BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**6309 of 2024**
Date of filing of complaint:	**23.12.2024**
Date of Order:	**27.03.2025**

Rajnandani
R/o: S-24, Second Floor, Gurudwara Road, Greater Kailash-2, South Delhi, Delhi-110048 **Complainant**

Versus

1. Imperia Structures Ltd.
2. Baakir Real Estate Private Limited
3. Brajinder Singh Batra, Joint Managing Director of R1
4. Harpreet Singh Batra, Managing Director of R1
5. Harpreet Singh Batra, Director of R1

Respondents

Regd. office at: A-25, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044

CORAM:

Shri Vijay Kumar Goyal **Member**

APPEARANCE:

Sh. Abhay Kumar Gupta and Ravi Kumar (Advocates) Complainant
Sh. Rishi Kapoor (Advocate) Respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the

promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase II, Sector 37 C, Gurugram
2.	Nature of the project	Group Housing
3.	Project Area	17 acres
4.	DTCP license no. and validity	64 of 2011 dated 07.03.2011
5.	Name of licensee	
6.	Unit no.	B-402, 4th floor & Block-B (As per page no. 30 of the complaint)
7.	Unit area admeasuring	1850 sq. ft. (Super area) (As per page no. 30 of the complaint)
8.	Date of execution of buyer's agreement	27.09.2016 (As per page no. 28 of the complaint)
9.	Possession clause	*10.1 Schedule for possession of the said apartment* ***The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete 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 & clause 41.....* (As per page no. 46 of the compliant)
10.	Due date of possession	27.09.2020 (**Note:** Due date to be calculated three and half years from the date of execution of agreement i.e., 27.09.2016 plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
11.	Total sale consideration	Rs.32,37,500/- (As per page no. 37 of the complaint)
12.	Amount paid by the complainant	Rs.33,73,475/- (As per page no. 78 of the complaint)
13.	Occupation Certificate	13.03.2024 (As per POD dated 27.03.2024)
14.	Offer of possession	17.07.2024 (As per POD dated 27.03.2024)
15.	Legal Notice for possession	18.09.2023 (As per page no. 77 of the complaint)
16.	Demand letter with the heading possession letter	15.03.2024 & 17.07.2024 (As per page no. 5 of the application)
17.	Reminder letters	04.09.2024, 16.09.2024, 03.10.2024 and 08.10.2024 (As per page no. 4 of the application)
18.	Cancellation notice	18.10.2024 (As alleged by the complainant on page no. 4 of the complaint)

B. Facts of the complaint:

3. That the complainant has made following submissions:

I. That the complainant is a respectable and law-abiding citizen who is currently residing at -24, Gurudwara road, Greater Kailash-2, Delhi.

II. That the complainant was allotted apartment bearing no. B-402, 4th floor, Block-B by the respondent on the basis of application dated 24.08.2015, in project ESFERA-II.

III. That an apartment buyer's agreement dated 27.09.2016 was executed between the complainant and the respondent for allotment of the afore-mentioned unit admeasuring super area of 1850 sq. ft. in the project of the respondent and as per clause 1.1 read with clause 3 of the said agreement for a total consideration of Rs.32,48,213/- and the complainant has paid an amount of Rs.1,25,262/- towards the purchase of the unit, and the same is paid in terms of the agreement between the parties.

IV. That the consideration towards the said unit has been duly paid by the complainant and the same has been acknowledged by the respondent vide receipt. Furthermore, as per clause 10.1 of the agreement, the respondent agreed to handover the possession of the apartment within a period of 3.5 years from the date of entering into the agreement. As such, the date of deliver of possession assured to the complainant was on or before 26.03.2020. However, despite receiving full and final consideration for the apartment as per the builder buyer's agreement and also giving assurance to deliver the possession on or before 26.03.2020, the respondent miserably failed to handover the possession of the apartment to the complainant which is still not given and the complainant is waiting for the same.

V. That the respondent is acting with a malafide intention only to grab the hard-earned money of the complainant without ensuring the promised delivery of the unit in question and it is apprehended that the respondent has no intention to deliver the said unit to the complainant.

VI. That the complainant kept making calls, requests and through several meetings kept inquiring as to when will the respondent deliver the project but the respondent never furnished a concrete answer to the same. The complainant time and again contacted the officials of the respondent expressing his concern over the delay in project and seeking an explanation from the respondent for the same, but to no avail. The complainant also issued a legal notice dated 18.09.2023 to the respondent requesting the respondent to handover the possession and pay the delay compensation charges as per the builder buyer's agreement. However, despite being in receipt of the legal notice dated 18.09.2023, the respondent failed to hand over the possession of the said unit. The complainant through various modes kept on visiting the office of the complainant to request for handover of the possession of the unit, however, no request was ever responded by the respondent.

VII. That to the utter shock and surprise of the complainant, the complainant received a *non-est* letter dated 17.07.2024 on 17.08.2024, which was in the nature of demand letter for additional payment in contravention of the agreement, but it was given the heading of "POSESSION LETTER". In the said letter, the respondent demanded an additional amount of Rs.18,63,881/-. Not only this, the said letter dated 17.07.2024 received on 17.08.2024 mentioned about a letter dated 15.03.2024, which was never received by the

complainant. It is pertinent to note that the said averment related to letter dated 15.03.2024 was a misleading statement and willfully mentioned to create records for some unknown purpose. The said letter dated 17.07.2024 was replied to the complainant in detail on 31.08.2024 and it was responded to the respondent that the entire demand of additional payment is against the agreement and also the well-established precedents of law. In the said reply, the complainant also called upon the respondent and its promoter to share the letter dated 15.03.2024 and proof of delivery for the same. The malafide intention of the respondent is more evident from the fact that the respondent sent the alleged possession letter on 17.08.2024 with a back date on 17.07.2024.

VIII. That no letter dated 15.03.2024 was ever served to the complainant, the complainant was never informed about the alleged increase in final super area of the said apartment and neither any amount was ever demanded from the complainant towards increase in super area before the letter dated 17.07.2024. Moreover, after being in receipt of the reply dated 31.08.2024, the respondent accepted the contents of the said reply and did not object to the same despite repeated reminders made by the respondent on 04.09.2024, 16.09.2024, 03.10.2024 and 08.10.2024.

IX. That despite being in receipt of letter dated 31.08.2024, on one-hand the respondent chose not to respond to the same and on the other hand, the respondent issued a letter dated 10.12.2024 (received on 18.12.2024) stating that the cancellation letter dated 18.10.2024 was sent to the complainant and the cancellation was done due to default of payment against the possession letter dated 15.03.2024 and 17.07.2024, and further asked for the account details to refund the

amount. Firstly, no cancellation letter dated 18.10.2024 was ever issued to the complainant and neither any amount is due and payable to the respondent. Secondly, the complainant never received any possession letter dated 15.03.2024 and the letter dated 17.07.2024(received on 17.08.2024) was non-est.

X. That the said letter dated 10.12.2024 was responded by the complaint in detail vide its letter dated 19.12.2024. It was specifically mentioned in the said response that the complainant never received any cancellation letter and neither the same is attached along with the letter dated 10.12.2024. The malafide intention of the respondent is evident from the fact that the letter dated 10.12.2024 mentions that the letter dated 18.10.2024 is attached along with the letter, however, no such letter was attached along with the letter dated 10.12.2024.

XI. That the aforesaid irregularities clearly elucidate the misconduct on the part of respondent and that the respondent clearly violated its brochures, advertisements and representations made to genuine innocent home-buyers. This is clear violation of Section 12 of the Act of 2016.

XII. That the respondent is liable to pay delayed possession charges for every month of delay till the actual date of physical handing over the possession. The respondent had made representations and tall claims that the project will be completed on time and shall be delivered promptly. On the contrary, the respondent has failed in adhering to the representations made by him and retained the hard-earned money paid by the complainant for so many years thereby causing wrongful loss to the complainant and wrongful gain to the respondent. Not only this, when the unit is ready for handover, the

respondent is demanding extra money as an extortion to handover the unit to the complainant.

XIII. That the present complaint has been filed in order to seek possession of the unit and also compensation/interest on the delayed possession along with the other reliefs as mentioned in the relief clause of the complaint.

C. Relief sought by the complainant:

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

i. Direct the respondent to provide the possession of the unit.

ii. Direct the respondent to make the payment of delay possession of Rs.17,93,564/- for the period from as per Act of 2016.

iii. Direct the respondent not to demand any additional amount and set-aside illegal and nonest demand raised by the respondent in its letter dated 17.07.2024 in the name of balance amount, increased area charge, escalation cost, GST etc.

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 respondents have contested the complaint on the following grounds:

I. That the complainant after making independent enquiries and only after being fully satisfied about the project, had approached the respondent for booking of a residential unit in respondent's project 'The Esfera' located in Sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. B 402 in favor

of the complainant for a total consideration amount of Rs.33,30,633/- including applicable tax and additional miscellaneous charges vide booking dated 24.08.2015 and opted the down payment plan on the terms and conditions mutually agreed by the complainant and the respondent.

II. That the complainant has improperly included Baakir Real Estate Private Limited as a party to this complaint, as they are not a party to the underlying complaint. The inclusion of this entity as a party is therefore inappropriate and unfounded, and the complainant's actions in this regard are incorrect.

III. That the respondent entered into builder buyer's agreement dated 27.09.2016 with the complainant in interest of the booked unit. It is pertinent to mention that BBA duly covers all the liabilities and rights pertaining to both the parties involved. The respondent has already obtained the occupancy certificate on 13.03.2024, pertaining to the project in question where the unit of the complainant is situated.

IV. That subsequent to the issuance of the OC by the competent authority, the respondent duly dispatched the offer of possession dated 15.03.2024. The complainant's allegation that no such letter was ever received constitutes a deliberate attempt to mislead and to unlawfully conceal material facts from the Hon'ble Authority and to demand additional financial compensation from the respondent. That the complainant's allegations against the respondent are unfounded and constitute false claims.

V. That the complainant has asserted that the full payment for the unit in question has been made. However, with reference to the same clause cited by the complainant, namely clause 3, it was explicitly mentioned that *"The Intending Allottee(s) has already paid a sum of Rs.*

32,48,213/- plus 1,25,262/- (Service Tax) being part payment towards the cost of the said apartment at the time of application and thereafter the receipt of which the developer/company doth hereby acknowledge and the Intending Allottee(s) shall and doth hereby agree to pay the remaining price of the Apartment as prescribed in schedule of payments along with all the other charges, securities etc. as may be demanded by the developer/company within the time and in the manner specified therein." That pursuant to this clause, the Complainant expressly consented to the fact that the payment made constituted a partial payment. In view of the same, the respondent was ready to deliver possession of the said unit to the complainant. That given the fact that the OC had been obtained, the said letter dated 15.03.2024 duly informed the complainant about their liability amounting to Rs.18,63,881/-.

VI. That the complainant was duly notified about the increase in area vide the letter dated 15.03.2024 and also vide letter dated 17.07.2024. Therefore, the complainant's claim that they should have been notified of the area increase before the issuance of the OC is not supported by the terms of the agreement.

VII. That the complainant has further alleged that the increase in area should only be charged in cases where the alteration is within the range of +/- 10% and that the increase in area for the said unit exceeds this threshold. This assertion is factually incorrect. The previous super area of the unit was 1850 sq. ft., and the current super area is 2035 sq. ft., reflecting an actual increase of 185 sq. ft., which constitutes exactly 10% of the previous area. Therefore, the charge for the increase in area is entirely in accordance with the terms of the BBA, which the complainant has duly signed and accepted.

VIII. That the complainant was duly served with letters, which explicitly outlined the applicable escalation charges. Furthermore, the justification for the escalation charges is duly supported by the BBA. Specifically, clause 1.2 of the agreement expressly provides that the price of the apartment is based on the cost of labour and materials as of 21.10.2012. It further stipulates that any increase or decrease in the cost of materials or labour shall be recoverable or payable by the complainant, a provision to which the complainant has explicitly consented.

IX. That the escalation in labour and material charges is the direct cause for the imposition of the escalation charges. That the escalation has occurred as a result of inflationary pressures, which have led to an increase in the costs of labour and materials required for the construction and development of the project. This increase, being beyond the control of the respondent, has been explicitly accounted for in the BBA under which the complainant has agreed to bear any additional costs arising from fluctuations in the prices of labour and materials. Moreover, to ensure transparency in the calculation of such escalation charges, the respondent has detailed the methodology for determining these costs in Annexure G of the BBA. Therefore, the escalation charges being levied are a necessary and justified consequence of these inflationary changes.

X. That the complainant hasn't approached this Hon'ble Authority with clean hands or with *bona fide* intentions and the same is depicted in their actions as they have not paid the outstanding instalments in time and it must be noted that till this day a large sum of amount is pending to be paid by the complainant, despite numerous reminders which were issued to the complainant by the respondent.

XI. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainant. Despite numerous reminders, the complainant failed to comply by the obligations laid down by the BBA, Rs.18,63,881/- is still due to be paid by the complainant.

XII. That the complainant had failed to make the required payments despite receiving numerous reminders, and has directly contradicted the facts by asserting that she has made the full payment as per the BBA. This assertion is entirely false, as outlined in the aforementioned facts, where it is evident that the complainant did not comply with the payment plan she herself had selected. Additionally, at the time of signing the BBA, the complainant expressly consented to bear the costs associated with the increased area and escalation charges. However, she has now failed to fulfill this obligation.

XIII. That the terms under buyer's agreement delineates the respective obligations of the complainant as well as of the respondent as an aftermath of breach of any of the conditions specified therein. It must be noted that this provision was also confirmed and agreed to by the complainant, who is now attempting to put on an innocent façade to escape their responsibilities and liabilities.

XIV. That delay was caused in completion of construction of the said project due to certain unforeseeable circumstances. According to the BBA, force majeure provides for both shortage of building material and labour required, along with providing for unforeseeable events which make the construction impossible to be carried out. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court directed a ban on construction activities in the said region from 04.11.2019 onwards, which was a huge hurdle to realty

developers in the city. The Air Quality Index (AQI) at the time was running as high as 900, which is severely unsafe for the health. Later, in furtherance of declaration of the AQI levels as 'not severe' by the Central Pollution Control Board (CPCB), the Hon'ble Supreme Court lifted the ban conditionally on 09.12.2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. It had caused the project to be delayed and thus, there was a delay in application for OC. Secondly, when the complete ban was lifted on 14.02.2020, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and later lifted the lockdown, conditionally, on 17.05.2020. The pandemic COVID-19 has caused immense delay and obstruction to the construction of the building, as the procurement of labour and raw material proved to be highly challenging. The whole situation led to a reverse migration of workers, who left cities and returned back to their villages, for safety of themselves and their families. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods have left great impact on the realty sector for resuming their respective constructions. Thus, causing delay in the completion of the said project, this was already hampered by the non-payment of outstanding dues by numerous allottees, including the complainant.

XV. That the respondent was prepared to hand over possession and accordingly, issued reminder letters dated 17.07.2024 and 17.08.2024. Notwithstanding these reminders, the complainant failed to make the required payment. Subsequently, the respondent sent a pre-cancellation notice dated 28.08.2024, reiterating the request for the complainant to make the payment and take possession. However,

the complainant did not comply. After providing the ample opportunities to the complainant, the respondent had no alternative but to cancel the allocation of the said unit, as communicated in the letter dated 28.10.2024.

XVI. That further the respondent company entered the Corporate Insolvency Resolution Process vide order dated 31.08.2023, passed by the Hon'ble National Company Law Tribunal. During the period of the moratorium, which lasted for four months, all operations of the respondent company were suspended. The respondent company was subsequently discharged from the CIRP by the order of the Hon'ble National Company Law Appellate Tribunal dated 1.02.2024.

XVII. That the respondent being under considerable pressure due to ongoing proceedings before various forums, and the financial strain following the recent end of the moratorium added to this burden. Given these challenges and the failure of the complainant to clear the outstanding dues, the respondent after careful consideration, was compelled to cancel the unit, proceed with the sale of the unit and create third-party rights.

XVIII. That the respondent states that it is willing to refund the earnest money amount, subject to a deduction of 15% in accordance with clause 4 of the BBA. It is further emphasized that the BBA has been duly executed and signed by the complainant, thereby establishing it as a legally binding contract between both parties. The complainant's signature on the BBA signifies full acknowledgment and acceptance of its terms, and as such, both parties are legally obligated to adhere to the provisions set forth within the agreement. Therefore, the terms related to the refund, including the 15% deduction, are enforceable as per the express provisions of the signed contract. Further, the

respondent, acting in good faith and with bona fide intent, issued a letter to the complainant on 10.12.2024, requesting the necessary bank details to facilitate the refund process, following the deduction of the earnest money.

XIX. That the complainant is not entitled to the proposed reliefs as she has approached this Hon'ble Authority with malice and *mala fide* intentions. It is also submitted that the contractual obligations were not met by the complainant, to begin with and they have concealed these relevant facts, which resultantly render this complaint infructuous and not maintainable.

7. The complainant has been filed against R1 i.e., Imperia Structures Ltd. and R3 to R5 are its directors. The name of Baakir Real Estate Private Limited is inadvertently mentioned in the proceedings of the Authority and the same has been mentioned by R1 in its reply that it is not a party to the complaint and its name has improperly included. Though Baakir Real Estate Private Limited is a license holder but the complainant has not filed the complaint against it so it is necessary to delete from the array of parties as mentioned in the proceedings dated 23.01.2025 and 27.03.2025.

8. 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 submission made by the parties.

E. Jurisdiction of the authority:

9. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of

jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

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

Section 11(4)(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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, 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 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. Findings on objections raised by the respondents:

F.I Objection regarding force majeure conditions:

11. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, demonetisation, shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to provide the possession of the unit.

G.II Direct the respondent to make the payment of delay possession of Rs.17,93,564/- for the period from as per Act of 2016.

12. The above-mentioned relief(s) sought by the complainants are taken together being inter-connected.

13. In the present complaint, the complainants intend to continue with the project and are 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."

(Emphasis supplied)

14. The due date of possession of the apartment as per clause 10.1 of the builder's buyer's agreement dated 27.09.2016, is to be calculated as three and half a years from the date of execution of buyer's agreement i.e., 27.09.2016. Therefore, the due date of possession comes to 27.09.2020 plus grace period of six months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prevailing rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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.

16. 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.

17. 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., 27.03.2025 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

18. 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;"*

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

20. The counsel for the complainant has filed an application for early hearing on 23.12.2024. It is mentioned in the facts of the application that the respondents have failed to adhere to the contractual obligations arising out of the agreement dated 27.09.2016. As per the possession clause of the agreement, the possession of the unit was to be delivered way back in 2020 but the respondents failed to fulfil their commitments. Moreover, the allotment of the unit was cancelled on 18.10.2024 despite paying more than 100% sale consideration.

21. The counsel for the complainant vide proceedings of the day dated 27.03.2025 brought to the attention of the Authority that the complainant has paid Rs.33,73,475/- against the sale consideration of Rs.32,37,500/- which is more than 100% of total sale consideration way back in 2016 and seeking possession of the unit along with delay possession charges. He further stated that the complainant received the offer of possession dated 17.07.2024 only consisting an illegal demand of Rs.18,63,881/- on account of increased area, escalation cost and GST etc. The complainant wrote several emails to set aside the illegal demands raised by the respondent but the same was never responded by the respondent. Moreover, the complainant received a letter dated 10.12.2024 on 18.12.2024 in which the complainant was informed that the unit of the complainant was cancelled on 18.10.2024 on account of non-payment.

22. The counsel for the respondent vide proceedings draws attention of the Authority to the fact that the occupation certificate of the project was received on 13.03.2024 and offer of possession was made to the complainant on 15.03.2024. And as per possession letter dated 15.03.2024, an outstanding amount of Rs.19,13,335/- was to be paid by the complainant on offer of possession in the name of balance amount, increased area change, escalation cost, GST etc. He further stated that the complainant never come forward to take possession and payment of outstanding dues despite issuance of multiple reminders for the same. On 28.08.2024, the respondent issued a pre-cancellation letter after issuing a possession letter dated 17.07.2024 which consists the details of outstanding dues to be paid by the complainant. Further, on 18.10.2024 the respondent cancelled the unit of the complainant on account of non-payment. The counsel for the complainant has raised an objection and

stated that the complainant has never received an offer of possession dated 15.03.2024. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainant is valid or not?

23. The respondent has cancelled the unit vide cancellation letter dated 18.10.2024 after obtaining occupation certificate from the competent Authority on 13.03.2024 and offer of possession on 17.07.2024 on account of outstanding dues after issuing various reminders and thereafter issuing pre-cancellation letter dated 28.08.2024. The complainant has paid an amount of Rs.33,73,475/- i.e., more than 100% of the total sale consideration of Rs.32,37,500/- way back in 2016 and the due date of possession was lapsed in 2020. There is substantial delay of 4 years in offer of possession as the due date of possession has lapsed on 27.09.2020 only and if the delay possession charges to be paid by the respondent are considered it is the respondent who has to pay even after considering the additional demands made by the respondent on offer of possession. On consideration of all the submissions made by the parties and documents place on record, the cancellation of the unit stands invalid.

24. Although there is substantial delay in making offer of possession i.e., 17.07.2024 after obtaining occupation certificate on 13.03.2024 and it was admitted by the complainant during proceedings dated 27.03.2025 that the offer of possession dated 17.07.2024 was duly received by her.

25. As per Section 19(10) of the Act of 2016, it is the obligation of the allottee to take possession within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit to the complainant after obtaining occupation certificate on 17.07.2024. So, it can be said that the

complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 27.09.2020 till actual handing over of possession or offer of possession made on 17.07.2024 after obtaining occupation certificate from competent authority plus two months, whichever is earlier.

26. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 27.09.2016 to hand over the possession within the stipulated period. Accordingly, the 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, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 27.09.2020 till offer of possession plus 2 months i.e., up to 17.07.2024 at the prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent not to demand any additional amount and set-aside illegal and nonest demand raised by the respondent in its letter dated 17.07.2024 in the name of balance amount, increased area charge, escalation cost, GST etc.

27. The complainant has contended about various illegal charges raised by the respondent-promoter in its letter dated 17.07.2024 detailed as under:

S. No.	Particulars	Amount (Rs.)
1.	Demand towards Balance Sale Consideration	33,051/-
2.	Increased Area Charges (i.e., Increase in Area x Booking/ Allotment Rate)	11,09,075/-
3.	Average Escalation Cost, as per indexed construction Escalation between 2014-2017	9,88,165/-
4.	GST (As applicable)	2,69,240/-
5.	Less: Delay Penalty @ Rs.5/- sq. ft.	6,10,330/-
6.	Total Outstanding Dues	18,63,881/-

28. 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.11,09,075/-but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 27.09.2016 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 to 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.....

29. It is not disputed that the due date for completion of the project has already expired on 27.09.2020 and occupation certificate has received on 13.03.2024. The impugned demand against the above-mentioned head was raised vide letters dated 17.07.2024 and the same is as per the above-mentioned provision of the buyer's agreement. If the complainant has any objection against the proposed change/increase, then she 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.

30. Considering the above-mentioned facts, the Authority observes that the respondent has increased the super area of the flat from 1850 sq. ft. to 2035 sq. ft. vide offer of possession dated 15.03.2024 (which was never received by the respondent as per POD dated 27.03.2025) with increase in area of 185 sq. ft. i.e., 10% without any justification or prior intimation to the complainant.

31. 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:

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 complainant has 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.

32. In view of the above, the Authority has clear observation that there was an increase in a super area which was intimated to the complainant 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 can charge from the complainant only on account of increase in the super area up to 10% as per clause 9.2 of the buyer's agreement after providing proper justification and specific details regarding the increase in the super area/carpet area.

- **Escalation charges**

33. 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.*

34. This is just to comment as to how the builder has misused his dominant position and drafted such one-sided clause in the agreement and the delay was a result of the respondent's failure to hand over the possession of the unit, leading to an increase in escalation cost. However, buyer's agreement being a pre-RERA agreement, the respondent can charge the escalations charges from the complainant as per clause 1.2 of the buyer's agreement dated 27.09.2016 executed between the complainant and the respondents subject to furnishing details and requisite certificates.

- **GST charges:**

35. It is contended on behalf of the complainant that vide letter dated 17.07.2024 the respondent raised a demand for a sum of Rs.2,69,240/ on account of balance service tax/GST. The possession of the subject unit

was required to be delivered by 27.09.2020 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees where the same was leviable, at the applicable rate, the respondent-builder has to pass on the benefit of input tax credit to allottees as per applicable GST rules subject to furnishing of such proof of payments and relevant details.

H. Directions of the Authority:

36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. Cancellation dated 18.10.2024 is bad in eyes of law and hence set-aside and the respondent is directed to reinstate the unit of the complainant within 30 days of this order.

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 due date of possession i.e. 27.09.2020 till 17.09.2024 i.e., expiry of 2 months from the date of offer of possession (17.07.2024). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order 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 charged 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 the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any, after adjustment of delayed possession charges.

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

37. Complaint stands disposed of.

38. File be consigned to the registry.

V.I

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 27.03.2025