

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

Complaint no.: 2874 of 2024
Date of filing of complaint: 08.07.2024
Date of order 23.12.2025

Shivarjun Das

R/o: - B1, M 1003, Ashiana Anmol, Dhunela
Village, Sector-33, District Sohna, Sohna
Road, Gurugram-122103

Complainant

Versus

1. M/s Imperia Structures Limited
2. M/s Imperia Wishfield Pvt. Ltd.
Both having Regd. office at: A-25, Mohan
Cooperative Industrial Estate, Mathura Road,
New Delhi-110044

Both having Corporate office at: Plot No.
14, Ground Floor, Sector- 44, Institutional
Area, Gurugram- 122003 Haryana

Respondents

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Ms. Ada Khursheed (Advocate)
Sh. Shubham Mishra (Advocate)

Complainant
Respondents

ORDER

1. The present complaint dated 02.02.2023 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 under the provision of the Act or the Rules and regulations

made thereunder or to the allottees as per the agreement for sale executed *inter se*.

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.	Particulars	Details
1.	Name and location of the project	"37 th Avenue", Sector 37C, Gurugram
2.	Nature of the project	Commercial
3.	Project area	1.175 acres
4.	DTCP license no.	51 of 2012 dated 17.05.2012 valid up to 16.05.2024
5.	Name of licensee	Prime IT Solutions Pvt. Ltd. and 2 others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	5-508 & 5 th Floor & Tower-37 th (As per page no. 27 of the complaint)
8.	Unit area admeasuring	600 sq. ft. (Super area) (As per page no. 27 of the complaint)
9.	Welcome letter	11.09.2015 (As per page no. 14 of the complaint)
10.	Date of execution of MOU	23.04.2016 (As per page no. 22 of the complaint)
11.	Possession clause	<i>11 (a) Schedule for possession of the said Unit: The company based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the said building/said unit within a period of 60 months from the date of this agreement unless there shall be delay or failure due to govt. department</i>

		<i>delay or due to any circumstances beyond the power and control of the developer 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(s) to abide by all or any of the terms and conditions of this agreement.....</i> (As per page no. 31 of the complaint)
12.	Due date of possession	Not specified
13.	Total sale consideration	Rs.37,60,800/- (As per page no. 27 of the complaint)
14.	Amount paid by the complainant	Rs.11,84,688/- (As per receipt information on page no. 18 of the complaint)
15.	Occupation Certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

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

- I. That on 12.07.2015 the complainant booked a commercial unit in the above said project namely "37th Avenue" having a commercial space of 600 sq. ft. (super area) and paid two instalments worth an amount of Rs.11,84,688/-. Further, the respondent issued a welcome letter dated 11.09.2015.
- II. That on 23.04.2016, the complainants and the respondent executed a Memorandum of understanding regarding commercial unit no. 5_S08 on the 5th floor in Tower 37th Avenue admeasuring 600 sq. ft. in commercial project "37th Avenue".

- III. That the complainant has paid an amount of Rs.9,48,400/- vide cheque dated 10.10.2015. Pursuant to such payment, the complainant had in aggregate paid a sum of Rs.11,84,688/- to the respondent.
- IV. 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.
- V. 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.
- VI. That even after expiry of 9 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.
- VII. 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.

VIII. 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.

IX. 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:

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

i. Direct the respondent company to refund the amount of Rs 11,84,688/- along with interest at the prescribed rate of interest.

5. 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 no. 1:

6. The respondent no. 1 has contested the complaint on the following grounds:

I. That the complaint is *prima facie* not maintainable and must be dismissed for being vexatious to law.

II. That the complainant has approached this Hon'ble Authority with unclean hands and has tried to mislead this Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts.

III. That the complainant is guilty of *suppressio very suggestion falsi*. The complainant has suppressed and mis-stated the facts and, as such, the

complaint apart from being wholly misconceived is rather the abuse of the process of law. The complaint is liable to be dismissed on pretext of this ground itself.

- IV. That the respondent no. 2 is the land owner for the said project and it is falsely stated by the complainant that the respondent no. 2 does not have the required certification for the execution of the said project.
- V. That the complainant, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent no. 1 for booking of a unit in respondent's project '37th Avenue' located in Sector-37-C, Gurugram. The respondent no. 1 provisionally allotted the unit bearing no. 5_S08 in favor of the complainant for a total consideration amount of Rs.41,03,376/- including applicable tax and other charges vide booking dated 07.09.2015 and opted the possession-linked plan on the terms and conditions mutually agreed by the complainant and the respondent no. 1.
- VI. That the project was initially being developed and managed by respondent no. 1. Accordingly, the complainant had submitted the booking form with respondent no. 1, and the amounts with respect to the said booking, Rs.11,84,688/- were paid into the account of respondent no. 1.
- VII. That thereafter a joint venture/collaboration was entered into 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 the directors of *M/s Imperia Structures 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.

- VIII. That *in lieu* of above said understanding & promises, M/s 'Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. It is pertinent to mention herein that Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were from M/s Prime IT Solutions Pvt. Ltd. and Mr. Harpreet Singh Batra and Mr. Brajinder Singh Batra were from M/s Imperia Structures Pvt Ltd.
- IX. That in view of the foregoing, the entire shareholding and control of the project was vested in respondent no. 2, and no rights, powers, or authority of any kind remained with respondent no. 1. The shareholding pattern reflects the joint venture structure under which respondent no. 2 was incorporated specifically for the execution, development, and management of the project wherein the unit of the complainant is situated.
- X. That the complainant was specifically called to the head office, where he was informed about this change in control and pursuant to the collaboration arrangement between the parties, respondent no. 2 was incorporated specifically for the purpose of development, execution, and management of the said project. Consequent to such arrangement, all rights, obligations, and financial transactions pertaining to the project were duly assigned and transferred in favour of respondent no. 2. Therefore, the actual and proper entity responsible for the development of the project and for dealing with all matters arising therefrom is respondent no. 2.

- XI. That, accordingly, the Memorandum of Understanding was executed with respondent no. 2 and not with respondent no. 1. It is evident from the terms of the MoU that respondent no. 1 is not mentioned or referenced anywhere, thereby clearly demonstrating that the project was being controlled and the responsibility of the same lies with the respondent no. 2. Pursuant to the same, the amount of Rs.11,84,688/-, which was initially paid into the account of respondent no. 1, was duly transferred to the designated account of respondent no. 2.
- XII. That as stated hereinabove, the project was initially being managed and operated by respondent no. 1. Subsequently, pursuant to the collaboration arrangement between the parties, respondent no. 2 was incorporated as a Special Purpose Vehicle specifically for the purpose of development, execution, and management of the said project. Consequent to such arrangement, all rights, obligations, and financial transactions pertaining to the project were duly assigned and transferred in favour of respondent no. 2, the same was further duly informed to the complainant. Therefore, the actual and proper entity responsible for the development of the project and for dealing with all matters arising therefrom is respondent no. 2.
- XIII. That the land license obtained also pertained to respondent no. 2 and not respondent no. 1. Therefore, the only proper and necessary party to the present complaint is respondent no. 2, as the said entity was specifically incorporated to undertake, execute, and manage the project wherein the unit of the complainant is situated. The entire responsibility for completion and implementation of the project was duly vested with respondent no. 2. Accordingly, all rights, liabilities, and

obligations concerning the said project rest solely with respondent no. 2.

- XIV. That respondent no. 1, presently has no involvement, interest, or liability in the subject project, and its inclusion as a party is wholly misconceived. Continuing to array respondent no. 1 in these proceedings would constitute misjoinder of parties and result in abuse of the process of law, as recognized under Order I, Rules 1, 2, and 10 of the Code of Civil Procedure, 1908, which govern the joinder of necessary and proper parties and empower the court to strike out parties who are neither necessary nor proper for adjudication of the dispute.
- XV. That respondent no. 1 be deleted from the array of parties to the complaint, as it is neither a necessary nor a proper party for the adjudication of the present dispute. All rights, liabilities, and powers in relation to the project now rest solely with respondent no. 2, and the entire sum paid by the complainant, which was initially received in the account of respondent no. 1, has been duly transferred to the designated account of respondent no. 2. In these circumstances, the inclusion of respondent no. 1 is wholly unnecessary and unwarranted, and it is therefore prayed that respondent no. 1 be deleted from the array of parties. In view of the foregoing, the complaint, as filed, is wholly devoid of merit, misconceived, and constitutes an abuse of the process of law.

E. Reply by the respondent no. 2:

7. The respondent no. 2 has 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 no. 1 for booking of a unit in respondent's project '37th Avenue' located in Sector-37-C, Gurugram. The respondent no.1 provisionally allotted the unit bearing no. 5_S08 in favor of the Complainant for a total consideration amount of Rs.41,03,376/- including applicable tax and other charges vide booking dated 07.09.2015 and opted the possession-linked plan.
- ii. That the project was initially being developed and managed by respondent no. 1. Accordingly, the complainant had submitted the booking form with respondent no. 1, and the amounts with respect to the said booking, Rs.11,84,688/- were paid into the account of respondent no. 1.
- iii. That thereafter a joint venture/collaboration was entered into 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 the directors of *M/s Imperia Structures 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.
- iv. That *in lieu* of above said understanding & promises, 'M/s Imperia Wishfield Pvt. Ltd.' was incorporated & formed with 4 Directors & 5 shareholders. It is pertinent to mention herein that Mr. Pradeep Sharma and Mr. Avinash Kumar Setia were from M/s Prime IT Solutions

Pvt. Ltd. and Mr. Harpreet Singh Batra and Mr. Brajinder Singh Batra were from M/s Imperia Structures Pvt Ltd.

- v. That the shareholding pattern of respondent no. 2 comprises five shareholders, wherein three shareholders hold 2,500 shares each and the remaining two shareholders hold 3,750 shares each. The said shareholding pattern reflects the joint venture structure under which respondent no. 2 was incorporated specifically for execution and management of the project wherein the unit of the complainant is located.
- vi. 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 no. 2 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 no. 2 and M/s Prime IT Solutions Pvt. Ltd. whereby the respondent no. 2, i.e., the two directors, Mr. Harpreet Singh Batra and Brajinder Singh Batra, were left with the sole responsibility to implement the said project.
- vii. That as stated hereinabove, the project was initially being managed and operated by respondent no. 1. Subsequently, pursuant to the collaboration arrangement between the parties, the respondent no. 2 was incorporated as a Special Purpose Vehicle (SPV) specifically for the

development, execution, and management of the said project. In consequence of this arrangement, all rights, obligations, and financial transactions relating to the project were duly assigned and transferred in favour of respondent no. 2. The said change was duly communicated to all allottees by convening a meeting to inform them of the same. Therefore, the respondent no. 2 is the actual and proper entity responsible for the development of the project and for addressing all matters arising therefrom.

- viii. That, accordingly, the Memorandum of Understanding was executed with respondent no. 2 and not with respondent no. 1. It is evident from the terms of the said MoU that respondent no. 1 is neither mentioned nor referenced anywhere therein, thereby clearly establishing that the control, management, and responsibility for the development of the project vested solely with respondent no. 2.
- ix. That in continuation of the above, the amount received from the allottees, including the complainant, which were initially deposited in the account of respondent no. 1 at the time of booking, were duly transferred to the designated project account of respondent no. 2, in accordance with the collaboration arrangement and for the proper accounting and execution of the project. Further these circumstances caused monetary crunch and other predicaments, leading to delay in implementation of the said project. Due to these complications, there was a delay in procurement of the land license and ownership by the respondent company. However, the same has been acquired by the respondent no. 2.
- x. That several allottees have withheld the remaining payments, which is further severally affecting the financial health of the respondent no. 2

and further, due to the force majeure conditions and circumstances, which were beyond the control of the respondent no. 2 as mentioned herein below, the construction got delayed in the said project. Both the parties i.e., the complainant as well as the respondent no. 2 had contemplated at very initial stage at the time of booking that some delay might occur in future and that is why under the force majeure, it is duly agreed by the complainant that the respondent no. 2 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 no. 2 that the respondent is entitled to extension of time for delivery of the said flat on account of force majeure circumstances beyond the control of the respondent company. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from 04.11.2019 onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on 09.11.2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020. Secondly, after the complete ban was lifted on 14.02.2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24.03.2020 on account of nation-wide pandemic COVID-19, and conditionally unlocked it on 03.05.2020. However, this has left a great impact on the

procurement of material and labour. The 40-day lockdown effective since 24.03.2020, extendable up to 03.05.2020 and subsequently to 17.03.2020, led to a reverse migration with workers leaving cities to return back to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers were stuck in relief camps. The aftermath of lockdown left a great impact on the sector for resuming the fast pace construction for achieving the timely delivery as agreed under the allotment.

- xi. That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent no. 2 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 no. 2.
- xii. 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. Furthermore, the delay was caused due to lack of funds, as the allottees have grossly underpaid and failed to make timely payments to the respondent company.

- xiii. That the only proper and necessary party to the present complaint is respondent no. 2, as the said entity was specifically incorporated to undertake, execute, and manage the project wherein the unit of the complainant is situated. The entire responsibility for completion and implementation of the project was duly vested with respondent no. 2. Accordingly, all rights, liabilities, and obligations concerning the said project rest solely with respondent no. 2.
- xiv. That the complainant is not entitled to the relief prayed for because the complainant has miserably failed to bring to the notice of this Hon'ble Authority any averment or document worth its salt 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.
8. 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.
9. The counsel for the complainant vide proceedings of the day dated 20.03.2025 brought to the notice of the Authority that the welcome letter and other demand letters were issued by the respondent no. 1 i.e., Imperia Structures Ltd. and payments were also made to the respondent no. 1 only but the MOU has been entered between by the M/s Imperia Wishfield Pvt. Ltd. and requested to implead M/s Imperia Wishfield Pvt. Ltd. as a party to the complaint. The complainant has filed an application under Order 1 Rule

10 of Code of Civil Procedure, 1908 on 04.04.2025 to make M/s Imperia Wishfield Pvt. Ltd. a party to the complaint and the same has been impleaded as respondent no. 2 vide proceedings of the day dated 27.11.2025.

10. On 31.10.2025, the respondent no. 1 has filed a reply to the above-mentioned application filed by the complainant to clarify that the respondent no. 1 has transferred the payments made by the complainant to respondent no. 2 and MOU has also been entered between the complainant and the respondent no. 2, so respondent no. 1 being a party to the complaint would not serve the purpose and requested to delete its name from the array of parties.
11. The Authority has gone through the documents placed on record and observed that there is no document on record to establish that whether the funds have been transferred to respondent no. 2 or not. Thus, it can be concluded that both the respondents are jointly and severally liable to refund the paid-up amount to the complainant.

F. Jurisdiction of the authority:

12. 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.

F.1 Territorial jurisdiction

13. 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.

F.II Subject-matter jurisdiction

14. 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) 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.

15. 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.
16. 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."

17. 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.

G. Findings on objections raised by the respondents:

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

18. 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 11.09.2020 including the grace period of 12 months. But the project is still incomplete even if 12 months

grace period is allowed as per the possession clause of the annexed builder buyer's agreement. 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.

H. Findings on the relief sought by the complainant:

G.I Direct the respondent company to refund the amount of Rs.11,84,688/- along with interest at the prescribed rate of interest.

19. In the present complaint, the complainant intends 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)

20. **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:

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.

21. 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.
22. 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., 23.12.2025 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
23. 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;"

24. 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.
25. In the instant matter, even after lapse of almost 9 years from the date of issuance of welcome letter 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.
26. 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.
27. 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.*"

28. In view of the above-mentioned reasoning, the due date of possession is to be calculated from date of welcome letter. Therefore, the due date of handing over of the possession of the unit comes out to be 11.09.2018. 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 welcome letter is to be treated as date of agreement i.e., 11.09.2015, 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 11.09.2020 including grace period of 12 months. Thus, even if we consider 11.09.2020 (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.

29. 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....."

30. 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.

31. 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.
32. 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., @ 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 Haryana Rules 2017 *ibid*.

I. Directions of the Authority:

33. 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 respondents are directed to refund the amount i.e., **Rs.11,84,688/-** received by him 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 amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondents are 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.
34. Complaint stand disposed of.
35. Files be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 23.12.2025