BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**597 of 2022**
Order reserved on:	**04.10.2024**
Order pronounced on:	**10.01.2025**

Umesh Sharma
Address at: House No. 193, Sector-12A, Gurugram

Complainant

Versus

M/s Imperia Structures Ltd.
Regd. office: A-25, Mohan Co-operative Industrial Estate, New Delhi-110044

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sukhbir Yadav — Advocate for the complainant
Sh. Geetansh Nagpal — Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/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 under the provisions of the Act or the Rules and regulations made there under 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. 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 valid up to 31.12.2020
7.	Apartment no.	1803, 18th Floor, Tower E (pg. 39 of complaint)
8.	Unit area admeasuring	1650 sq. ft. (pg. 48 of complaint)
9.	Date of booking	09.02.2012 (pg. 48 of complaint)
10.	Date of allotment letter	10.05.2012 (pg. 39 of complaint)
11.	Date of builder buyer agreement	18.03.2013 (pg. 46 of complaint)
12.	Possession clause	***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."* ***(Emphasis supplied)***
13.	Due date of possession	18.09.2016 [calculated as per possession clause]
14.	Total sale consideration	₹ 75,44,000/- [as per the agreement at pg. 52 of complaint]
15.	Amount paid by the complainant	₹ 88,09,863/- [as per applicant SOA dated 04.02.2022 at pg. 91 of complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession for fit outs	07.09.2021 (pg. 94 of complaint)

B. Facts of the complaint

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

a. That on 09.02.2012 believing the representation and assurance of respondent, the complainant Umesh Sharma, booked one residential apartment bearing flat no. E - 1803 on 18th floor in tower - E for size admeasuring 1650 sq. ft. on the basic price of Rs. 3335 per sq. ft. with 01 covered Parking and paid Rs. 5,50,000/- as booking amount and signed a pre-printed application form.

b. That on 10.05.2012, the respondent issued an allotment letter for the said unit in favour of the complainant.

c. That after a long follow-up on 18.03.2013, a pre-printed, unilateral, arbitrary flat buyer agreement/buyer's agreement was executed inter-se the respondent and the complainant. According to clause 10.1 of the flat buyer agreement, the respondent has to give possession of the said flat within a period of 42 months from the date of execution of this agreement. The BBA was executed on 18.03.2013, hence the due date of possession was 13.09.2016.

d. That the complainant kept paying the demands raised by the respondent. Before the execution of the BBA, the complainant has already paid Rs. 22,83,634/- and this was accepted by respondent in his BBA.

e. That the complainant has availed a home loan of Rs. 52,00,000/- from State Bank of India against the said flat and paying the interest on the loan. As per the statement of account dated 04.02.2022 issued by the respondent, the complainant has paid Rs. 88,09,863/- i.e. is 99.99% of the total amount demanded by the respondent.

f. That on 07.09.2021 the respondent issued a demand note cum possession offer for fit outs and asked for payment of Rs. 14,22,107/-. The said demand contains unreasonable demand of Rs. 7,19,400/- under the head of Increase in Area (without any justification) and Rs. 6,20,289/- under the head average escalation cost and taxes on these demands. The said demands are illegal and arbitrary.

g. Since 2015 the complainant kept on regularly visiting the office of the respondent as well as the construction site, and made efforts to get possession of the allotted apartment but all went in vain. Despite

several visits and requests by the complainant, the respondent did not give possession of the apartment.

h. That the main grievance of the complainant in the present complaint is that despite the complainant paid more than 99.99% of the actual cost of the apartment and is ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of apartment on promised time and till date the project is without amenities.

i. That due to the acts of the above and the terms and conditions of the builder buyer agreement/buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

C. Relief sought by the complainant:

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

(i) To get possession of the fully developed/ constructed apartment with all amenities within 6 months of the filing of this complaint.

(ii) To get the delayed possession interest on the amount paid by the allottee at the prescribed rate from the due date of possession to till the actual possession of the apartment is handed over as per the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

(iii) To get an order in their favour by directing the respondent party to provide area calculation (carpet area, loading, and super area). The respondent has increased the area without any justification.

(iv) To get an order in his favour by directing the respondent party to withdraw the demand of Rs. 6,20,289/- and Rs. 7,19,400/-.

(v) To get an order in his favour by refraining the respondent party to charge GST.

(vi) The complainant is entitled to get an order in their favor to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the apartment buyer agreement.

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.

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

I. That the complainant has not approached the authority with clean hands and thus supressed misconceived the material facts with an intention to mislead the authority by making incorrect and false averments and stating untrue and incomplete facts and as such is guilty of suppression.

II. That the rights of the parties to the present lis are governed by the tripartite agreement whereby equitable mortgage in favour of State Bank of India is said to have been created qua the allotted unit. Thus, it is necessary that State Bank of India be arrayed as a necessary party as all the original documents viz. Agreement and Money receipts is with the State Bank of India only.

III. That after making independent enquiries and only after being fully satisfied about the project, the complainant approached the respondent company for booking of a residential unit in its project "The ESFERA", located in Sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. tower E, 1803 admeasuring with of 1815 sq. ft. to complainant for a total consideration of

Rs.88,10,241/- (including applicable tax) plus other charges vide booking dated 20.09.2011 and opted for construction linked plan on the terms and conditions mutually agreed by them.

IV. That the complainant has failed to make out a case under section 18 of Act, as the respondent has already completed the construction and development of the towers and applied to the competent authority for grant of occupancy certificate on 15.04.2021 after complying with all the requisite formalities.

V. That, the respondent company is in extreme liquidity crunch at this critical juncture and has also been saddled with orders of refund in relation to around 20-25 apartments in the project, on account of orders passed by various other courts. The total amount payable in terms of those decrees exceeds an amount of Rs.20 crores.

VI. That, on account of many allottees exiting the project and many other allottees not paying their installment amounts, the company, with great difficulty, in these turbulent times has managed to secure a last mile funding of Rs.99 crores from SWAMIH Investment Fund – I. The said alternate investment fund (AIF) was established under the special window declared on 6.11.2019 by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brownfield, RERA registered residential developments that are in the affordable housing/mid-income category, are net-worth positive and require last mile funding to complete construction. The company was granted sanction on 23.09.2020 after examination of its status and its subject project "Esfera" for the amount of Rs.99 crores. The first transaction of installment has already been received by the respondent company from the said fund as loan.

VII. That the respondent company is extremely committed to complete the phase 2 of the project Esfera. In fact, the super structure of all towers in phase 2 (incl. Tower B) has already been completed. The internal finishing work and MEP works is going in a full swing with almost 450 construction labourers are working hard to achieve the intent of the appellant to complete the entire project.

VIII. That the respondent company fulfilled its promise and had constructed the said unit of the complainant and sent an offer for fitout dated 07.09.2021 to the complainant way before the agreed timeline.

7. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. 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.

E.II Subject-matter jurisdiction

10. 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) 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.

11. 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.

F. Entitlement of the Complainant:

F.I To get possession of the fully developed/ constructed apartment with all amenities within 6 months of the filing of this complaint.

F.II To get the delayed possession interest on the amount paid by the allottee, at the prescribed rate from the due date of possession to till the actual possession of the apartment is handed over as per the proviso to Section 18(l) of the Real Estate Regulation and Development) Act, 2016.

12. 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***

18(1). 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."

13. Clause 10.1 of the buyer's agreement provides the time period of handing over possession and the same 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."*

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges in terms of proviso to section 18 of the Act which 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.*

15. 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.

16. 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., 10.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.

17. 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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

19. On consideration of the documents available on record and 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 by the due date as per the agreement. It is a matter of fact that buyer's agreement executed between the parties on 18.03.2013, the possession of the booked unit was to be delivered within a period of 42 months from the date of execution of the agreement, which comes out to be 18.09.2016. Till date no occupation certificate has been obtained by the respondent. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 18.03.2013 to hand over the possession within the stipulated period.

20. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by complainant to the respondent from the due date of possession i.e., 18.09.2016 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

F.III To get an order in their favour by directing the respondent party to provide area calculation (carpet area, loading, and super area). The respondent has increased the area without any justification.

21. As per section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other

information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent/promoter is directed to provide documents and details i.e., area calculation with justification for increase in area of the unit in question to the complainant within a period of 1 month from the date of this order.

F.IV. To get an order in his favour by directing the respondent party to withdraw the demand of Rs. 6,20,289/- and 7,19,400/-.

22. The complainant has contended about various illegal charges raised by the respondent-promoter detailed as under:

S. No.	Particulars	Amount (Rs.)
1	Demand towards Balance Sale Consideration	4,47,262/-
2	Increased Area Charges (i.e., Increase in Area x Booking/ Allotment Rate)	**7,19,400/-**
3	Average Escalation Cost, as per indexed construction Escalation between 2014-2017	**6,20,289 /-**
4(A)	Net Sales Value (Aggregate of above)	17,86,951/-
5(B)	Total Service Tax/ GST	4,78,970/-
6(C)	Service Tax/GST (Received)	3,24,119/-
7(D)	Balance Service Tax/GST [i.e. (B-C)=D	1,54,851/-
8(E)	Delay Possession Penalty @ Rs. 5/- sq. ft.	5,19,695 /-
9(F)	Total Outstanding Dues [i.e., (A+D-E) =F	14,22,107/-

23. It is pleaded that out of the above-mentioned charges detailed, there is no basis to demand charges **against increase in area**, average escalation cost and balance service tax/GST. Though demand under the heading increased area charges (i.e., increase in area x booking/

allotment rate) has been mentioned as Rs. 7,19,400/- but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 18.03.2013 and clause 9.2 provides with regard to major alteration/modification resulting in excess of +/- 10% change in the super area of the apartment or material/ substantial change in the sole opinion of and as determined by the developer/company. A reference to clause 9.2 of the agreement must detail as under:

> 9.2 Major alteration/modification
>
> In case of any major alteration/modification resulting in excess of +10% change in the super area of the aid apartment or material/substantial change, in the sole opinion of and as determined by the Developer/company, in the specifications of the materials to be used in the said building/said apartment any time prior to and upon the, grant of occupation certificate, the develop/company **shall intimate the intending allotee(s) in writing the changes** thereof and the resultant change, if any, in the price of the said apartment to be paid by him/her and the intending allottee agrees or deliver to the Developer/Company his/her written consent or objections to the changes **within thirty days from the date of dispatch** by the Developer/Company of such notice failing which the intending allottee shall be deemed to have given his/her full and unconditional consent to all such alterations/modifications and for payment, if any to be paid in consequence thereof.....

24. It is not disputed that the due date for completion of the project has already expired on 18.09.2016. The impugned demand against the above-mentioned head was raised vide letters dated 07.09.2021 and the same is as per the above-mentioned provision of the buyer agreement. If the complainant have any objection against the purposed change/increase, the complainant has a right to challenge the same within the period stipulated as per buyers' agreement. However, the respondent-builder is also duty bound to explain that increase in the super area of the unit vis a vis the project before raising such demand.

25. That in ***NCDRC consumer case no. 285 of 2018 titled as Pawan Gupta Vs Experion Developers Private Limited***, it was held that the respondent is not entitled to change any amount on account of increase in area. The relevant part of the order has been reproduced hereunder:

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> *The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainants have made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the*

builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.

26. Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 1650 sq. ft. to 1815 sq. ft. vide offer of possession for fit outs dated 07.09.2021 thereby increasing the area of the subject unit by 165 sq. ft. i.e. 10%. In view of the above, the Authority has clear observation that as per BBA if there is any increase in super area, the company shall intimate the intending allottee in writing. But in the present case, the respondent has intimated to the complainant regarding increase in super area, of the subject unit at the time of offer of possession for fit outs and not before. Further, no justification and intimation were made to the complainant in respect of increase in area. So, the respondent cannot charge any amount from the complainant merely on account of increase in the super area without providing proper justification and specific details regarding the increase in the super area/carpet area.

- **Escalation charges**

27. The complainant took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of offer of possession. The respondent-builder submits that cost of escalation was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. The undertaking to pay the above-mentioned charge was comprehensively set out in the buyer agreement.

The said clause of the agreement is reproduced hereunder: -

Clause 1.2

It is mutually agreed and binding between the Allottee(s) and the Company that 50% of the Total Price of the Said Apartment, shall be treated as construction cost for the purpose of computation of

Escalation Charges. It is further mutually agreed that within the above stated construction cost, the components of steel, cement, other construction materials, fuel and power and labour shall be 15%. 10%, 40%, 5% and 30% respectively of the construction cost. Escalation charges shall be computed at the expiry of 42 months i.e. in April, 2016. The RBI indexes for the month of September. 2012 and for the month March, 2016 shall be taken as the opening and closing indexes respectively to compute the Escalation Charges. The Company shall appoint a reputed firm of Chartered Accountants to independently audit and verify the computation of escalation charges done by the Company from time to time. Such audited and verified Escalation Charges shall be paid/refunded (or adjusted), as the case may be. by/to the Allottee(s) before the offer of possession of the Said Apartment to the Allotlee(s). Escalation Charges, as intimated to the Allottee(s) shall be final and binding on the Allottee(s). The Allottee(s) agrees and understands that any default in payment of the Escalation Charges shall be deemed to be a breach under the terms and conditions of the Agreement. No possession shall be handed over to the Allottee(s) unless Escalation Charges are paid in full along with delayed interest, if any.

28. 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. The delay was a result of the respondent failure to hand over the possession of the unit, leading to an increase in escalation cost. Therefore, it would be unjust to attribute the delay to the complainant. Hence, the imposition of escalation charges is not justified, and the same cannot be charged from the complainant.

F.V To get an order in his favour by restraining the respondent party to charge GST.

29. It is contended on behalf of the complainant that vide letter dated 07.09.2021 the respondent raised a demand for a sum of Rs. 4,78,970/- on account of balance service tax/GST. That demand is illegal as the incidence of GST came into effect from 01.07.2017 and the due date for completion of the project unit was fixed as 18.09.2016. Therefore, the tax which came into existence after the due date of possession and this

extra cost should not be levied on the complainant. The authority has decided this issue in the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd. wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.

30. In the present complaint, the possession of the subject unit was required to be delivered by 18.09.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondent/promoter is liable to bear the difference of government taxes levied upon after the due date of possession till the date of offer of possession and the promoter is only entitled to charge taxes fixed by the government effective only upto the due date of possession. Therefore, difference between post GST and pre GST shall be borne by the promoter.

F.VI The complainant is entitled to get an order in their favor to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the apartment buyer agreement.

31. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

G. Directions of the authority

32. 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 handover possession of the unit allotted to the complainant within a period of 60 days after obtaining valid occupation certificate.

II. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 18.09.2016 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

III. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

V. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement. The respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement

as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

33. Complaint as well as applications, if any, stands disposed off accordingly.

34. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2025