

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

**Complaint no.:** 2757 of 2020  
**Date of decision :** 05.07.2024

Bhawana

**Both RR/o:** - Flat no. A1/102, Jalalpur city, Ramjaipal  
Path, Patna, Bihar

**Complainant**

Versus

1. M/s Imperia Structures Ltd.  
**Office address:** A-25, Mohan Cooperative  
Industrial Estate, Mathura Road, New Delhi-110044
2. Brajinder Singh Batra  
**Office address:** A-25, Mohan Cooperative  
Industrial Estate, Mathura Road, New Delhi-110044
3. Sushil Kumar  
**Address:** 1<sup>st</sup> floor, Kanak Braj Complex, Boring  
Road, Patna, Bihar
4. Shikha  
**Address:** Flat no. 305, Naman Ashray Apartment,  
Sahdeo Mahto Marg, Patna, Bihar
5. Purshottam Kumar Singh  
**Address:** Flat no. 304, Krishna Kunj Apartment,  
Krishna Nagar, Road no. 8, East Boring Canal Road,  
Patna, Bihar
6. Raj Kumar Singh  
**Address:** Singh Bhawan, Near, H.R.D.T School,  
Mohalla-Shivpuri, Shastri Nagar, Patna, Bihar

**Respondents**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri. Atul Kumar (AR on behalf of complainant)  
Shri. Sourav (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

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

S. N.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana
2.	Nature of the project	Group Housing Complex
3.	Project area	17 acres
4.	DTCP license no.	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
5.	Name of licensee	M/s Phonix Datatech Services Pvt Ltd and 4 others
6.	RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
7.	Apartment no.	1103, 11 <sup>th</sup> floor, Block D

		(page no. 26 of complaint)
8.	Unit area admeasuring	168.68 sq. mtrs. (page no. 26 of complaint)
9.	Allotment Letter	01.03.2012 (page no. 26 of complaint)
10.	Date of builder buyer agreement (not registered)	21.11.2019 (date of stamp) [page no. 20 of complaint] 20.01.2020 [pg. 37 of reply]
11.	Possession clause	<p><b>10.1. SCHEDULE FOR POSSESSION</b></p> <p>“The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the <b>construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement</b> unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement.”</p> <p><b>(emphasis supplied)</b></p>
12.	Due date of possession	20.07.2023 + 6 months COVID-19 = 20.01.2024



		[calculated as per possession clause]
13.	Total sale consideration	₹ 56,82,550/- [as per the BBA on page no. 46 of reply]
14.	Amount paid by the complainant	₹ 57,87,153/- [as per the statement of account on page no. 31 of reply]
15.	Occupation certificate	07.02.2018-Tower- G, H, I & EWS Block [annexed with reply dated 08.12.2020]
16.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- a. That on dated 21.11.2019 apartment buyers' agreement no. IN-DL86166617160958R between Imperia Structure Ltd. and the Petitioner for flat bearing no. 1103D in Esfera situated at Sector-37 C, Village Gharoli Khurd and Elasai, Gurugram-Dwarka Expressway, Haryana was signed.
- b. That Haryana Real Estate Regulatory Authority vide its memo no. HRERA – 183/2017 dated 17.11.2017 issued Registration Certificate of Project. Registration no. of this Project is 352 of 2017 dated 17.11.2017.
- c. That it is stated that the Respondents have violated the above clause as have not yet registered the agreement for sale. That at the time of booking it was said that this project will be completed and handed over within one year time period. That, petitioner when on dated 14<sup>th</sup> December' 2019 filed an FIR in Budha Colony



Police Station, Patna bearing No. 419/2019, the Respondent on dated 13<sup>th</sup> January' 2020, called petitioner to have a settlement.

- d. That the Petitioner when participated the said settlement meeting on good faith, was again cheated by the Respondent for the reasons Memorandum of Settlement (for brevity hereinafter called as MOS), the Respondent has assured that he will hand over the unit in a year's time. But so far as nothing has been done by the Respondent till date.
- e. That from the perusal of the said ledger, Rs.2,14,340/- has been received from the petitioner in the name of Income Tax deduction at Source. That the said amount is not reflecting on the website of Income Tax Department. The Respondent has not even furnished a copy of Form-16 to the petitioner. That this situation compels the petitioner to understand that in the name of TDS Rs.2,14,340/- has been cheated from the petitioner.
- f. That from the perusal of the said ledger, Rs.3,21,508/- & Rs.3,21,508/- has been received from the petitioner in the name of CGST and SGST respectively totaling to Rs.6,43,016/- . That neither receipts of the said amount has been made available to the petitioner nor have they said amounts been deposited in the Government exchequer. That this situation compels the petitioner to understand that in the name of CGST & SGST Rs.3,21,508/- + Rs.3,21,508/- = Rs.6,43,016/- has been cheated from the petitioner.
- g. That from the perusal of the MOS it appears that some amount of Annual Return and Pre-lease rental, receivable by Abhiyank's



project namely H<sub>2</sub>O ONYX, has been transferred to the petitioner's project namely Esfera 1103D. That copies of the receipt/transfer/adjustment of Annual Return & Pre-lease rental from Abhiyank's H<sub>2</sub>O ONYX have not been made available to the petitioner. That in the head of Service Tax, Petitioner deposited Rs.1,11,625/-. Rs.1,68,553/- has been received from her Annual return totaling to Rs.2,80,178/-.

- h. That the amount Rs.2,80,178/- received, in the name of Service Tax, by Respondents has ~~not been~~ deposited in the Government exchequer nor is reflecting in the ledger. The Respondent is not returning the same to the petitioner. It is a clear case of fraud with Government exchequer. That from the perusal of the MOS it appears that some amount of Annual Return and Pre-lease rental, receivable by Abhiyank's project namely H<sub>2</sub>O ONYX, has been transferred to her property.
- i. That copies of the receipt/transfer/adjustment of Annual Return & Pre-lease rental of Abhiyank's H<sub>2</sub>O ONYX have not been made available to the petitioner's brother till date. That it is requested to direct the Respondents to pay interest @ the State Bank of India highest marginal cost of lending rate plus two percent P.A for the period of delay in construction and excess payment taken by the Respondents and with suitable compensation. That appropriate action may be taken against the Respondents for violation of provisions of The Real Estate (Regulation and Development) Act, 2016 and its Rules 2017 issued by the State Government.



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

4. The complainant has sought following relief:

- a. Direct the respondent to registration of agreement of flat no. 1103D in Esfera.
- b. Direct the respondent to get the pending construction work of the subject unit completed soon.
- c. Direct the respondent to execute the conveyance deed of flat no. 1103D in Esfera.
- d. Direct the respondent to provide copy of form-16 to the complainant amounting to ₹2,14,340/- given to Imperia as Income Tax which is not reflecting of the website of income tax department.
- e. Direct the respondent to provide copy of receipts of CGST & SGST amounting ₹3,21,508/- & ₹3,21,508/- which have not been deposited in the government exchequer.
- f. Direct the respondent to provide copy of receipt amounting to ₹2,80,178/- being deposited by the respondent under the head of service tax.
- g. Direct the respondent to provide copy of details of amount of annual return and pre-lease rental, received by them from complainant's brother project H2O ONYX which has been transferred to her property.
- h. Direct the respondent to pay delay possession charges on amount paid till offer of possession of the said unit along with prescribed rate of interest as per RERA.



- i. Initiate appropriate action against the respondent for violation of provision of the RERA Act, 2016 and Rules, 2017.

**D. Reply filed by the respondent:**

5. The respondent has contested the complaint on the following grounds:

- a. Respondent is a Company duly registered under the provisions of the Companies Act, 1956 and Mr. Rajender Kumar working as an Asst. Legal is authorized representative of the Respondent Company has been duly authorized amongst others to sign, verify and file this Reply before this Hon'ble Regulatory Authority.
- b. That it is most humbly submitted that in the last few months the Respondent Company, like many other business enterprises across industry have witnessed several global developments which have impacted the lives and economy in general. The spread of the COVID- 19 virus has hampered economies around the globe and continues to cause disruption in our lives. That the business environment has changed dramatically and the Respondent Company like others has been put in an unprecedented situation. The magnitude and spread of the collapse of all business activities that have followed post this COVID pandemic is unlike anything experienced in our lifetimes. That with no revenue we are facing tremendous uncertainty around when the situation becomes normal as prevailing in pre-pandemic times and like many other business houses we are also hoping for economic reliefs from the government to the business





for helping out during this testing times and in these given circumstances, the Respondent Company facing many challenges for arranging the funds as many investors are either back out from this project or have withhold their payments but still the Respondent Company is committed to its customers / project in question.

- c. That as the Authority is also very much aware that there is scarcity of construction labourers, the reverse migration of laborers / workers is a serious issue for labour-intensive sectors such as the real estate sector. It would not be out of place to mention that the ability and willingness of the migrant labour to return to work in an uncertain environment remains to be seen. So the timely completion of development / construction work at project site is directly related to the availability of construction labourers and also on the conducive economic environment all around, furthermore the respondent company is hoping the economic relief as per the bar lout package/schemes announced by the Central Government & Reserve Bank of India for Real Estate Sectors.
- d. That Answering Respondent denies & disputed each and every statement, contentions and allegations contained in the complaint unless specifically admitted hereinafter, are denied in their entirety as unless specifically set forth and traversed herein. Further, it is submitted that the Complainant has not approached this Hon'ble Authority with bonafide intent as an evident attempt has been made to gain undue advantage by



misrepresenting and twisting the material facts and circumstances herein. Further, the Complainant cannot deserve any relief from the Respondent as the Complaint is mala fide, false, frivolous and misconceived and hence lacks merit. The complainant, thus, is not entitled to claim any equities from the respondent by way of the present complaint. No cause of action has arisen in favour of the Complaint to file the instant complaint for the desired reliefs.

- e. That the complainant in the present complaint has misrepresented the facts and misleading this Authority with a sere motive to arm twist the respondent company and extort money from the respondent company.
- f. It is submitted that the complainant is an 'Investor' and approached the respondent company seeking good returns on his investment in any of the projects of the respondent company. There is no bonafide requirement of any kind on the part of the complainant.
- g. That the issues, grounds and reliefs sought by the complainant in the complaint is completely distorted, contorted, misleading and manipulated so as to portray that the Respondent company has duped the complainant which is completely untrue, false and is specifically and categorically denied.
- h. That the respondent company would like to take an opportunity through this instant reply to bring into light the correct facts which have been completely misrepresented by the complainant in the instant complaint.

- i. That it is important to mention here that the project "ESFERA" comprises of 2 Phases whereas OC of the Phase I of the project is duly issued by Town and Country Planning Development Haryana on 07.02.2018 and more than 100 happy allottee(s) are residing in that phase. That the allotted unit of the complainant is in Phase II which is at the stage of Completion, whereas super structure of the project is completed and fitment stage is in progress. That the possession of the unit will be tentatively delivered to its respective allottee(s) in May 2021 with respective OC and CC on the said project.
- j. That for the purpose of ensuring the delivery of the possession, despite Lockdown and restriction by the imposed by Government of India, the respondent company kept seeking permission to resumes construction of the said project. After many efforts, the respondent company got the permission certificate dated 01.05.2020 by the Municipal Corporation of Gurugram, Haryana subject to certain safety restriction and conditions.
- k. Therefore, it is humbly submitted that this Authority may be pleased to consider the bona fide of the respondent company and distinguish the respondent company from the bad repute being imparted to real-estate builders.
- l. That the respondent company is extremely committed to complete the Phase - 2 of Project Esfera, in fact the super structure of all towers in Phase - 2 (incl. Tower - D) has already been completed, the internal finishing work and MEP works is

going in a full swing with almost 300 construction labourers are working hard to achieve the intent of the Appellant to complete the entire project despite all prevailing adversaries.

m. It is submitted that the apartment buyer's agreement dated 23.04.2014 executed between the parties, in clause 52, has an arbitration clause which provides that all disputes between the complainant and allottee to be resolved through arbitration to be held in Delhi. It is stated that no provision in Real Estate (Regulation & Development Act), 2016 provides for exclusive jurisdiction to this Hon'ble Regulatory Authority or takes away the right of parties to render jurisdiction in an arbitration tribunal.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E.I Territorial jurisdiction**

8. 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**

9. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder."*

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings regarding relief sought by the complainant.**

**F.I. Direct the respondent to registration of agreement of flat no. 1103D in Esfera.**

11. In the present complaint the complainant was allotted a unit bearing no. 1103, 11<sup>th</sup> floor, in Block-D, of the project of the respondent namely i.e., "The Esfera" Phase-II, situated in sector- 37C, Gurugram. The buyer's agreement was executed in this regard on 21.11.2019, inter-se the parties. The buyer's agreement is not registered with the



concerned Authority. As per section 13 of the Act 2016, *a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.* In view of the above, the respondent is directed to register the buyer's agreement with the applicable law within a period of 30 days from the date of this order ailing which the legal consequence shall prevail.

**F.II Direct the respondent to get the pending construction work of the subject unit completed soon.**

12. There is nothing on the record to show that the respondent has applied for OC/part CC or what is the status of the development of the above-mentioned project. So, in such a situation, no direction can be given to the respondent to handover the possession of the subject unit, as the possession cannot be offered till the OC/part CC for the subject unit has been obtained. The respondent is directed to complete the construction of the project as soon as possible. However, delay possession charges as ascertained by the authority shall be payable to the complainants as per provisions of the Act.

**F.III Direct the respondent to execute the conveyance deed of flat no. 1103D in Esfera.**

13. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas, as per section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.



14. The possession of the subject unit has not been offered to the complainants till date. Therefore, the respondent/builder is directed to handover the physical possession of the unit after payment of outstanding dues if any, within 30 days to the complainant/allottees after obtaining the occupation certificate from the competent Authority and to get the conveyance deed of the allotted unit executed in their favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months after the receipt of occupation certificate. Further, only administrative charges of up to Rs.15000/- can be charged by the promoter-developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the local administrative in this regard vide circular dated 02.04.2018.
- F.IV Direct the respondent to provide copy of form-16 to the complainant amounting to ₹2,14,340/- given to Imperia as Income Tax which is not reflecting of the website of income tax department.**
- F.V Direct the respondent to provide copy of receipts of CGST & SGST amounting ₹3,21,508/- & ₹3,21,508/- which have not been deposited in the government exchequer.**
- F.VI Direct the respondent to provide copy of receipt amounting to ₹2,80,178/- being deposited by the respondent under the head of service tax.**
15. The complainant submitted that the respondent/promoter has received the amount of Rs.2,14,340/- in lieu of tax but neither the said amount is reflected in the website of the income tax department nor the respondent provide a copy of from 16 in this regard. The complainant further submitted that the respondent has charged the



additional amount of Rs.3,21,508/- & Rs.3,21,508/- respectively in lieu of CGST and SGST and not to be provided a copy of receipt in the said tax. The respondent company has charged an amount of Rs.2,80,178/- in the head of service tax and the copy of the same has not been provided till date after various request made by the complainant to the respondent company.

16. In view of the above submissions made by both the parties, the Authority observes that if the respondent company has paid the said amount to the concerned department with regard to the subject unit of the complainant then provide the copy of the receipts along with GST R1, form 16 for income tax and challan for service tax being paid within a period of 30 days from the date of this order.

**F.VII Direct the respondent to provide copy of details of amount of annual return and pre-lease rental, received by them from complainant's brother project H2O ONYX which has been transferred to her property.**

17. As far as the said relief is concerned it was not pressed by the counsel for the complainant during the course of hearing. Accordingly, the authority cannot deliberate upon the said issue.

**F.VIII Direct the respondent to pay delay possession charges on amount paid till offer of possession of the said unit along with prescribed rate of interest as per RERA.**

18. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

*Section 18: - Return of amount and compensation*

*If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*



*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.*

19. As per clause 10.1 of the buyer's agreement dated 20.01.2020, provides for handover of possession and is reproduced below:

**"10.1. SCHEDULE FOR POSSESSION**

*"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement."*

20. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the



flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

21. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of within 42 months from the date of execution of buyer's agreement plus grace period of 6 months in lieu of covid-19. The authority calculated due date of possession according to clause 10.1 of the agreement dated 20.01.2020 i.e., within 42 months from date of execution of buyer's agreement. The period of 42 months expired on 20.01.2023. The Authority as per notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020. Therefore, the due date of possession comes out to be 21.01.2024. There is no reason why this benefit cannot be allowed to the complainant /allottee who is duly affected during above such adverse eventualities and hence a relief of 6 months will be given equally to both the complainants/allottee, and the respondent and no interest shall be charged by either party, during the Covid period i.e., from 01.03.2020 to 01.09.2020.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. However, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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."*

23. 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.
24. 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., 05.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
25. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10.1 of the agreement executed between the parties on 20.01.2020, the



possession of the subject apartment was to be delivered within three and half years from the date of execution of this agreement. Further, the Authority as per notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020. Therefore, there is no reason why this benefit cannot be allowed to the complainant/allottee who is duly affected during above such adverse eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee, and the respondent and no interest shall be charged by either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 20.01.2024. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 20.01.2020 executed between the parties. It is pertinent to mention over here that even after a passage of more than 4 years from the date of buyer's agreement neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as

to whether the respondent has applied for occupation certificate/part occupation certificate or what the status of construction of the project is. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

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 complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.95% p.a. w.e.f. 20.01.2024 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**F.IX Initiate appropriate action against the respondent for violation of provision of the RERA Act, 2016 and Rules, 2017.**

27. No specific provisions are mentioned in the complaint which are violated by the respondent accordingly, the authority shall not deliberate upon the said issue.

**G. Directions of the authority**

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

- a. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.95% p.a. for every month of delay from the due date of possession i.e., 20.01.2024 till actual handing over of possession or offer of



possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- b. The respondent shall not charge anything from the complainant(s) which is not the part of the flat buyer's agreement.
- c. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- d. The arrears of such interest accrued from due date of possession i.e., 20.01.2024 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- e. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- f. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



**HARERA**  
**GURUGRAM**

Complaint no. 2757 of 2020

29. Complaint stands disposed of.
30. File be consigned to registry.

*(Signature)*  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2024



**HARERA**  
**GURUGRAM**