

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

Date of Order: 12.12.2024

NAME OF THE BUILDER		IMPERIA WISHFIELD PRIVATE LIMITED	
PROJECT NAME		"ELVEDOR"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6636/2022	Hemant Kumar Mishra V/S Imperia Wishfield Private Limited	Shri Pardeep Singh Advocate Shri Rishi Kapoor Advocate
2.	CR/6935/2022	Ambalika Chitkara & Saryu Chaudhary V/S Imperia Wishfield Private Limited	Shri Geetansh Nagpal Advocate Shri Rishi Kapoor Advocate

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Elvedor" (Residential-cum-commercial) being developed by the

A

same respondent/promoter i.e., Imperia Wishfield Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid-up amount along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	Imperia Wishfield Private Limited at "Elvedor" situated in Sector- 37C, Gurugram.	
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 sixty (60) 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.		
<i>(Emphasis supplied)</i>		
(Taken from the buyer's agreement annexed in the complaint no. 6935 of 2022)		
Occupation certificate: - Not received		
Complaint No. & Case Title	CR/6636/2022 Hemant Kumar Mishra V/S Imperia Wishfield Private Limited	CR/6935/2022 Ambalika Chitkara & Saryu Chaudhary V/S Imperia Wishfield Private Limited
Reply status	08.05.2023	16.08.2023
Unit no.	G46 [As per page no. 30 of the complaint]	G11 [As per page no. 102 of the complaint]
Area admeasuring	306 sq. ft. [As per ledger account on page no. 10 of the reply]	404 sq. ft. [As per page no. 37 of the complaint]

Provisional Allotment in the name of complainant	20.10.2016 (As per page no. 30 of the complaint)	30.12.2017 (As per page no. 89 of the complaint)
Date of builder buyer's agreement	Not executed	Annexed but not executed
Due date of handing over of possession	Not specified	Not specified
Offer of possession	Not offered	Not offered
Total Consideration / Total Amount paid by the complainant(s)	TSC: Rs.37,53,772 /- (As per ledger account on page no. 10 of the complaint) AP: Rs.12,74,041 /- (As per ledger account on page no. 10 of the complaint)	TSC: Rs.43,99,696 /- (As per ledger account on page no. 10 of the complaint) AP: Rs.17,36,463 /- (As per ledger account on page no. 10 of the complaint)
<p>The complainant in the above complaint(s) has sought the following reliefs:</p> <ol style="list-style-type: none"> 1. Direct the respondent company to refund the amount of Rs.12,74,041/-. 2. Direct the respondent to pay interest on the amount of Rs.12,74,041/- from the date of deposit till the date of actual receipt at the prescribed rates. 3. Pass an award of Rs.10,00,000/- as damages/ compensation to the complainant for delay in giving the possession of the flat after passing of more than 60 month of builder buyer agreement and for causing mental agony, pain and suffering to the complainant. 4. Award a cost of Rs.10,00,00/- towards litigation expenses in favour of the complainant and against the opposite party. 		
<p>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviation Full form</p> <p>TSC Total Sale consideration</p> <p>AP Amount paid by the allottee(s)</p>		

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking refund of the amount paid along with interest.

A

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6636/2022 titled as Hemant Kumar Mishra V/S Imperia Wishfield Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Project name and location	"Elvedor" at sector 37C, Gurgaon, Haryana
2.	Project area	1.175 acres
3.	Nature of project	Residential-cum-commercial
4.	RERA registered/not registered	Not registered
5.	DTCP license no.	51 of 2012 dated 17.05.2012
	Valid up to	16.05.2024
	Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and others
6.	Provisional allotment letter	20.10.2016 (As per page no. 30 of the complaint)
7.	Date of execution of	Not executed

	builder buyer's agreement	
8.	Unit No.	SHOP G46, Ground floor & Block-B (As per page no. 30 of the complaint) (Note: Unit has been changed to shop G46 from IR_015 on ground floor)
9.	Unit area admeasuring	306 sq. ft. (As per ledger account on page no. 10 of the reply)
10.	Possession clause	<i>N.A</i>
11.	Due date of delivery of possession	Not specified
12.	Total consideration	Rs.37,53,772/- (As per ledger account on page no. 10 of the reply)
13.	Total amount paid by the complainant	Rs.12,74,041/- (As per ledger account on page no. 10 of the reply)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:
 - I. That on 13.09.2012 the complainant filled an application form and applied for allotment of one commercial unit in the above said project namely "Esfera Elvedor" having a commercial space of 315 sq. ft. (super area) and paid an amount of Rs.2,75,000/- vide a cheque dated 13.09.2012 as booking fees and pursuant to that payment, the respondent issued a receipt dated 14.09.2012.
 - II. That after this the complainant sent a demand letter and raised a demand of Rs.4,37,384/- against the booking for commercial retail

Pa

- unit mentioned above and the complainant paid this amount vide cheques dated 30.11.2012. Pursuant to that payment, the respondent issued a receipt dated 02.12.2012.
- III. That however, the respondent did not intimate any timeline within which the buyer's agreement would be executed. Finally, after several months from the date of booking, the respondent issued a unit confirmation letter dated 07.05.2013 wherein the respondent company allotted the unit no. IR_015 on the ground floor in tower IRIS admeasuring 315 sq. ft. In commercial project "Elvedor Retail" in the said project in favour of the complainant.
- IV. That the respondent again sent a demand letter in the month of January 2016 and raised a demand of Rs.2,88,438/- and on the assurance of the respondent, the complainant continued to fulfil his obligation and accordingly paid further amount of Rs.2,88,438/- vide cheque dated 15.01.2016. The respondent acknowledged the same and issued a receipt of the said amount dated 25.01.2016.
- V. That finally after 36 months from the date of booking, the respondent issued a letter dated 20.10.2016 and supplied two copies of the MOU in respect of the unit no.G46 situated in the project "37th Avenue", Tower 37 situated in sector 37C, Gurgaon Haryana and asked the complainant to sign both the copies along with stamp papers and annexure and then return the same within 30 days from the issue of this letter for execution of agreement.
- VI. That the complainant duly signed that Memorandum of understanding and resent both the copies of that MOU to the respondent company but the same was never sent back by the respondent company to the complainant. That the complainant was

- already a trapped customer having invested substantial amounts of his hard earned money in the project; the complainant was constrained to execute this MOU dated 20th October 2016.
- VII. That on 20.10.2016, the respondent company issued a provisional allotment letter to the complainant regarding shop no. G46 on the ground floor in block B in Tower 37th Avenue in commercial project "37th Avenue". It is pertinent to mention here that in this provisional allotment letter the size of the unit was changed from 315 sq. ft. to 296 sq. ft. without taking the consent of the complainant.
- VIII. That additionally in terms of this provisional allotment letter the total basic sale price was shown as at the rate of Rs.8,775/- per sq. ft. for a total super area of 296 sq. ft.), PLC were shown as Rs.2,59,740/-, IFMS of Rs.29,600/- and other charges at Rs.4,90304/-.
- IX. That as per the last demand letter issued by the respondent dated 31.08.2017 at the casting of basement slab the complainant had paid a sum of Rs.10,00,822/- by August 2017 out of Rs.12,18,340 due on that date as specified in the demand letter.
- X. That thereafter the complainant paid an amount of Rs.2,73,219/- vide cheque dated 31.07.2018. Pursuant to such payment, the complainant had in aggregate paid a sum of Rs.12,74,041/- to the respondent.
- XI. That even after receiving of this amount the respondent did not undertake any construction on the project. The complainant repeatedly requested the respondent to provide status of construction as well as information on the expected date of delivery of the project. When no construction was taking place for more than 1 year, the complainant visited the office and the site of construction and was shocked to see that no activity was ongoing.

A

- XII. That no construction activities were undertaken for a period of 2 years. The complainant started making queries from other allottees that were similarly situated and was shocked to learn that neither did the respondent have any right in and over the land at the time of booking, nor did the respondent have requisite sanctions or approvals from the concerned authorities. A license/letter of intent was issued in favour of Prime IT Solutions Pvt. Ltd. and not the respondent company on 24-05-2011.
- XIII. That as per clause 25 of terms and conditions of the license / letter of intent which was issued in favour of Prime IT solutions Private Limited (and not the respondent) on 24.05.2011, the colonizer (i.e., Prime IT solutions Private Limited) was required to provide an undertaking to the effect that land is not being sold to anyone after issuance of the letter of intent. As such, it is evident that a pre-condition for issuance of letter of intent/ licence was that there is no collaboration agreement/agreement to sell which is in force on the project land. Therefore, neither did the respondent have any license in its favour nor was it, in any event, without a separate license issued in its favour, entitled to acquire the land or undertake construction on the same.
- XIV. That the collaboration agreement dated 06.12.2012 which was governing document granting the respondent right to undertake construction and development was in fact unregistered. Consequently, at the time of undertaking booking for the complainant, the respondent had no right in and over the said land.
- XV. That in 2016 in order to enforce its purported rights against Prime IT solutions the respondent company filed a civil suit against M/S Prime

A

IT solutions Pvt Ltd before the Ld. Civil Judge (Jr. Div.) Gurugram wherein a compromise was executed between the parties to the suit. Pursuant to such compromise dated 12.01.2016 and a compromise decree dated 21.01.2016, the respondent presumably has acquired rights in respect of the project land. However, as is evident, the respondent still does not have the requisite sanctions from the concerned authorities to undertake construction over the lands since the approval/license was issued only in the name of M/S Prime IT solutions Pvt Ltd and not the respondent. As such the construction is completely not sanctioned and this fact has been actively concealed by the respondent for almost 10 years.

- XVI. That even after expiry of 10 years from the date of booking, till date only a rudimentary structure of one out of the several building forming part of the project has been erected on the project land which is incapable of being handed over or being inhabitable possession. Additionally, there is no other development on the project land for last four years and the construction activities have been stopped since 2016.
- XVII. That the acts of the respondent are palpably unfair trade practice as innocent customers are lured into buying projects from them only to suffer financial loss later, not to speak of immense mental stress and harassment.
- XVIII. That the respondent has breached the fundamental term of the contract by inordinately delaying delivery of the possession. The respondent has committed various acts of omission and commissions by making incorrect and false statements in the advertisement



materials as well as by committing other serious acts as mentioned in preceding paragraphs.

XIX. That this Hon'ble Authority has the jurisdiction to try the present complaint as it is by now settled that under section 31 of the RERA Act, any aggrieved person may file a complaint pertaining to any housing project, either registered or unregistered.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct the respondent company to refund the amount of Rs 12,74,041/-.
 - ii. Direct the respondent to pay interest on the amount of Rs 12,74,041/- from the date of deposit till the date of actual receipt at the prescribed rates.
 - iii. Pass an award of Rs.10,00,000/- as damages/ compensation to the complainant for delay in giving the possession of the flat after passing of more than 60 month of builder buyer agreement and for causing mental agony, pain and suffering to the complainant.
 - iv. Award a cost of Rs.10,00,00/- towards litigation expenses in favour of the complainant and against the opposite party.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

11. The respondent has contested the complaint on the following grounds:

A

- I. That the complainant 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 G46 in favor of the complainant for a total consideration amount of Rs.37,53,772/- including applicable tax and additional miscellaneous charges vide booking dated 13.09.2012 and opted the construction-linked plan on the terms and conditions mutually agreed by the complainant and the respondent company.
- II. That the complainant 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 complainant has breached the obligations laid upon their booking dated 13.09.2012.
- III. That the terms under booking delineates the respective obligations of the complainant 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*.
- IV. 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 company.

- V. 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.
- VI. 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.
- VII. 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

A

- Solutions Pvt. Ltd. whereby the respondent company was left with the sole responsibility to implement the said project.
- VIII. That these circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project.
- IX. That 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.
- X. 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.
- XI. That both the parties i.e., the complainant 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 complainant that the respondent company shall 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 complainant and the respondent company 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

A

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.

- XII. 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

A

- 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.
- XIII. 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 complainant has paid only Rs.12,74,041/- to the respondent and a huge sum is still pending to be paid by the complainant. The complainant has caused loss to the respondent and the project could not be completed without the sum required by the respondent.
- XIV. 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 complainant.
- XV. That the complainant is not entitled to the relief prayed for because the complainant has 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 complainant

A

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.

12. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

13. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

12

Section 11.....

(4) The promoter shall-

(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.

16. 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 complainant at a later stage.
17. 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."

18. 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 objections raised by the respondents:

F.I Objection regarding delay due to force majeure conditions:

19. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court banning the construction for a shorter period of time on account of weather conditions in NCR region. The respondent further raised the contention that other factors like demonetisation, govt. schemes and non-payment of instalment by different allottee of the project also contributed in delay in completion of project but all the pleas advanced in this regard are devoid of merit. First of all, as per the possession clause taken from similar complaint of the same project the possession of the unit in question was to be delivered latest by 30.06.2022 including the grace period of 6 months on account of covid-19. But the project is still incomplete even if 6 months grace period is allowed on account of covid-19. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent company to refund the amount of Rs 12,74,041/-.

G.II Direct the respondent to pay interest on the amount of Rs 12,74,041/- from the date of deposit till the date of actual receipt at the prescribed rates.

20. The above-mentioned relief sought by the complainant is taken together being inter-connected.
21. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

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)

22. **Admissibility of refund along with prescribed rate of interest:** The complainant is 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:

19

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.

23. 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.
24. 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., 12.12.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*



26. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(b) of the Act, 2016.
27. In the instant matter, even after lapse of 6 years from the date of issuance of provisional allotment till the filing of complaint, no buyer's agreement has been executed inter- se parties. The respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the reasonable period should be allowed for possession of the unit or completion of the project.
28. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
29. The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**

30. In view of the above-mentioned reasoning, the due date of possession is to be calculated from date of provisional allotment letter. Therefore, the due date of handing over of the possession of the unit comes out to be 20.10.2019. Even if we consider the buyer's agreement of the similar complaint of the same project which says the construction of the unit to be completed within a period of 60 months from the date of the agreement. In the absence of buyer's agreement, the date of provisional allotment is to be treated as date of agreement i.e., 20.10.2016, ought to be taken as date for calculating due date of possession. Therefore, due date of possession in terms of possession clause at the uppermost limit could be considered as 20.03.2022 including grace period of 6 months in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic.
31. The counsel for the respondent vide proceedings of the day dated 12.12.2024 brought to the notice of the Authority that the occupation certificate of the unit is not yet obtained and the application filed for withdrawal of impleadment of M/s Prime IT Solutions Pvt. Ltd. is allowed. Thus, even if we consider 20.03.2022(which is later date) as due date of possession, the respondent has failed to complete the unit and give possession of the unit till date.
32. Moreover, the authority 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 I of the project....."*
33. 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***

A

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.

34. 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 provisional allotment letter or duly completed by the either date mentioned as above. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
35. 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 complainant is 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 Pass an award of Rs.10,00,000/- as damages/ compensation to the complainant for delay in giving the possession of the flat after passing of more than 60 month of builder buyer's agreement and for causing mental agony, pain and suffering to the complainant.

G.IV Award a cost of Rs.10,00,00/- towards litigation expenses in favour of the complainant and against the opposite party.

36. The above-mentioned relief sought by the complainant is taken together being inter-connected.
37. The complainant is seeking above mentioned relief w.r.t. compensation. 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:

38. 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):
- The respondent is directed to refund the amount i.e., **Rs.12,74,041/-** received by him from the complainant 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.

RA

- 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order along with details of amount paid by the complainants, due date of possession etc.
40. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
41. Files be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2024