

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

Complaint no. :	779 of 2024
First date of hearing:	24.05.2024
Date of decision:	12.09.2025

Vinod Kumar Singh S/o Hira Lal**Address:** - BD/5D, DDA Flat, Munirka, New Delhi -
110067**Complainant**

Versus

1. Ishv Realtors Private Limited(Previously Known as "*Ish Realtors Private Limited*")**Address:** - Corporate office 308, Time Center, ,
Golf Course Road, Sector 54, Gurugram-122011**2. Inaya infrastructure Private Limited****Address:** - Shop No. 9 and 10 G.F,
Shankar Market, Ajmeri Gate, Delhi**3. Gambhir Housing India Limited****Address:** - H-69, Upper Ground Floor Outer
Circle, Connaught Place, New Delhi, 110001**Respondents****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**Shri Ajitesh Kumar and Shivanshu
Shrivastava

Advocate for the complainant

Shri Ankur Yadav

Advocate for the respondent 1

Shri Dev Chadhary

Advocate for the respondent 2

None

Advocate for the respondent 3

ORDER

1. The present complaint dated 15.03.2024 has been filed by the complainant 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 thereunder 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. N.	Particulars	Details
1.	Name of the project	Skyline 109, Sector 109, Gurugram
2.	Project area	3.78187 Acres
3.	DTCP license	24 of 2011 dated 24.03.2011 Valid up to 23.03.2015
4.	RERA registered/ or not	Not registered
5.	Shop No. and size as per BBA	79, upper ground floor admeasuring 481 sq. ft. (Page no. 47 of complaint)

6.	Date of builder buyer agreement	28.03.2014 (Page no. 26 of the complaint)
7.	Possession clause	15. <i>That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within Four years from the date of this Agreement. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans / grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises.</i>
8.	Due date of possession	28.03.2018
9.	Total sale consideration	Rs. 45,26,210/- (As per BBA at page no. 28 of the complaint)

10.	Amount paid by the complainant	Rs. 13,32,879/- (Page no. 7 of complaint)
11.	Occupation certificate on	Not Obtained
12.	Offer of possession made on	Not Offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That Respondent No. 1, M/s Ishv Realtors Private Limited (previously known as "Ish Realtors Private Limited"), is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 28.02.2011, bearing CIN No. U70102DL2011PTC214954, having its registered office at H. No. 86, New Pole No. NJF XW-23, Village Pandwala Kalan, Najafgarh, South West Delhi-110043.
 - b. That Respondent No. 2, M/s Inaya Infrastructure Pvt. Ltd., is a Private Limited Company incorporated under the Companies Act, 1956 on 27.11.2012, bearing CIN No. U70200DL2012PTC245377, having its registered office at Shop Nos. 9 & 10, Ground Floor, Shankar Market, Ajmeri Gate, New Delhi-110006.
 - c. That Respondent No. 3, M/s Gambhir Housing India Limited, is a Public Limited Company incorporated on 01.10.2015 under the Companies Act, 1956, bearing CIN No. U45201DL2005PLC141487, having its registered office at H-69, Upper Ground Floor, Outer Circle, Connaught Place, New Delhi-110001.

- d. That sometime in the year 2013, the Respondents jointly and severally commenced a project for construction and development of a commercial colony over land bearing Rectangle No. 11/17, Killa Nos. 24/1, 24/3, 25/2, 24/2, 25/1, 5, 6/1, situated in "Skyline 109", Gurgaon, under the name "Skyline 109". It is pertinent to note that the said project has not been registered with the Haryana Real Estate Regulatory Authority (Haryana RERA) till date.
- e. That in the year 2014, the Complainant was induced by the Respondents through misleading and deceptive advertisements assuring secure investment in the project "Skyline 109", which led the Complainant to enter into a Flat Buyer's Agreement dated 28.03.2014 for booking Unit No. UG-79 admeasuring 481 sq. ft. (hereinafter referred to as "the Unit") in the said project, for a total sale consideration of ₹45,26,210/- (Rupees Forty-Five Lakhs Twenty-Six Thousand Two Hundred Ten Only).
- f. That the particulars of the Unit, the sale consideration agreed, the payments made by the Complainant from time to time, the proposed date of possession, and the period of delay are detailed in the accompanying statement of facts.
- g. That as per Clause 15 of the Flat Buyer's Agreement, the Respondents were under a contractual obligation to hand over possession of the Unit to the Complainant within a period of four years from the date of the Agreement, i.e., on or before 28.03.2018. For ready reference, Clause 15 of the Agreement is reproduced hereinbelow.

- h. That the Complainant diligently made timely payments towards the Unit as and when demands were raised by the Respondents. Till date, the Complainant has paid a sum of ₹13,32,879/- (Rupees Thirteen Lakhs Thirty-Two Thousand Eight Hundred Seventy-Nine Only) to the Respondents.
- i. That despite the lapse of more than ten years from the date of booking, the Respondents have failed to provide any update regarding the progress or status of the project "Skyline 109". The Respondents have blatantly violated Clause 15 of the Agreement, which clearly mandates delivery of possession within four years.
- j. That the Complainant subsequently learnt from various sources that the said project had never commenced and that "Skyline 109" was merely a deceptive scheme devised to fraudulently extract money from innocent investors. The Complainant also discovered that the project was never registered with Haryana RERA, confirming its illegality.
- k. That the Complainant, who invested his hard-earned savings in the hope of acquiring a commercial unit, is now facing severe financial distress due to the wrongful acts and omissions of the Respondents.
- l. That in view of the foregoing facts and circumstances, the Complainant, through his counsel, issued a legal notice to the Respondents on 20.01.2024 calling upon them to address the aforementioned grievances, but to no avail.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
- a. Direct the Respondents, jointly and severally, to refund to the Complainant the entire amount of ₹13,32,879/- received from the Complainant, along with interest at an appropriate rate from the respective dates of payment till actual realization.

D. Reply filed by respondent no. 1.

5. The respondent had contested the complaint on the following grounds:
- a. That as per the Builder Buyer Agreement ("BBA") dated 28.03.2014 executed between the parties, Clause 15 stipulates that the Builder shall endeavour to deliver possession of the Unit to the Allottee within a period of four years from the date of execution of the Agreement.
 - b. Clauses of the BBA clearly establishes that the Complainant was fully aware of, and expressly accepted, the possibility of unavoidable delays in construction. The Complainant agreed that the Developer would make all reasonable efforts to deliver the project at the earliest and within the said period; however, failure to adhere strictly to the period of four years would not amount to a breach of contract as time is not the essence of contracts relating to immovable property, unless expressly made so in unequivocal terms. It is a settled principle of law that unforeseen circumstances or natural calamities may impede construction activity and may consequently lead to delays.
 - c. That by the same reasoning, the Complainant is not entitled to claim delayed possession charges beyond the date of the Memorandum of Settlement dated 19.08.2020. Despite the

Respondent's bona fide intent to deliver the project, as reiterated in the said Memorandum of Settlement, construction was again adversely affected due to the unprecedented and worsening COVID-19 pandemic.

- d. That the Government of India, recognising the extraordinary nature of the COVID-19 pandemic, invoked the Disaster Management Act, 2005 on 24.03.2020 and imposed nationwide lockdowns. Notwithstanding such extraordinary circumstances, the Respondent, in good faith and demonstrating its willingness to complete the project, entered into the Memorandum of Settlement on 19.08.2020—four months into the pandemic.
- e. That despite the best efforts of the Respondent, the outbreak and continued subsistence of the COVID-19 pandemic—categorised as a force majeure event by the Central Government—fatally impacted construction activities. The project suffered severe setbacks due to the resultant economic slowdown, labour shortages, disruption of supply chains, and a drastic decline in investments.
- f. That in view of the above, and considering that the COVID-19 pandemic has been officially recognised as an unavoidable force majeure event responsible for delays in construction projects, Clause 15 of the BBA squarely applies. Consequently, there is no breach of contract attributable to the Respondent, and the Complainant is not entitled to claim delayed possession charges.
- g. That, in addition to the above, the law is well-settled that time is not the essence of a contract pertaining to immovable property, unless

expressed in clear and unequivocal language. It is also judicially recognised that construction activities may reasonably be affected by unforeseen contingencies or natural disasters, which may cause unavoidable delays. That the adverse impact of the pandemic was severe and debilitating, and it was amidst such circumstances that the Respondent Company was taken over by its present Directors, Mr. Amit Yadav and Mr. Mahesh Yadav, from the erstwhile management in early 2023. That the situation of the Respondent Company at the time of takeover was extremely precarious, to the extent that the Company had even entered into insolvency proceedings. However, upon induction of the new Directors, fresh impetus and stability have been infused into the Company due to their diligent efforts. The new management is committed to reviving the Company's operations and ensuring successful completion of the present project. The Respondent is willing and ready to hand over the project to the Complainant on the basis of a fresh Agreement to Sell that better aligns with the current requirements of the project.

E. Reply filed by the respondents No. 3

6. The respondent had contested the complaint on the following grounds:
 - a. That It is most respectfully submitted that the averment made in the complaint alleging that in the year 2013 Respondent No. 3, along with the other Respondents, had commenced a project for construction and development of a commercial colony over land bearing Rectangle No. 11/17, Killa Nos. 24/1, 24/3, 25/2, 24/2, 25/1, 5 and 6/1 situated in "Skyline 109", Gurgaon, is factually

incorrect and wholly misconceived. Respondent No. 3 has never been associated, connected, or affiliated in any manner whatsoever with M/s Ish Realtors Pvt. Ltd. (Respondent No. 1), and this fact is clearly verifiable from the records available on the website of the Ministry of Corporate Affairs.

- b. It is further submitted that the Complainant has never invested in any project of Respondent No. 3. Respondent No. 3 had no role, direct or indirect, in the project referred to by the Complainant either in the legal notice or in the present complaint.
 - c. Respondent No. 3 categorically states that it was never a part of any project under the name "Skyline 109". Hence, the allegations levelled by the Complainant in this regard are erroneous, baseless, and devoid of any factual foundation.
7. No reply has been received on behalf of Respondent No. 2 till date. Today marks the eighth date of hearing in this case. Despite being given ample opportunity, Respondent No. 2 has failed to submit a response. Accordingly, the defence of Respondent No. 2 is hereby struck off.
8. 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.

F. Jurisdiction of the authority

9. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

F.1 Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

F.II Subject-matter jurisdiction

11. Section 11(4)(a) of the Act 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.

12. So, in view of the provisions of the Act of 2016 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.

G. Findings on the objections raised by the respondent.

G.I. Objection with regard to mis- joinder of respondent no. 2 in the complaint.

13. It is submitted that the objection raised by Respondent No. 3 that the Complainant has never invested in any project of Respondent No. 3 and that Respondent No. 3 had no direct or indirect role in the project is wholly untenable.
14. The Builder Buyer Agreement (BBA) as well as the payment receipts issued to the Complainant prominently bear the logo and address of Respondent No. 3, namely Gambhir Housing India Limited, as reflected in the records available on the MCA portal. Such representation, made through official documentation, unequivocally conveyed to the Complainant that Respondent No. 3 was associated with, promoting, or participating in the project. The Complainant entered into the transaction relying upon this representation. The Authority, in a precedent involving the use of the 'Godrej' brand in project promotional materials, has categorically held that where branding, logos, or goodwill of a well-known entity are used to induce buyers, such conduct amounts to misrepresentation under Section 12 of the RERA Act, 2016, and liability is attracted even if the concerned entity has not formally executed the agreement. The Authority further held that a buyer misled by such representation is entitled to refund with interest. In view of the above facts and judicial reasoning, Respondent No. 3 cannot be permitted to deny its involvement at this stage and must be held liable under Sections 11(2), 12, and 18 of the RERA Act. Section 12 clearly mandates that where any person makes an advance on the basis of false or misleading statements in advertisements or documents and suffers loss, he shall be compensated by the promoter, and if he chooses to withdraw, he is

entitled to a refund of his entire investment along with prescribed interest. Accordingly, the respondents are jointly and severally liable to refund the amount to the Complainant along with interest.

H. Findings on the relief sought by the complainant.

H.I Direct the jointly and severally, to refund to the Complainant the entire amount of ₹13,32,879/- received from the Complainant, along with interest at an appropriate rate from the respective dates of payment till actual realization.

15. In the present complaint, the complainant intends to withdraw from the project and is seeking refund of the amount paid by them in respect of subject unit along with interest. 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."

16. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by

them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

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., 12.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
19. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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. That in the present case, the Complainant booked a unit with the Respondents in their project titled "Skyline 109," situated in Sector-109, Gurugram, Haryana. The Complainant was allotted Unit No. 79, Upper Ground Floor, admeasuring 481 sq. ft., pursuant to the Builder Buyer Agreement executed on 28.03.2014. As per Clause 15 of the said Agreement, the Developer was obligated to hand over possession of the allotted unit to the proposed allottee within a period of four years from the date of execution of the Agreement. Accordingly, the due date for offering possession, calculated from the execution date of the Builder Buyer Agreement, falls on 28.03.2018.
21. It is pertinent to mention over here that even after a passage of more than 7 years neither the occupation certificate has been obtained by the competent authority nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the

project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

22. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees 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....."

23. 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."

24. 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 allottees 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 pay the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.
25. 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 respondents are established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 10.85% 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*.

I. Directions of the Authority

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

- i. The respondents are directed to refund the amount of Rs. 13,32,879/- paid by the complainant along with prescribed rate of interest 10.85% p.a. as prescribed under section 18 (1) of the Act, 2016 read with rule 15 of the rules from the date of each payment till the date of realization.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondents are further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant-allottee.
27. Complaint as well as applications, if any, stands disposed off accordingly.
28. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2025