

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no. 1058 of 2023
Date of filing complaint 24.03.2023
Date of decision 18.02.2025

Tarun Agnihotri
Rajesh Valecha

Both are resident of: A-59, Ganesh Nagar, Post Office-
Tilak Nagar, New Delhi-110018

Complainants

Versus

M/s Imperia Structures Limited

Regd. office: A-25, Mohan Co-operative Industrial
Estate, New Delhi-110044.

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Deepak Bansal (Advocate)
Sh. Rishi Kapoor (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real -Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions



under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

4. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

SR.No.	Particulars	Details
1.	Name of the project	"Elvedor" sector 37C, Gurgaon, Haryana
2.	Nature of project	Commercial colony
3.	Rera Registered/Not Registered	47 of 2012 dated 12.05.2012 Valid/renewed up to- 11.05.2016 Licensee- M/s Prime IT Solutions Pvt. Ltd.
4.	Project area	2 acres
5.	Unit no.	G.13 Ground floor (Page no. 41 of complaint)
6.	Unit admeasuring	207 sq.ft. (Page no. 207 of complaint)
7.	Date of execution of agreement for sale	14.09.2016 (page no. 41 of complaint)
8.	Possession clause	11(a) Schedule for possession of the said unit The company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the said building/said unit within a period of forty two months from the date of this agreement unless there shall be delay or failure due to department delay or due to any



		circumstances beyond the power and control of the company or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the Total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee to abide by all or any of the terms and conditions of this agreement
9.	Due date of delivery of possession	14.03.2020 (Calculated from the date of buyer's agreement)
10.	Total sale consideration	Rs 23,46,205/- (As per page no. 41 of complaint)
11.	Total amount paid by the complainants	Rs. 10,57,456/- (As alleged by the complainants and the same is admitted by the respondent during proceeding dated 24.12.2024)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint

5. The complainants have made the following submissions in the complaint: -
- That the respondent published very attractive brochure of commercial colony called '**Elvedor**' at Sector - 37, Gurugram, Haryana. The project was launched in 2011 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.
 - That based on the various representations made by the respondent, the complainants booked a unit no. G-13, ground floor admeasuring 315sq. ft. in the project of the respondent.



- c. That a buyer's agreement was executed between the complainants, the respondent on 14.09.2016. The complainants paid Rs. 10,57,456/- out of total sale consideration of Rs. 23,46,205/-.
- d. That as per clause 11(a) of the builder buyer's agreement, the respondent was under legal obligation to handover the possession of the above said unit within 42 months from the date of execution of the builder buyer agreement.
- e. That the respondent has not completed the construction of the said real estate project till now and the complainants have not been provided with the possession of the said unit despite several and repeated promises and representation made by respondent. By committing delay in delivering the possession of the aforesaid unit, the respondent has violated the terms and conditions of the builder buyer's agreement and promises made at the time of booking of said unit.
- f. That the complainants have approached the Authority seeking refund of their paid amount with interest.

C. Relief sought by the complainants:

6. The complainants have sought following relief(s)
 - a. Direct the respondent to refund the full deposited money which is withheld with the respondent along with interest@18% p.a. from the date of deposit till realization in accordance with section 18(1), section 19(4) of the Act, 2016 and Rule 15 and Rule 16 of Rules, 2017.
 - b. Direct the respondent to pay interest @18% per annum on the amount paid by the complainants to the respondent from the date of payment to the date of realization.
 - c. Direct the respondent to reimburse litigation cost of Rs. 1,00,000/- to the complainants.

D. Reply by the respondent

The respondent contested the complaint on the following grounds:

7. That the complainants after making independent enquiries and only after being fully satisfied about the project, had approached the respondent company for booking of a unit in respondent's project 'Elvedor Retail' located in Sector-37 C, Gurugram. The respondent company provisionally allotted the unit bearing no. Shop G13 in favor of the complainants for a total consideration amount of Rs.25,36,365/- including applicable tax and additional miscellaneous charges vide booking dated 25.08.2012 and opted the construction-linked plan on the terms and conditions mutually agreed by the complainants and the respondent company.
8. That the complainants has not approached the Hon'ble Authority with clean hands or with *bona fide* intentions and that depicts in their actions as they haven't paid the instalments on time and still a large portion of amount is still outstanding, despite the fact numerous reminders sent by the respondent company. It is stated that the complainants have breached the obligations laid upon their booking dated 25.08.2012.
9. That the terms under booking delineates the respective obligations of the complainants as well as those of the respondent, in case of breach of any of the conditions specified therein, the consequences thereof. The complaint has been made to injure and damage the interest and reputation of the respondent and that of the project. Therefore, the instant complaint is liable to be dismissed *in limine*.

10. That the foundation of the said project vests on the joint venture/collaboration between M/s Prime IT Solutions Private Limited, a company incorporated under the provisions of Companies Act, having its registered office at B-33, First Floor, Shivalik Colony (Near Malviya Nagar), New Delhi-110017 (as one party) and M/s Imperia Structures Pvt. Ltd. (as second party), laying down the transaction structure for the said project and for creation of SPV (Special Purpose Vehicle) company, named and titled as Imperia Wishfield Pvt. Ltd., i.e. the respondent.
11. That in lieu of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were from Ms Prime IT Solutions Pvt. Ltd. and Mr. Harpreet Singh Batra and Mr. Brajinder Singh Batra were from M/s Imperia Structures Pvt. Ltd.
12. That 3 out of 5 shareholders of the respondent company, to the tune of 2500 shares each, amounting to Rs.15,00,000/- each were from M/s Prime IT Solutions Pvt. Ltd. and remaining 2 Shareholders of the respondent company, to the tune of 3750 shares each were from M/s Imperia Structures Pvt. Ltd.
13. That the said project suffered a huge setback by the act of non-cooperation of M/s Prime IT Solutions Pvt. Ltd., which proved to be detrimental to the progress of the said project as majority of the fund deposited with the above-mentioned project account by the allottees was under the charge of M/s Prime IT Solutions Pvt. Ltd. and the said fund was later diverted by the M/s

Prime IT Solutions Pvt. Ltd., leaving the respondent company with nearly no funds to proceed along with the said project. Further, a case was filed with the title 'M/s Prime IT Solutions Pvt. Ltd. vs. Devi Ram and Imperia Wishfield Pvt. Ltd.', pursuant to which a compromise deed dated 12.01.2016 was signed between the respondent company and M/s Prime IT Solutions Pvt. Ltd. whereby the respondent company was left with the sole responsibility to implement the said project.

14. That these circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project. Due to these complications there was a delay in procurement of the land license and ownership by the respondent company. However, the same has been acquired by the respondent and the project is near to completion.
15. That several allottees have withheld the remaining payments, which is further severally affecting the financial health of the respondent company and further, due to the Force Majeure conditions and circumstances, which were beyond the control of the respondent company as mentioned herein below, the construction got delayed in the said project.
16. That both the parties i.e., the complainants as well as the respondent company had contemplated at the very initial stage while signing the allotment letter that some delay might occur in future and that is why under the force majeure clause as mentioned in the allotment letter, it is duly agreed by the complainants that the respondent would not be liable to perform any or all of its obligations during the subsistence of any force



majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It was unequivocally agreed between the complainants and the respondent that the respondent company is entitled to extension of time for delivery of the said flat on account of force majeure circumstances beyond the control of the respondent company. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from 04.11.2019 onwards, which was a blow to realty developers in the city. The air quality index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on 09.11.2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020. Secondly, after the complete ban was lifted on 14.02.2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24.03.2020 on account of nation-wide pandemic COVID-19, and conditionally unlocked it on 03.05.2020, however, this has left a great impact on the procurement of material and labour. The 40-day lockdown effective since 24.03.2020, extendable up to 03.05.2020 and subsequently to 17.03.2020, led to a reverse migration with workers leaving cities to return back to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers were stuck in relief

camps. The aftermath of lockdown left a great impact on the sector for resuming the fast pace construction for achieving the timely delivery as agreed under the allotment letter.

17. That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent had commenced construction work and arranged for the necessary infrastructure including labour, plants and machinery, etc. However, since the construction work was halted and could not be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to idle resulting in mounting expenses, without there being any progress in the construction work. Further, most of the construction material which was purchased in advance got wasted/deteriorated causing huge monetary losses. Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting in huge losses to the respondent.

18. That the delay is caused due to lack of funds, as the allottees have grossly underpaid and failed to make timely payments to the respondent. The complainants have paid only Rs.10,57,457/- to the respondent and a huge sum of Rs. 14,78,908 still pending to be paid by the complainants. The complainants have caused loss to the respondent and the project could not be completed without the sum required by the respondent.

19. That despite all the impediments faced, the respondent was still trying to finish the construction of the said project and managed to complete the civil work of the said tower/project, and the finishing work, leaving only the MEP work of the towers under progress, which is estimated to be completed by the year 2025 and the respondent shall be handing over physical possession of the said unit to the complainants.
20. That the complainants are not entitled to the relief prayed for because the complainants have miserably failed to bring to the notice of the Hon'ble Authority any averment or document which could form a basis for this Hon'ble Authority to consider the complaint under reply which is totally devoid of any merit in law. The complainants themselves have violated the agreed terms by not making timely payment and not making payment for full consideration of the said unit and hence are not entitled to get any relief. The instant complaint is an abuse of process of law.
21. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

22. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

23. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

24. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

25. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

26. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed

by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

27. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Findings on the objections raised by the respondent:

F.I Objection regarding regarding the circumstances being 'force majeure.

28. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as ban of construction activities in Delhi NCR Region by the orders of



Hon'ble Supreme Court due to unprecedented air pollution levels, Covid-19 pandemic, shortage of labour and raw material, non-payment of outstanding dues by numerous allottees, including complainants etc. , but all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 14.09.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 14.03.2020. The events such as ban of construction activities in Delhi NCR Region by the orders of Hon'ble Supreme Court due to unprecedented air pollution levels, were for a shorter duration of time and were not continuous. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent/builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

29. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020*** has observed that:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself.

30. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 14.03.2020 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants

- a. Direct the respondent to refund the full deposited money which is withheld with the respondent along with interest@18% p.a. from the date of deposit till realization in accordance with section 18(1), section 19(4) of the Act, 2016 and Rule 15 and Rule 16 of Rules, 2017.
 - b. Direct the respondent to pay interest @18% per annum on the amount paid by the complainants to the respondent from the date of payment to the date of realization.
31. The above-mentioned relief sought by the complainants are taken together being inter-connected.
32. That the complainants booked a unit G.36, ground floor in the project of the respondent namely, "Elvedor" admeasuring super area of 315 sq. ft. for an agreed sale consideration of Rs.23,46,205/- against which complainants paid an amount of Rs.10,57,456/- and the respondent has failed to hand over the physical possession till date. That the complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:



Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,—.....

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

33. As per clause 11(a) of the agreement provides for handing over of possession and is reproduced below:

"11(a) Schedule for possession of the said unit

The company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the said building/said unit within a period of forty two months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the company or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the Total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee to abide by all or any of the terms and conditions of this agreement."

34. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein subject to force majeure conditions and reason beyond the control of the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even



a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

35. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

36. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.



37. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 18.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
38. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 11(a) of the agreement dated 14.09.2016, the possession of the subject unit was to be delivered within a period of 42 months from the date of execution of the agreement. The due date is calculated 42 months from date of buyer's agreement i.e., 14.09.2016. Accordingly, the due date of possession comes out to be 14.03.2020 and there is a delay of more than 3 years on the date of filing of complaint to handover the possession of the allotted unit.
39. Keeping in view the fact that the allottee/complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
40. The due date of possession as per buyer's agreement for sale as mentioned in the table above is 14.03.2020. The Authority has further, observes that even after the passage of more than 4 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them. Further, the Authority observes that there



is no document place on record from which it can be ascertained that whether the respondent has applied for OC/Part OC or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

41. Moreover, the OC/CC of the project where the unit is situated has still not been obtained by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which **clearly amounts to deficiency of service**. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

42. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 observed as under:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

43. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of buyer's agreement. Accordingly, the promoter is liable to the allottee, as they wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
44. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.III Direct the respondent to reimburse litigation cost of Rs. 1,00,000/- to the complainants.

45. The complainants are seeking above mentioned relief w.r.t. litigation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation &

litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority

46. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to refund the amount i.e., **Rs.10,57,456/-** received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is

initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

47. Complaints stand disposed of.
48. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 18.02.2025

HARERA
GURUGRAM