

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

Complaint no. : 5201 of 2023  
Date of filing complaint: 10.11.2023  
First date of hearing: 22.02.2024  
Date of decision : 06.03.2025

Soam Sachdeva

R/o: E-8/6, 3<sup>rd</sup> floor, Vasant Vihar-I, Near DPS  
School, South West Delhi-110057.

**Complainant**

Versus

M/s Imperia Wishfield Private Limited

Regd. Office at: A-25, Mohan Co-operative  
Industrial Estate, Mathura Road, New Delhi -  
110044

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Sushil Yadav (Advocate)

Sh. Rishi Kapoor (Advocate)

Complainant

Respondent

**ORDER**

1. The present complaint has been filed on 10.11.2023 by the complainant/allottee 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.

**A. Project and unit related details**



2. The particulars of the project, the details of 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.	Name and location of the project	"Elvedor" at sector-37 C, Gurgaon.
2.	Nature of Project	Commercial
3.	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
4.	RERA registered/ not registered and validity status	Not Registered
5.	Unit No.	A-020, Ground floor, Tower-Adus (As per page no. 11 of the reply)
6.	Unit area admeasuring	260 sq. ft. (super area) (As per page no. 11 of the reply)
7.	Date of booking	29.08.2012 (As per page no. 11 of the reply)
8.	Date of buyer's agreement	Not executed
9.	Possession clause	N.A
10.	Due date of possession	Cannot be ascertained
11.	Total Sale Consideration	Rs.29,65,163/- (As per payment schedule on page no. 13 of the reply)
12.	Amount paid by complainant	Rs.5,52,485/- (As per receipt information on page no. 13 of the reply)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:





- I. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "Elvedor, Sector 37 C Gurgaon", promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements, the complainant booked a shop measuring 260 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs.27,50,125/-.
- II. That the complainant made payment of Rs.5,52,485/- to the respondent vide different cheques and other mode, the respondent duly accepted the payments.
- III. That the respondent agreed to allot shop admeasuring 260 sq. ft. in sector 37 C, Gurugram to the complainant. That at the time of booking of the aforesaid shop and after the payment, the respondent had agreed to execute builder buyer's agreement within 30 days from the date of allotment. The complainant regularly followed up the respondent for execution of the builder buyer's agreement but the respondent evaded the matter on one pretext or other. The respondent kept assuring the complainant that the possession of the shop will be handed over soon. However, for the reason best known to the respondent they never delivered the possession of shop nor executed the builder buyer's agreement.
- IV. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going on in full swing and accordingly asked for the payments which the complainant gave on time and when the complainant visited the site was shocked & surprised to see that construction work is not on and no one was present at the site to



address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the shop without completing the work and not handing over the possession on time.

- V. That despite receiving more than 35% payments approximately on time for all the demands raised by the respondent for the said shop and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted shop to the complainant within stipulated period.
- VI. That it could be seen that the construction of the block in which the complainant booked a shop with a promise by the respondent to deliver the shop by 14.10.2019 but could not completed it within time for the reasons best known to the respondent which clearly shows that ulterior motive of the respondent was to fraudulently extract money from the innocent people.
- VII. That due to this omission on the part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the shop on time. That as oral agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.150/- per sq. ft. per month of the total area of the shop. It is however, pertinent to mention here that a compensation at such a nominal rate of Rs.150/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the shop even after a delay from the agreed



possession plan. The respondent cannot escape the liability merely by mentioning compensation.

- VIII. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the shop is actually delivered to the complainant.
- IX. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent to deliver possession of the shop in question along with prescribed interest on the amount deposited by the complainant but the respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

**D. Reply by the respondent:**

5. The respondent contested the complaint on the following grounds:
- 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. A-020 in favor of the complainant for a total consideration amount of Rs.29,65,163/- including applicable tax and additional miscellaneous charges vide



- booking dated 29.08.2012 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 his actions as he hasn'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 29.08.2012.
  - 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

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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 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 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 agreement.

- 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 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.5,52,485/- 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 himself has violated the agreed terms by not making timely payment and not making payment for full consideration of the said unit and hence is not entitled to get any relief. The instant complaint is an abuse of process of law.

6. 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 on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority:**

7. 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**

8. 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

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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**

9. 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) 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.

10. 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.
11. 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. (Supra)*** and 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*** 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."

12. 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 refund amount.

**F. Findings on the objection raised by the respondent:**

**F.I Objection regarding force majeure conditions:**

13. 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. 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.*

14. In view of the above-mentioned reasoning, the due date of possession is to be calculated from date of booking i.e., 29.08.2012. Therefore, the due date of handing over of the possession of the unit comes out to be 29.08.2015. Even if we consider the possession clause mentioned in 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 booking is to be treated as date of agreement i.e., 29.08.2012, 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 29.08.2017. The 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 could not be allowed as the due date of possession is way prior to the occurrence 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 to refund the entire amount paid by the complainant along with the prescribed rate of interest.**

15. 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)*

16. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him along with interest prescribed rate of interest. The allottee intend to withdraw from the project and is seeking refund of the amount paid by him 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.

17. 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.
18. 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., 06.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.



19. 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;"*
20. 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.
21. In the instant matter, even after lapse of 11 years from the date of booking till the filling 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.
22. 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.

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23. In view of the reasoning mentioned in para 14, the due date of possession is to be calculated from date of booking. Therefore, the due date of handing over of the possession of the unit comes out to be 29.08.2015. 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., 29.08.2012, 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 29.08.2017.
24. The counsel for the complainant vide proceedings of the day dated 06.03.2025 brought to the notice of the Authority that the project is abandoned and not being completed and hence the complainant is seeking refund with interest. The counsel for the respondent confirms during the proceedings dated 06.03.2025 that the project is under delay and in view of the same the respondent is willing to make refund of the principle amount in the first week of April and the interest component in instalments. Thus, even if we consider 29.08.2017 (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.
25. 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 1 of the project....."*
26. 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.*
27. 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.
28. 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 him 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 its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.




**H. Directions of the authority:**

29. 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/promoter is directed to refund the amount i.e., **Rs.5,52,485/-** received from each of 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 its realization.
  - 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.
30. The complaint stand disposed of.
31. File be consigned to registry.

Dated: 06.03.2025

**HARERA**  
GURUGRAM

  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram