

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

**Complaint no.** : 5318 of 2025  
**Date of complaint** : 24.10.2025  
**Date of order** : 09.01.2026

Dhananjay Kumar,  
**R/o:** - 1401, 14<sup>th</sup> Floor, Tower-T-30, Phase-3, Nirala  
Estate, Greater Noida, Techzone-IV, U.P-201210.

**Complainant**

Versus

M/s Imperia Wishfield Pvt. Ltd.  
**Regd. Office at:** A-25, Mohan Cooperative Industrial  
Estate, Mathura Road, New Delhi-110044.

**Respondent**

**CORAM:**

Arun Kumar

**Chairman**

**APPEARANCE:**

Anshul Sharma (Advocate)  
Shubham Mishra (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed 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 to the allottee as per the agreement for sale executed *inter se* them.

**A. Unit and project related details**

2. 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.	Heads	Details
1.	Project name and location	"37th Avenue" at sector 37C, Gurgaon, Haryana
2.	Project area	1.175 acres
3.	Nature of project	Commercial colony
4.	RERA registered/not registered	<b>Not registered</b>
5.	DTPC license no. & validity status	51 of 2012 dated 17.05.2012 Valid/renewed up to- 16.05.2024 Licensee- Harikishan and 2 Ors.
6.	Unit no. as per the buyer's agreement	4_S12, 4 <sup>th</sup> Floor, Tower-B (page 25 of complaint)
7.	Unit measuring	900 sq. ft. (super area) (page 25 of complaint)
8.	Allotment letter dated	14.11.2015 (page 16 of complaint)
9.	Date of execution of buyer agreement	26.11.2015 (page 22 of complaint)
10.	Possession clause	<p><b>11(a) Schedule for possession of the said unit</b></p> <p>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 <b>within a period of sixty(60) months from the date of this agreement</b> 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</p>

		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.
11.	Due date of delivery of possession as per clause 11(a)	26.05.2021 (due date is calculated from the date of BBA+ 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
12.	Total consideration as per BBA.	Rs.57,14,100/- (page 25 of complaint)
13.	Total amount paid by the complainant	Rs.17,62,646/- (page 28 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

## B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant purchased a residential unit in the project "Elvedor" situated at Sector 37C, Gurugram, admeasuring 659 sq. ft. and bearing unit No. 4-S12, Tower-B, 4th Floor, Super Area 83.64 sq. mtrs. A builder buyer agreement was duly executed between the parties on 26.11.2015. That the total sale consideration of the said unit was Rs.57,14,100/- inclusive of fixtures, fittings, EDC & IDC, IFMS, electricity connection charges and other allied charges. The respondent assured the complainant that all necessary sanctions and approvals had been duly obtained for the timely completion of the project. Out of the aforesaid consideration, the respondent demanded, and the complainant paid a sum of Rs.17,62,646/-.
- II. That as per Clause 11(a) of the studio apartment buyer's agreement,

the respondent was required to complete the construction and hand over possession of the said unit within 60 months from 26.11.2015, i.e., on or before 26.11.2020. However, despite this clear obligation, the respondent failed to honor the terms of the BBA. The complainant repeatedly requested the respondent and its officials to complete the construction and hand over peaceful possession, but the respondent, on one pretext or another, kept misleading the complainant and deliberately failed to fulfill its commitments.

- III. 'That when the respondent did not honour its commitment, the complainant requested refund of the amount already deposited so that the complainant could invest in another property. However, the respondent and its authorized representatives failed and neglected to refund the amount, thereby causing grave financial hardship to the complainant.
- IV. That from the aforesaid acts, omissions, and misdeeds of the respondent, it is evident that despite repeated requests, the respondent has neither refunded the deposited amount of Rs.17,62,646/- nor complied with the assurances and promises made under the BBA. The respondent has thus wrongfully withheld and misappropriated the complainant's hard-earned money.
- V. That the complainant has waited patiently for several years, but due to the deliberate delay, inaction, and non-performance on the part of the respondent, the complainant has suffered immense financial loss as well as severe mental agony, harassment, and physical distress.

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

- 4. The complainant has sought following relief(s):

I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

**D. Reply by the respondent:**

5. The respondent vide reply dated 12.12.2025 contested the complaint on the following grounds: -

- i. That the complainant, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent for booking of a unit in respondent's project '37<sup>th</sup> Avenue' located in Sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. 5\_S03 in favor of the complainant for a total consideration amount of Rs.62,59,179/-, including applicable tax and other charges vide Memorandum of Understanding dated 26.11.2015 and conditions mutually agreed by the complainants and the respondent.
- ii. That the foundation of the said project rests upon a joint venture arrangement, pursuant to which a Special Purpose Vehicle (SPV) company, namely 'Imperia Wishfield Pvt. Ltd.', i.e., the respondent company, was created.
- iii. That in lieu of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. That 3 out of 5 shareholders of the respondent Company, to the tune of 2500 shares each, amounting to Rs.15,00,000/-.
- iv. 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. v. 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. These circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project.

v. 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. 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 and the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020. Secondly, 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.

- vi. That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent company 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 company.
- vii. That on account of above-mentioned circumstances, in addition to certain force majeure developments, the respondent company was not able to complete the said project.

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 complainant.

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

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**

7. 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**

8. 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:

***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.*

9. 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.

**F. Findings on the objections raised by the respondent.**

**F.I Objections regarding force majeure.**

10. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction, shortage of material and labour, major spread of Covid-19 across worldwide, non-payment of

outstanding dues by numerous allottees including the complainant, initiation of CIRP proceedings against respondent company etc. In the instant complaint, the due date of handing over of possession was 26.11.2020 and grace period of 6 months on outbreak of Covid-19 pandemic has already been granted to the respondent. As far as the contention of the respondent regarding banning of construction in the NCR region is concerned, the same was banned for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Further, 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 respondent-promoter cannot be given any leniency on based of aforesaid reasons and it is a 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 paid-up amount along with prescribed rate of interest.**

11. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him along with interest at the prescribed rate as provided under Section 18(1) of the Act. Sec. 18(1) of the Act 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)*

12. Clause 11(a) of the buyer's agreement dated 26.11.2015 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 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..."*

13. The respondent/promoter has proposed to handover possession of the subject apartment within a period of 5 years from the date of execution of buyer's agreement. Therefore, the due date of possession was 26.11.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 26.05.2021.
14. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed

rate of interest 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.*

15. 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.
16. 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., 09.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
17. 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 Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11(a) of the buyer's agreement, the due date of possession comes out to be 26.05.2021 for the reasons quoted above. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottee intend to

withdraw from the project and is well within his right to do the same in view of Section 18(1) of the Act, 2016.

18. The occupation certificate 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 allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration 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....."*

19. 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, it was observed

*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."*

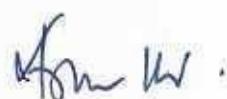
20. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. 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 it in respect of the unit with interest at such rate as may be prescribed.
21. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) 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., @10.80% 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 Rules, 2017 ibid.

#### **H. Directions of the authority**

22. 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):
  - i. The respondent is directed to refund the entire amount i.e., Rs.17,62,646/- received by it from the complainant along with interest at the rate of 10.80% 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 deposited amount.

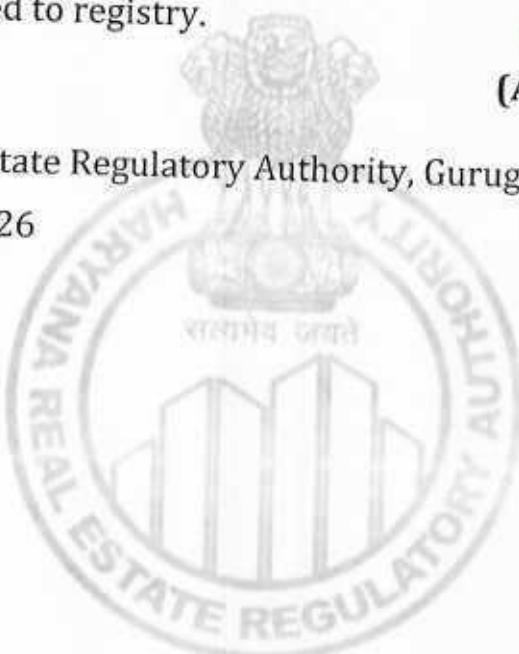
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to registry.



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.01.2026



**HARERA**  
GURUGRAM