BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision : 12.02.2026

NAME OF BUILDER		IMPERIA WISHFIELD PRIVATE LIMITED	
PROJECT NAME		"ELVEDOR" Situated at Sector 37C, Gurugram	
Sr. No.	**Case No.**	**Case title**	**APPEARANCE**
1.	CR/2212/2025	Roshan Lal V/S Imperia Wishfield Private Limited	Mr. Ankur Katyal and Mr. Harshil Gupta (Advocates) Mr. Shubham Mishra (Advocate)
2.	CR/4117/2025	Mrs. Anjana Gupta V/S Imperia Westfield Private Limited	Mr. Pradeep Singh Sehrawat and Mr. Mohit Kumar (Advocates) Mr. Shubham Mishra (Advocate)

CORAM:
Shri Phool Singh Saini **Member**

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the

project, namely, "Elvedor" being developed by the same respondent-promoter i.e., "Imperia Wishfield Private Limited."

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

Project Name and Location	"Elvedor" at Sector – 37C, Gurugram, Haryana
Project area	1.175 acres
DTCP License No. and validity	51 of 2012 dated 17.05.2012 Valid up to 16.05.2024
RERA Registered or Not Registered	**Not Registered**
Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and others
Occupation certificate	**Not Obtained**

Sr. No.	Complaint No., Case Title, Date of filing of complaint and reply status	Unit no. and size	Date of allotment and execution of BBA	Total Sale Consideration / Total Amount paid by complainant	Offer of possession (OOP)
1.	**CR/2212/2025** **Roshan Lal Vs. Imperia Wishfield Pvt. Ltd.** **DOF:** 05.05.2025 **Reply:** 03.10.2025	I_026, Ground Floor & Tower-IBIS admeasuring 379 sq. ft. (Page 27 of Complaint)	Confirmation of unit Allotment Letter dated 06.05.2013 (Page 27 of Complaint) **BBA not executed**	**TSC-**₹38,82,470/- (Page 28 of complaint) **AP-**₹6,45,756/- (As per receipt information on page 29 of complaint)	**OOP:** Not Offered
2.	**CR/4117/2025** **Mrs. Anjana Gupta Vs. Imperia Wishfield Pvt. Ltd.** **DOF:** 29.08.2025 **Reply:** 23.10.2025	4_S06, 4th Floor admeasuring 436 sq. ft. (Page 20 of Complaint)	Provisional Allotment Letter dated 06.10.2016 (Page 20 of Complaint) **BBA not executed**	**TSC-**₹37,34,050/- (Page 2 of reply) **AP-**₹6,45,756/- (As per receipt information on page 74-75 of reply)	**OOP:** Not Offered
The complainant herein is seeking the following reliefs: 1. Direct the respondent to refund a sum of Rs.11,69,644/- deposited by the complainant to the respondent towards the subject unit.					

2. Direct the respondent to pay an interest @18% per annum on the aforesaid amount from the date of taking the aforesaid sum till its actual realization, in the interest of justice. 3. Direct the respondent to pay penalty which may extend upto five percent of the estimated cost of the real estate project, as per section 13 r/w section 61 of the RERA Act, 2016 for not executing the builder buyer agreement with the complainant and taking the advance sum of money towards the subject unit in absence of the aforesaid agreement. 4. Direct the respondent to pay delayed compensation to the complainant as per the applicable law. 5. Direct the opposite party to pay a compensation to the tune of INR 5,00,000/- for mental torture, agony and harassment suffered by the complainant at the hands of the respondent, in the interest of justice. 6. Direct the respondent to pay the cost of the present legal proceedings to the complainant, in the interest of justice.
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: **Abbreviation** — **Full form** DOF — Date of filing of complaint TSC — Total Sales Consideration AP — Amount paid by the allottee/s OOP — Offer of Possession

4. The facts of both the complaints filed by the complainants are similar. Out of the above-mentioned case, the particulars of lead case ***CR/2212/2025 titled as "Roshan Lal Vs. Imperia Wishfield Private Limited"*** are being taken into consideration for determining the rights of the parties.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Project name and location	"Elvedor" at sector 37C, Gurgaon, Haryana
2.	Project area	2 acres
3.	Nature of project	Residential-cum-Commercial
4.	RERA registered/not	Not registered

	registered	
5.	DTCP license no.	51 of 2012 dated 12.05.2012
	Valid up to	11.05.2016
	Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and another
6.	Confirmation of unit Allotment	06.05.2013 (As per page no. 27 of the complaint)
7.	Date of execution of buyer's agreement	Not executed
8.	Unit No.	I_026, Ground Floor & Tower-IBIS (As per page no. 27 of the complaint)
9.	Unit area admeasuring	379 sq. ft. (As per page no. 27 of the complaint)
10.	Possession clause	-
11.	Due date of delivery of possession	Cannot be ascertained
12.	Total consideration	Rs.38,82,470/- (As per page no. 28 of the complaint)
13.	Total amount paid by the complainants	Rs.6,45,756/- (As per receipt information on page no. 29 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

6. The complainant/allottee has made the following submissions:

a) That based upon the representations and lofty promises made by the respondent, the complainant in the year 2012 booked one commercial retail shop in the said project of the respondent and paid a sum of Rs. 3,15,707/- on 25.08.2012 to the respondent vide receipt no. 0001. Thereafter, the complainant paid another sum of Rs. 4,54,957/- on 10.10.2012 vide receipt no. 0566, as per the payment schedule of the commercial shop, to the respondent.

b) That after the payment of the aforesaid sum to the respondent, the respondent allotted one commercial retail shop to the complainant

bearing no. I_026 on the Ground Floor of Tower IBIS admeasuring 379.00 sq. ft. for a total consideration of Rs. 38,82,470/- in the said project of the respondent being Elvedor Retail in Sector-37C, Gurugram, Haryana, vide booking ID no. IWF-R-0101 dated 25.08.2012 and issued one Confirmation of Unit Allotment Letter dated 06.05.2013 to the complainant.

c) It is pertinent to mention herein that even after receiving the aforesaid sum from the complainant and booking the said unit to the complainant, the respondent never executed any Builder-Buyer Agreement despite repeated demands made by the complainant. The respondent just issued the said confirmation of unit allotment letter dated 06.05.2013 to the complainant appended therewith a payment schedule and a Welcome Letter dated 22.09.2012 and no other document was ever executed between the complainant and the respondent. The complainant kept on asking for the execution of the Builder Buyer agreement, however, to no avail. Thus, in the present case there is a clear violation of the said provision as no such agreement was ever executed by the respondent.

d) The respondent just verbally kept on falsely saying and promising that the construction of the project is in full swing and the same will be soon delivered to the complainant. The respondent also kept on asking for the payment of further sum of money as per the payment schedule and thereby demanded another sum of Rs. 3,98,979/- vide demand letter dated 05.01.2016 from the complainant. The complainant adhering to the said demand of the respondent and hoping that the subject unit would be soon given to him paid the

aforesaid sum i.e. Rs. 3,98,980/- vide receipt no. 2259 dated 02.02.2016 to the respondent.

e) The complainant in compliance of the payment schedule of the said unit punctiliously and punctually, discharged his obligations and made timely payments of the instalment dues, as per the payment plan, and/or as and when demanded by the respondent towards the consideration amount of the subject unit. Thus, undisputedly, and admittedly, the complainant paid the respondent a total of sum of Rs. 11,69,644/- towards the sale consideration of the said unit.

f) That even though the complainant has made payments as demanded by the respondent, the respondent has been in utter breach of his promise to give timely delivery of the said unit to the complainant. Moreover, the complainant was shocked and stunned to know that the construction of the project has not even started and in fact the project has already been cancelled by the respondent due to the reasons best known to them.

g) It is stated that the default on the part of the respondent to deliver the said unit to the complainant and further cancelling it without providing any alternative solution, the respondent has caused grave and severe loss to the complainant, more so in view of the fact that the complainant has invested substantial part of his saving in the said project. The complainant made the hereinabove mentioned payment to the respondent from the savings with the hope of owning a retail shop and operating his business from there but that was not to be so. Had the complainant invested the said sum of money in some other venture or had put the said money in a bank then that would have borne him a good interest and return on the

same. However, investing his hard-earned money in such dead project of the respondent has caused him great losses and damages. It is stated that the modus operandi of the respondent has always been non-transparent and arbitrary to say the least during this whole described transaction.

h) That after coming to know of the fact that the said project has been cancelled, the complainant paid several visits to the respondent's office to enquire about the next course of action and to seek alternative solution for aforesaid cancellation of the project. The complainant also demanded the refund of his invested sum of money; however, no satisfactory response was ever received from the side of the respondent and no concrete action has been taken till date by the respondent in this regard even after a lapse of more than 12 years from the date of receiving the first instalment on 12.08.2012 towards the unit in question.

i) That since the unit has not been delivered and handed over to the complainant and the project has also been cancelled by the respondent, the respondent is now, inter alia, liable to refund the total amount deposited i.e. Rs. 11,69,644/- to the complainant along with interest @ 18% per annum from the date of taking the said sum till its actual realization.

j) The respondent has miserably failed to fulfil its promise of constructing and delivering the subject unit in a time bound manner to the complainant and consequently, depriving the complainant of the possession of the unit and also his hard-earned money and life-long savings. Thus, the complainant is being caused financial and monetary losses and damages on the basis of misleading

information given by the respondent that the legal physical possession of the promised unit would be handed over to the complainant, but they miserably failed to do so. The respondent has clearly endeavoured to feather their own nest, i.e. to make profits for themselves at the cost/expense of the complainant thereby unjustly enriching themselves.

k) In light of the aforesaid facts and circumstances, the complainant herein is constrained to approach this Hon'ble Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 and seeking refund of the aforesaid deposited amount i.e. Rs. 11,69,644/- along with applicable interest and compensation for having suffered immense mental trauma, harassment, financial loss and suffering on account of breach committed by the respondent by non-delivering the unit in question and eventually cancelling it.

C. Relief sought by the complainants:

7. The complainant has sought following reliefs:

I. Direct the respondent to refund a sum of Rs.11,69,644/- deposited by the complainant to the respondent towards the subject unit.

II. Direct the respondent to pay an interest @18% per annum on the aforesaid amount from the date of taking the aforesaid sum till its actual realization, in the interest of justice.

III. Direct the respondent to pay penalty which may extend upto five percent of the estimated cost of the real estate project, as per section 13 r/w section 61 of the RERA Act, 2016 for not executing the builder buyer agreement with the complainant and taking the advance sum of money towards the subject unit in absence of the aforesaid agreement.

IV. Direct the respondent to pay delayed compensation to the complainant as per the applicable law.

V. Direct the opposite party to pay a compensation to the tune of INR

5,00,000/- for mental torture, agony and harassment suffered by the complainant at the hands of the respondent, in the interest of justice.

VI. Direct the respondent to pay the cost of the present legal proceedings to the complainant, in the interest of justice.

8. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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

9. The respondent has contested the complaint on the following grounds.

a) 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 '37th Avenue' located in Sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. I_026 in favor of the complainant for a total consideration amount of Rs.41,74,343/-, including applicable tax and other charges vide Memorandum of Understanding dated 25.08.2012 and conditions mutually agreed by the complainants and the respondent.

b) 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.

c) 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/-.

d) 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.

e) 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.

f) 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.

g) 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. That the delay is caused due to lack of funds as the allottees have grossly failed to make timely

payments to the respondent and a huge sum is still pending to be paid to the complainant.

E. Jurisdiction of the Authority:

10. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

11. 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:

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

> ***Section 11(4)(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.*

13. 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.

14. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and*** *reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***wherein it has been laid down as under:

> *"**86.** From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

F. I Objections regarding force majeure.

16. 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 a sum of Rs.11,69,644/- deposited by the complainant to the respondent towards the subject unit.

G.II Direct the respondent to pay an interest @18% per annum on the aforesaid amount from the date of taking the aforesaid sum till its actual realization, in the interest of justice.

17. 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)***

18. Keeping in view the fact that the allottee-complainant wishes to withdraw from the project and seeks refund of the amount received by the promoter in respect of the unit with interest, the matter is covered under Section 18(1) of the Act of 2016. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated is not yet received by the respondent. Accordingly, the respondent is liable to return the amount received by him from the allottee in respect of the subject unit with interest at the prescribed rate.

19. **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.

20. 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.

21. 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., 12.02.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

22. 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 till date. 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.

23. 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....."*

24. 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."*

25. 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.

26. 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.

G.III Direct the respondent to pay penalty which may extend upto five percent of the estimated cost of the real estate project, as per section 13 r/w section 61 of the RERA Act, 2016 for not executing the builder buyer agreement with the complainant and taking the advance sum of money towards the subject unit in absence of the aforesaid agreement.

27. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a penalty, RERA follows a due process that includes conducting an investigation and a hearing where the developer can present their case.

28. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainant does not intend to pursue the above relief sought by him. Hence, the Authority has not rendered any findings pertaining to the above-mentioned relief.

G.IV Direct the respondent to pay delayed compensation to the complainant as per the applicable law.

G.V Direct the opposite party to pay a compensation to the tune of INR 5,00,000/- for mental torture, agony and harassment suffered by the complainant at the hands of the respondent, in the interest of justice.

G.VI Direct the respondent to pay the cost of the present legal proceedings to the complainant, in the interest of justice.

29. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

30. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in ***Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.*** has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. Directions of the authority

31. 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 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.

32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

33. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

34. Files be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.02.2026