

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

Complaint no. : 3313 of 2024
Date of complaint : 15.07.2024
Date of order : 26.03.2025

Bushan Lal Bhat,
R/o: - Flat No. 53-C, Pocket GH-10,
Sunder Apartment, Paschim Vihar, New Delhi-110087.

Complainant

Versus

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

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Venkat Rao (Advocate)
Yash (Advocate)

Complainant
Respondent

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 provisions 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 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" 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.	403, 4 th Floor, Tower- E (page no. 23 of complaint)
8.	Unit area admeasuring	1650 sq. ft. (super area) (page no. 23 of complaint)
9.	Date of builder buyer agreement	05.12.2012 [page no. 21 of complaint]
10.	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.”
11.	Due date of possession	05.06.2016 [calculated as per possession clause]
12.	Total sale consideration	Rs. 79,28,414/- [as per applicant file at page no. 6 of reply]
13.	Amount paid by the complainant	Rs. 74,60,923/- [as per applicant file at page no. 6 of reply]
14.	Occupation certificate in principle granted on	22.11.2024 (as per written submissions of the respondent dated 20.03.2025)
15.	Letter of intimation regarding possession	23.12.2022 (page 105 of complaint)
16.	Offer of possession for fit outs	01.02.2025 (as per written submissions of the respondent dated 20.03.2025)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant on 24.01.2012, booked a residential unit in the project of the respondent named “The Esfera” situated in Sector-37C, Gurugram Haryana and paid an amount of Rs.5,89,025/- towards booking of the unit in question.
- II. That the respondent on 03.03.2012, issued an allotment letter allotting a unit in the project in question, admeasuring 1650 sq.ft. super area to the complainant.
- III. That after numerous follow-ups, the complainant in the month of August 2012 contacted the respondent to execute the builder buyer



- agreement, but respondent failed to execute the same and kept on demanding the money on account of purchase of the said unit.
- IV. That almost more than six months from the date of booking, a builder buyer agreement dated 05.12.2012 was executed between the parties.
- V. That thereafter, the complainant contacted the respondent on several occasions and also pointed out some unfair and arbitrary clauses in the agreement. Additionally, a clarification was sought on the development of project and the date of delivery. However, no satisfactory answer was received from the respondent.
- VI. That as per clause 10.1 of the said buyer's agreement, the respondent proposed to hand over the possession of the unit in question within a period of three and half year from the date of execution of buyer's agreement i.e., by 05.06.2016. However, the respondent failed in handing over possession in accordance with the said agreement.
- VII. That the complainant contacted the respondent in January 2018 in order to enquire about the date of handing over of possession but to the utter shock of the complainant, the project was nowhere near completion. The complainant due to the delay in handing over of possession requested the respondent to make the payment of delay possession charges on account of delay in offer of possession but to no avail.
- VIII. That the respondent during the said period kept on demanding money and the same was demanded without attaining the stage of construction. As per the payment plan, but the complainant left with no other option but to make the payment on time as per the demand raised by the respondent.



- IX. That believing on the respondent's representation, the complainant kept on making payment as and when demanded by the respondent and till 12.01.2021, the complainant has paid a total sum of Rs.74,63,523/- towards the unit in question against a total sale consideration of Rs.75,93,500/-.
- X. That on 23.12.2022, the respondent issued an offer of possession and settlement of dues for the unit in question in which the respondent has stated that the construction has been completed but has not mentioned about the status of occupation certificate for said project and whether it has been applied or not, therefore it is not a genuine offer of possession.
- XI. That the complainant after receiving the offer of possession approached the respondent's project to take the possession, but the project was nowhere near completion and was full of irregularities.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to issue fresh offer of possession after receipt of occupation certificate from the competent authority and to pay delay possession charges alongwith prescribed rate of interest.
 - Direct the respondent to withdraw the illegal demands.
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 vide its reply and written submissions dated 20.03.2025 has contested the complaint on the following grounds:
- That the complainant at is free will, booked a unit on 24.01.2012 with the respondent in the project namely 'The Esfera' located in Sector-



37C, Gurugram for a total consideration amount of Rs.79,55,370/- including applicable tax and additional miscellaneous charges.

- ii. That the construction of the said project has already been completed and respondent had procured occupation certificate for the tower in question on 22.11.2024 and has started giving out possession of the said project.
 - iii. That the complainant has alleged that respondent has raised illegal demands from the complainant, however, no documentary evidence pertaining to the same has been filed along with the complaint. It is further submitted that the demands raised by the respondent are strictly in terms of the BBA signed between the parties and more particularly as per Annexure F & G of the said BBA.
 - iv. That the respondent is only liable to pay delay compensation as per Clause 10.3 of the BBA.
 - v. That after receipt of occupation certificate, the respondent had issued offer of possession dated 01.02.2025 to the complainant. It is further submitted that an amount of Rs.27,91,385/- is to be paid after adjusting DPC by the respondent company.
7. 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

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.

F. Findings on the relief sought by the complainant.

- F.I Direct the respondent to issue fresh offer of possession after receipt of occupation certificate from the competent authority and to pay delay possession charges along with prescribed rate of interest.**
- F.II Direct the respondent to withdraw the illegal demands.**

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 OF THE SAID APARTMENT

*"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. As per the above possession clause, the respondent was obligated to complete the construction of the project within a period of 3 years and 6 months from the date of execution of buyer's agreement. The apartment buyer's agreement was executed between the parties on 05.12.2012. Therefore, the due date for handing over of possession comes out to be 05.06.2016.
15. The authority observes that the respondent vide written submissions dated 20.03.2025, has submitted that it had procured occupation certificate for the tower in question on 22.11.2024 and has started giving out possession of the said project. On perusal of the occupation certificate dated 22.11.2024, it is determined that the office of DTCP after considering the application of the respondent dated 10.04.2024, has considered the in principle approval for the purpose of inviting



objections/suggestions for construction of the deviations/changes made by the respondent from the approved building plans subject to fulfilment of certain conditions and it was specifically mentioned that:

"Final" approval of the "Provisional" occupation along with sanction letter (BR-VII) will be conveyed after examination of the objections, if any received in this regard from the General Public/existing allottees within 30 days after issuance of communication as and when issued by you."

Further, as per record, no such final approval as mentioned above has been granted to the respondent till date. Accordingly, the said letter dated 22.11.2024, cannot be treated as occupation certificate. However, the respondent arbitrarily prior to obtaining of occupation certificate from the competent Authority, vide 'letter of intimation regarding possession' dated 23.12.2022 and 'offer of possession for fit-outs' letter dated 01.02.2025 intimated the complainant regarding handing over of possession of the units in Tower-E of the project, subject to payment of amount demanded by it under various heads without giving any justification/clarification regarding it in the said letter, which cannot be held valid in the eyes of law.

16. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

17. 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.

18. 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., 26.03.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. The definition of term 'interest' as defined under section 2(z a) 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;"*
20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to him in case of delayed possession charges.
21. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the apartment buyer's agreement executed between the parties on 05.12.2012, the possession of the subject flat/apartment was to be delivered within a period of 42 months from the date of execution of the agreement. Therefore, the due date of handing over possession



comes out to be 05.06.2016. The respondent has failed to handover possession of the subject apartment 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 05.12.2012 executed between the parties. Further occupation certificate w.r.t the Tower in question i.e., Tower-E has not been granted by the competent authorities till date. 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 allottees.

22. 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 allottee shall be paid by the promoter, interest at prescribed rate @11.10% p.a. for every month of delay from the due date of possession i.e., 05.06.2016 till valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
23. The authority further observes that vide proceedings dated 12.03.2025, the respondent was directed to file updated statement of account after adjustment of delay possession charges till date at the prescribed rate. The respondent in compliance of the same vide written submissions dated 20.03.2025 has filed calculation sheet for unit of the complainant. However, after careful perusal of the said calculation sheet, it is observed that the respondent has wrongly calculated the delay ✓



possession charges under the head 'delayed period till RERA @Rs.5/- psft pm' and by deducting amount of Rs.5,84,724/-, Rs.8,28,162/- and Rs.20,30,320/- under the heads of 'GRAP will be one month/year from booking', 'DPC minus 365 days of COVID & CIRP' and 'possession demand' respectively for which no justification/clarification has been submitted by it. Further, it is also noted that in the 'offer of possession for fit outs' dated 01.02.2025, the total outstanding dues was shown as Rs.10,94,839/-, whereas in the above said calculation sheet, the possession demand is shown as Rs.20,30,320/-.

24. In view of the above, the respondent/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges in terms of the directions given above within a period of 30 days to the complainant.

G. Directions of the authority

25. 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/promoter is directed to pay interest to the complainant against the paid-up amount i.e. Rs.74,60,923/- at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 05.06.2016 till valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from the due date of possession i.e., 05.06.2016 till the date of order by the authority shall be paid by



the promoter to the allottee 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 allottee before 10th of the subsequent month as per rule 16(2) of the rules.

- iii. The respondent/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges in terms of the directions given above within a period of 30 days to the complainant.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
- v. The respondent/promoter shall handover physical possession of the flat/unit to the complainant in terms of section 17(1) of the Act of 2016.
- vi. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.
- vii. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

26. Complaint stands disposed of.

27. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.03.2025