

## Background Note on the subject of Change of options

1. Taking up the Unitech related matters, the Hon'ble Supreme Court, vide its order dated **15th September 2017**, directed the Ld. Amicus Curiae to develop a web-portal and directed the Homebuyers to register themselves on the said web-portal. The relevant extract of the order *ibid* is reproduced herein below:

*“The amicus curiae is permitted to collect data on a web portal from flat buyers who are interested in taking possession of the flats or those who have taken possession. All the home buyers including those who have already submitted the data are directed to upload the data on the web portal which shall be created by Mr. Pawan Shree Agarwal, learned amicus.”*

2. The Hon'ble Court further directed the Homebuyers vide its order dated **21st September 2017** to register their options for **Refund or Possession** on the said Portal. The relevant extract of the order *ibid* is reproduced herein below:

*“... we ask the learned amicus curiae to invite options from the home buyers of the 61 projects whether they are inclined to take possession of the flats or desirous to get the amount refunded. Be it noted, the portal shall be operational from 22.09.2017. The home buyer who have already got possession in respect of 13 projects will not be entitled to give their option because they have already taken over possession.”*

3. The Hon'ble Court, vide its order dated **13th November 2017**, further directed the Ld. Amicus to keep the web-portal open till 31st December 2017 so that all the concerned homebuyers can exercise their option of either Refund or Possession. The relevant extract of the order *ibid* is reproduced herein below:

*“Mr. Agarwal, is permitted to operate the web-portal till end of December 2017.”*

4. It may be noted that partial refund of the principal amount was processed and paid to **1132** homebuyers on a pro-rata basis by the Registry of the Hon'ble Supreme Court on the recommendation of the Ld. Amicus Curiae, subsequent to the directions of the Hon'ble Supreme Court from time-to-time.

5. The homebuyers of Vistas-Gurgaon project approached the Hon'ble Supreme Court through an Intervention Application and prayed to withdraw their refund claim and seek possession of their respective units. The Hon'ble Supreme Court, vide its order dated **20th January 2020**, accepted the request of the homebuyers and directed that they may be allowed to change their option from **Refund to Possession** subject to depositing the refunds in the Registry of this Court, together with interest at 9% per annum payable with effect from the date of disbursement until the date of deposit in the Registry of this Court. The relevant extract of the order *ibid* is reproduced herein below:

*“Home buyers of the project ‘Vistas’ in Sector 17 [to be read as 70], Gurgaon,*

*who seek to convert their options from refund to possession are permitted to do so. In order to facilitate this, the home buyers shall register their options for seeking possession instead of refund with the amicus curiae. However, the home buyers shall be informed that those among them who seek to alter their option to seek possession will be required to deposit in this court the monies which are payable against the offer of possession. These home buyers will be required to pay the balance payable on account of their allotted units at the time when the offer of possession is made. Those among the home buyers who have already received refunds but now seek possession shall be required to deposit the refunds in the Registry of this Court, together with interest at 9% per annum payable with effect from the date of disbursement until the date of deposit in the Registry of this Court. The amicus curiae shall prepare a list of such home buyers and share it with the Registry to facilitate the process.”*

6. Keeping in view that there has already been partial refund made to about 1100 homebuyers, the new Management, vide Chapter 4 in the Resolution Framework dated **16<sup>th</sup> July 2020**, submitted the same before the Hon’ble Supreme Court for adjudication. The extract of Clause 4.7 of Chapter 4 is reproduced herein below for ready reference:

**"4.7 Dealing with Homebuyers seeking Refunds**

- 4.7.1 *While acknowledging the significant delays that the Unitech Group have caused in the delivery of units to the various Homebuyers across various Projects, the Board is also cognizant of the very limited financial resources which the Unitech Group has at its command.*
- 4.7.2 *Therefore, other than for cases where Homebuyers of Projects which are in “Category 3: To be Abandoned Projects” cannot be Migrated and refund is offered to them, the Board seeks the Hon’ble Court to direct the Homebuyers seeking refunds, including those in whose favour any decree or other order has previously been issued by the Hon’ble Court or any other Authority, to instead accept delivery of Current Allotment or Migrated Allotment (as applicable).*
- 4.7.3 *The Homebuyers who have already been provided with part refund of their principal amounts (including pursuant to any decree or other order issued by the Hon’ble Court or any other Authority) would be required to return the amounts refunded to them within 60 days of the Approval Date, and take the possession of unit offered to them by the Company under the terms of this Framework, whether in Current Project or Migrated Project.*
- 4.7.4 *In case such Homebuyers do not return the amounts already refunded to them within 60 days of the Approval Date, then the relevant Homebuyers would be deemed to have foregone their allotment and the Unitech Group would be entitled to include such unit for further sale and other dealings free of any encumbrance. Such Homebuyers shall be refunded their remaining part of the principal amount paid by them or any other amounts as ordered to be payable by the Unitech Group to*

*them in relation to and pursuant to the allotment made to them from the Final Surplus after construction and delivery of all the homes but only in the manner and to the extent as provided in Chapter 7 (Cash-Flow Usage) hereof. It is amply clarified that no interest shall be payable to such Homebuyer in relation to the amounts to be returned to him from the Final Surplus.*

- 4.7.5 The Homebuyers in the Projects who are in “Category 3: To be Abandoned Projects” and are not Migrated shall be refunded their balance principal amounts as per clause 4.7.6 below.*
- 4.7.6 For Homebuyers in Projects which are in “Category 3: To be Abandoned Projects”, the relevant Homebuyers who have not been Migrated would be notified accordingly, and provided their Refund of the principal amounts (net of associated costs) as and when the relevant assets are monetised in accordance with the Resolution Framework for Non-Project Assets contained in this Framework and in accordance with the Cash-flow Usage described in this Resolution Framework.*
- 4.7.7 In respect of Homebuyers to whom Refund is to be made, whether on account of clause 4.7.4 or clause 4.7.6 above, payments of the Refund amounts to banks and financial institutions, whose interest is registered with Unitech Group as having financed such Homebuyers, will constitute full and valid discharge for Unitech Group as against those Homebuyers and the concerned banks and financial institutions. Upon any Homebuyer becoming entitled to a refund in terms of this Framework, the entitlement of such banks and financial institution in respect of such units shall be confined solely to receipt of refund amounts in accordance with, and up to the amounts as provided in terms of this Framework. Any security or other right created in favour of such banks and financial institutions, who have financed such Homebuyers, over the allotments and related rights would immediately stand extinguished upon the relevant Homebuyer becoming entitled to a refund in accordance with this Framework. Determination of the Board of such entitlement of refund shall be sufficient evidence of such entitlement and shall cause all encumbrances in favour of or for the benefit of banks and financial institutions who have financed the relevant Homebuyers to be released. However, for the purposes of updating records and to ensure appropriate clarity, and without in any manner affecting the cancellation of the allotments done as per this clause, such Homebuyers and any person who had security over such allotments on account of the Homebuyer will be required to do all necessary acts and provide all necessary cooperation, including modification of entries before the Registrar, entering into any cancellation agreements and such other documents as may be required by the Company to effect this cancellation; and shall return all the original property documents viz. allotment letters, buyer’s agreement, payment receipts etc. to the Company immediately and in any case within 30 (thirty) days of the*

*Homebuyer becoming entitled to a Refund in accordance with this Framework.*

4.7.8 *In respect of the Homebuyers who have already been provided refund of amounts which are at least their full principal amounts (irrespective of manner of appropriation of any monies by such Homebuyers) on or prior to the Approval Date, the units of such Homebuyers shall immediately stand cancelled on the date of approval of this Framework and shall be available to the Unitech Group for re-sale, free of any encumbrance, with no further liability of Unitech Group outstanding towards such Homebuyers or their lenders. However, for the purposes of updating records and to ensure appropriate clarity, and without in any manner affecting the cancellation of the allotments done as per this clause, such Homebuyers and any person who had security over such allotments on account of the Homebuyer will be required to do all necessary acts and provide all necessary cooperation, including modification of entries before the Registrar, entering into any cancellation agreements and such other documents as may be required by the Company to effect this cancellation; and shall return all the original property documents viz. allotment letters, buyer's agreement, payment receipts etc. to the Company immediately and in any case within 30 (thirty) days of the approval of this Framework.”*

7. Thereafter, the Hon'ble Supreme Court vide its order dated **17<sup>th</sup> August 2021** afforded an opportunity to all the Homebuyers, including 1,132 Homebuyers who had availed of partial refunds through the Amicus/ Registry to change their options from **Refund to Possession**. A total of 289 Homebuyers changed their options from Refund to Possession pursuant to the orders dated 17.08.2021 of the Hon'ble Supreme Court. The relevant extract of the order *ibid* is reproduced herein below:

*“The home buyers who had earlier opted for refunds on the portal of the Amicus Curiae are given an opportunity to revive their option of taking possession. For this purpose, the portal shall be reopened for a period of thirty days. Emails be addressed to the home buyers who have opted for refunds intimating them that they have a period of thirty days to change their option by indicating that if they wish to take possession in place of refund. This shall also be placed on the website.”*

8. Due to certain issues arising in the management of the web-portal at the end of the Ld. Amicus, the Hon'ble Supreme Court, vide its order dated **27<sup>th</sup> July 2022**, directed the Ld. Amicus Curiae to handover the management of the web-portal to the new Management. The relevant portion of the order *ibid* is extracted herein below for ready reference:

*“The web portal shall, henceforth, be maintained exclusively by the management of Unitech and, in consequence, any requirement of technical inputs or IT related services shall be availed of by the Management at its discretion.”*

9. The Hon'ble Supreme Court gave another **one-time opportunity** to the Homebuyers vide its order dated **03<sup>rd</sup> November 2023** to change their options from Refund to Possession by or before 15<sup>th</sup> December 2023. The Hon'ble Court further directed that the Homebuyers who had received partial refunds earlier would have to repay the principal amount, which was earlier refunded to them, within a period of 08 weeks i.e. on or before 15.02.2024 if they choose to change their option to Possession. The relevant portion of the order *ibid* is extracted herein below for ready reference:

*"6 As regards payments by the home buyers, we issue the following directions:*

- (i) The home buyers who have opted for possession of constructed units shall make payment of their balance dues in accordance with the revised payment plan which has been uploaded on the website of Unitech Limited, failing which interest shall be payable at the rate of 9% per annum;*
- (ii) Those home buyers who had earlier opted for refund, but are now desirous of changing their options to possession are permitted to do so as a one-time measure by sending their details to the designated email account of Unitech Limited by 15 December 2023; and*
- (iii) Those of the home buyers who wish to change their options from refund to possession and who had received partial refunds earlier would have to repay the principal amount which was earlier refunded to them within a period of eight weeks of their opting for possession."*

10. In view of the aforesaid Order, the Management uploaded a Public Notice dated **06<sup>th</sup> November 2023** on the website of Unitech to inform the homebuyers about the said order and also about creation of a dedicated email id, i.e. [refundtopossession@unitechgroup.com](mailto:refundtopossession@unitechgroup.com), specifically for the purpose of homebuyers to communicate the change of their refund option exercised earlier. A copy of the Notice dated 06<sup>th</sup> November 2023 is available on the website of the Company.
11. The Management further extended the last date for change of options from 15.12.2023 to 31.12.2023 for which a Public Notice was uploaded on the Company website on **19<sup>th</sup> December 2023**. However, the last date for deposit of the partially refunded amount was maintained as 15.02.2024. A copy of the Notice dated 19<sup>th</sup> December 2023 is available on the website of the Company. The Hon'ble Supreme Court was apprised about the same through the Convenience Note.
12. Keeping in view the spirit of observations of the Hon'ble Supreme Court during the hearing held on 26.04.2024, the Management, vide Public Notice dated **03<sup>rd</sup> May 2024**, gave a final/ last opportunity to the Homebuyers continuing with Refund options to change their options from Refund to Possession by sending emails to this effect to the dedicated email ID

[refundtopossession@unitechgroup.com](mailto:refundtopossession@unitechgroup.com) by or before 2400 hours on **31st May 2024**. It was further mentioned that any emails received after this deadline will not be entertained as the process cannot continue for an infinite period. A copy of the Notice dated 03<sup>rd</sup> May 2024 is available on the website of the Company.

13. Further, the Management, vide Public Notice dated **12<sup>th</sup> September 2024**, informed that a total of 12,130 Homebuyers had registered themselves on the portal, out of which 4,576 Homebuyers had originally opted for Refund on the Amicus' Portal created pursuant to the directions contained in the Hon'ble Supreme Court Order dated 15<sup>th</sup> September 2017 and 21<sup>st</sup> September 2017. A total of 1,954 Homebuyers have changed their options from Refund to Possession pursuant to the directions of the Hon'ble Supreme Court issued vide its orders dated 17.08.2021 and thereafter vide its orders dated 03.11.2023 till the last date i.e. 31.05.2024. A copy of the Public Notice dated 12<sup>th</sup> September 2024 is available on the website of the Company.
14. It is pertinent to mention that it was also informed vide the Public Notice dated 12.09.2024, that a total of 1,657 Homebuyers had not changed their options and continued to be treated as Refund Seeking Homebuyers. These 1657 Homebuyers also include a total of 303 Homebuyers who have availed of partial refunds amounting to Rs. 35.67 Crore but not deposited the same. As such, 03 different lists, which contain the Project-wise details of Refund seeking Homebuyers, were uploaded on the website so as to give an opportunity to the Homebuyers to point out if they had at any stage communicated their change of option from Refund to Possession, along with the attendant conditions, by or before 15<sup>th</sup> October 2024. A copy of the Notice dated 12<sup>th</sup> September 2024 is available on the website of the Company.
15. Pursuant to the above, a number of emails have been/ are being received from the Homebuyers and some of them have visited the Unitech office. It has been found that 13 Homebuyers from List-1, 02 Homebuyers from List-2, and 05 Homebuyers from List -3 had completed the process and the same have been taken on record.

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## Consent Form – Anthea Floors

Sr. No.	Subject	Response of the Home buyer/ Allottee	
1.	Name of the Project	Anthea Floors, Wildflower Country, Sector 70, Gurugram	
2.	Name(s) of the Allottee(s)		
3.	Customer Code		
4.	Unit No. as allotted to the Allottee		
5.	Present Address with Contact No. and Email ID		
6.	In case the Allottee has received any partial refunds from the Amicus/ Supreme Court Registry/ Unitech in the past, please confirm if you have repaid the said amount in full to Unitech.	Amount Refunded, if any	
		Amount Repaid, if any, along with date of Repayment and mode of repayment	
7.	Please Tick if your latest Option is for -	Refund	Possession
8.	Consent for the Revised Floor Plans and Additional Costs (Please tick the relevant entry)	Yes	No
9.	Would the allottee of Basement+ Ground Floor like to retain the Basement (Please tick the relevant Box)	Yes	No
10.	<p>(i) I/ We, as mentioned above, have carefully gone through the contents of the communication dated 17.05.2024, circulated through email by the current management of Unitech Limited, and also available on the website of the Company.</p> <p>(ii) I/ We hereby give my/ our consent to the proposed changes in the Building Plan/ Floor Plan of the Unit allotted to me/ us, subject to such modifications as may be made/ approved by the Competent Authority, along with the additional costs, as conveyed to me/ us vide email dated 17<sup>th</sup> May 2024.</p> <p>(iii) I/ We understand that my/our Unit/ Floor No. may be changed due to consolidation of the Units taken up for construction pursuant to the final list of possession seeking homebuyers, to which I/We will have no objection.</p> <p>(iv) The above consent is final and irrevocable.</p>		
	Date: _____	Signature of the Allottee(s)	