

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

Complaint no. : 4810 of 2024
Date of filing: 01.10.2024
Date of decision : 22.04.2025

1. Imperia Esfera Residents Welfare Association
through its President Smt. Rinky Singh
Regd. Address: Flat No. 101, I Tower, Imperia
Esfera, Sector 37C, Gurugram Haryana-
122001.

Complainant**Versus**

1. M/s Imperia Structures Limited
Regd. office: A-25, Mohan Co-operative,
Industrial Estate, New Delhi-110044
2. Pragati Association Private Limited
Regd. office: A-25, Mohan Co-operative,
Industrial Estate, New Delhi-110044

Respondents**CORAM:**

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Abhay Jain (Advocate)
Sh. Parteek Parshar (Advocate)
Sh. Harsh Pushkarna (AR)

Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2

ORDER

1. That the present complaint has been filed by the complainant/association of allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se parties.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"The Esfera" situated in Sector-37C, Gurugram
2.	Project area	17 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide registration no. 352 of 2017 dated 17.11.2017 (for Esfera phase-II and registered area 60460 sq. mtrs.)
	Validity Status	31.12.2020
5.	DTPC License no.	64 of 2011 dated 07.03.2011
	Validity status	15.07.2024
	Name of licensee	Phonix Datatech Services Pvt. Ltd. and 4 others
6.	Occupation certificate details	OC received dated 07.02.2018 for tower/block- <ul style="list-style-type: none"> • Tower-G (Stilt/ground floor to 9th floor) • Tower-H (Stilt/ground floor to 14th floor) • Tower-I (Stilt/ground floor to 14th floor)

		<ul style="list-style-type: none"> • OC received dated 13.03.2024 for tower/block- Tower A, B, C Community Building/convenient shopping and EWS -1, (2nd floor (part) to 7th floor) • OC received dated 12.07.2024 for tower/block- <ul style="list-style-type: none"> • Tower-A (Ground floor to 19th floor) • Tower-B (Ground floor to 19th floor) • Tower-C (Ground floor to 23rd floor) • EWS-1, 74(OC for 30 units stand granted vide memo no. 5125 dated 07.02.2018) 2nd floor (part) to 7th floor • Community building (Ground floor to 1st floor) • Convenient Shopping (Ground Floor) • OC received dated 12.07.2024 for tower/block- <ul style="list-style-type: none"> • Tower D, E, J (earlier known as Tower-F)
7.	Imperia Esfera Residents Welfare Association Complainant herein (Through Sh. Rinky Singh president of IERWA)	Registered vide no. HR-018-2019-03934 dated 16.12.2019 under Haryana Registration and Regulation of Societies Act, 2012
8.	Maintenance and service agreement	19.07.2018

A. Facts of the complaint

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

- That the complainant association, Imperia Esfera Residents Welfare Association is a registered society having registration no. HR 018 2019 03934 issued by the District Registrar, Firms and Societies, Gurugram on 16th December, 2019 under the Haryana Registration and Regulation of Societies Act, 2012, which was formed to protect the interests of the

allottees of the residential project, 'Imperia Esfera' constructed on 17 acres of land at Sector 37 C, Gurugram, Haryana. The allottees nurtured the unrealized dream of having their own apartments in upcoming residential project with all facilities and standards, situated around serene and peaceful environment for their children. The grievance of the complainant association relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondents in regard to the residential project, Imperia Esfera, having total 9 residential towers and total of 918 units inclusive of residential, commercial and EWS units. However, the complaint pertains to residents of phase 1 comprising of 157 residential flats in towers G, H and I.

- b. That the respondent no.1, Imperia Structures Limited and respondent no. 2, Pragati Associates Private limited, are the companies duly incorporated under the Companies Act, 1956 as amended up to date. The respondents are being sued through their respective Chairman cum Managing Director.
- c. The respondent no.1 is carrying out business as builder, promoter and colonizer and is inter alia engaged in development and construction activities under licence from the state of Haryana and its statutory authorities. The respondent no. 1, its subsidiary companies and collaborator companies are in possession of the land measuring 17 acres for which the Director General, Town & Country Planning, Government of Haryana, Chandigarh vide licence bearing no. 64 of 2011 dated 7th March, 2011 having Memo No. LC-1303-JE(B)-2011/2664, had granted permission for promotion and development of the residential project on the project land at Sector 37 C, Gurugram, Haryana.



- d. That on the basis of licence, the respondent no. 1 had collected a huge amount from gullible and naïve allottees since 2011 for construction and development of residential flats in the project. Despite collecting payable amounts from the allottees, the respondent no. 1 constructed only a part of the project comprising of 157 residential flats in tower G, H and I along with part of economically weaker section flats. The respondent no.1 obtained part Occupation Certificate for phase 1 of the project from the competent authority in 2018 and offered possession to the allottees. Thereafter, the allottees started residing in phase 1 of the project.
- e. That the respondent no. 1 being the developer of the project, appointed its own sister concern i.e. respondent no.2 -Pragati Associates Private Limited as maintenance agency to handle the maintenance of the project. The respondents' nos. 1 & 2 colluded with each other to befool and deceive the allottees who have spent their hard-earned life time money to lead peaceful and soothing lives with their families in the project.
- f. The genesis of the complaint lies in gross indifference, refusal, failure of the various obligations on the part of the respondent no. 1, who initially enticed members of the association to pay their hard earned money in the purchase of the residential flats in the project, with the strong commitments of complying with all requisite duties, functions and obligations of the respondent no. 1, and subsequently denying and escaping from its commitments. The respondent no. 1 appointed its own sister concern, the respondent no. 2 - Pragati Associates Private Limited as maintenance agency and handed over the maintenance, operations and management of the project to the respondent no. 2. Due to complete lapses

and failures of the respondents, public utility services like electricity, housekeeping, security, STP, sewage, sanitation, lifts and other related services required for survival of the residents are being impeded. The respondents, even after repetitive requests from the members of the complainant association, have failed to resolve their grievances related to maintenance services, maintenance charges, structural defects, electricity charges, sewage, refund of interest free maintenance security and sinking fund etc. till date.

- g. The respondent no. 1 in connivance with its own appointed maintenance agency i.e., respondent no. 2 has been demanding and collecting illegal and escalated charges on account of maintenance and electricity from the allottees without properly maintaining the project. The structure is in bad condition and requires repair, repaint, restructuring on immediate basis. The respondents are non-responsive to the submissions made by the members of the association, hence leaving the members high and dry at their own fate. Due to the deteriorating condition of the premises and poor maintenance practices by the respondents, the complainant association seeks handover of complete control of the project along with all books and documents regarding the account details, receipts and expenditure and transfer of IFMS and sinking fund which were collected from the allottees time to time, to the governing board of the association.

B. Relief sought by the complainant: -

The complainant has sought following relief(s):

1. Direct the respondents to handover the complete control of the project including clubhouse, gym, pool, restaurants, etc. and all books and



documents regarding the account details, receipts and expenditure of the project, to the Governing Board of the association.

- II. Direct the respondent no. 1, to transfer the interest free maintenance security and sinking fund collected from the allottees of the project to the complainant association.
- III. Direct the respondents not to demand maintenance charges at escalated rate from the members of the complainant association and charge maintenance charges at old rate i.e. ₹3.15/- per square feet inclusive of all charges, as per the maintenance and service agreements executed by the respondents with the allottees for maintaining the project 'Imperia Esfera.
- IV. Direct the respondent nos. 1 & 2, to provide details of all the expenses and money received towards common area maintenance charges from all the allottees in the project from the date of receiving Occupation Certificates, till the date of handing over of project to the complainant association.
- V. Direct the respondent nos. 1 & 2, to conduct a forensic audit of the account of common area maintenance charges with regard to all the expenditure incurred on maintenance of the common area in the project and all the money received from the allottees till date.
- VI. Direct the respondents to restructure/repaint/repair the breakage, leakage, seepage, wear and tear of the external and internal areas of the buildings, towers, basement of the premises immediately.
- VII. Direct the respondent no. 1 to relocate the sewage treatment plant to the designated place as earmarked in phase 2 of the project.
- VIII. Direct the respondent no. 1 to relocate and install the DG Set to the designated place as earmarked in phase 2 of the project.
- IX. Direct the respondents to install and activate 33KV power switching station for providing power supply to the allottees of the project.
- X. Direct the respondents to demand monthly electricity charges from the allottees based on their actual consumption at the predetermined rates which is equivalent to the rates charged by the Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL).

- XI. Direct the respondents to open emergency gate near EWS flats at the backside of the project, for use of the allottees of the project.
- XII. Direct the respondents to pay legal expenses of Rs.5,00,000/- incurred by the complainant association for filing and pursuing the case.
- 4. 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.

C. Reply by the respondent no. 1

- 5. The respondent is contesting the complaint on the following grounds:-
 - a. That the respondent no.1 is a company duly, registered under the Companies Act, 1956 and filling the reply through Ms. Priya Sharma, who is the authorized representative of the respondent no. 1, and has been authorized vide board resolution dated 19.11.2024.
 - b. That the complaint is prima facie not maintainable and must be dismissed for being vexatious to law. The complainant has approached without the Authority with malice and has tried to mislead this Authority by placing on record concocted facts and making incorrect and false averments and stating untrue and/or incomplete facts and, as such, the complainant is guilty of *suppression very suggestion falsi*. The complainant has suppressed and/or mis-stated the facts and, thus, the complaint, apart from being wholly misconceived, is also an abuse of the process of law. The complaint deserves to be dismissed at the very threshold.
 - c. That the Esfera project consists of 9 towers out of which OC has been obtained for 6 towers. Phase 1 of the Esfera project consist of Tower G, H, I & EWS totalling 261 units, thereafter Phase 2 of the Esfera Project consist of Tower A, B, C, D, E & J totalling to 439 units and there are total 9 units of

commercial/retail shops, thereby totalling 709 units in the entire Esfera project.

- d. That the respondent no. 1 received the license for the project in the year 2012 i.e. prior to its starting and the same is still valid.
- e. That the respondent no. 1 did not register the project under the Real Estate (Regulation & Development) Act, 2016, as Phase 1 of the project was completed prior to the enactment of the Act. Additionally, the Occupancy Certificate for phase 1 was obtained before the implementation of the Act.
- f. That the complainant has inter alia alleged that the maintenance agency is charging higher price as against what was agreed in the agreement signed with the maintenance agency. Respondent no. 2 is the agency appointed for maintenance of the project as per the agreements signed between the allottees and respondent no. 1, hence at this stage the respondent no. 1 has no role regarding electricity charges. The agreement in question is expressly time bound, and the amounts specified therein are aligned to the stipulated timeframes. Consequently, to assert that the prices would remain fixed indefinitely is not feasible in light of inflationary pressures and the rising costs of operations. The price was increased after a gap of 6 years i.e., from 2018 to 2024. Hence, the price increase was minimal and justified, considering the significant rise in costs over this period. Thus, the price adjustment in 2024 is fair and reasonable.
- g. That clause 14.1 of the builder buyer agreement signed with the allottees with respondent no. 1, it was inter alia part of the agreement that the allottee agree to enter into tripartite maintenance agreement with the maintenance agency as may be appointed by the developer company.

Thereafter, the respondent no. 2 was appointed/nominated as the maintenance agency and separate agreements were signed by the members of the complainant with respondent no. 2.

- h. That the respondent no. 2 has the exclusive right to increase, revise or modify charges of any service(s) to ensure quality maintenance services (in consultation with the RWA once formed) and the same shall be binding on the allottee. The allottee out of his/her own free will had signed the agreements with the respondent no. 1 and the same is binding on them.
- i. That the draft regarding the changes was shared with the president of the RWA and some other members, however, they did not discuss it with the larger resident community. The charges are comparable to those of other nearby societies. Additionally, maintenance charges depend on the level of services provided and the number of occupied units. In societies with fewer residents, such as Esfera I, where approximately 140 flats are occupied, the charges may appear slightly high because services must be provided at a full scale, irrespective of the number of residents. Comparing these charges with societies having a large number of residents is not appropriate.
- j. That in accordance with the terms of the agreement, consultation with the Residents' Welfare Association was required, but the agreement did not make their recommendations or decisions final. The draft changes were shared with the RWA for their input, however, as no comments or feedback were provided, the decision was made in the best interest of the residents, with a focus on ensuring the continued provision of high-quality maintenance services for the project.

k. **Reply to allegations with respect to Common Area Maintenance Charges:-**

- **Billing Software and Prepaid System:** The billing software installed is specifically designed for the prepaid electricity system, which includes CAM charges for operational convenience and transparency.
- **Adjustment of CAM and Common Area Electricity Charges:** CAM charges were revised from Rs. 22.50 to Rs. 23.00 per square foot, reflecting an increase of 50 paise per square foot. Simultaneously, common area electricity charges were reduced from 80 paise to 50 paise per square foot. As a result, the effective increase in charges is only 35 paise per square foot after six years, which is reasonable and justified given the substantial inflation over this period.
- **Breakdown of Charges:** The revised CAM and reduced electricity charges ensure a balanced approach, keeping costs fair for residents while maintaining the quality of services provided.
- **Utility Charges.** Any additional utility charges such as water, parking, and meter expenses are transparently billed and are separate from the fixed CAM charges of 23.50 per square foot. These charges are essential for covering specific utilities consumed by the residents and are not a deviation from the agreed-upon CAM charges.
- **Inflation Justification:** Considering the rise in costs for manpower, materials, and maintenance services over the past six years, the nominal increase of 35 paise per square foot is a reasonable adjustment to sustain service quality without overburdening residents. That the transparency and fairness in the billing system,

ensuring it aligns with operational requirements and inflationary trends.

- l. That the respondent no. 2 i.e., Pragati Associates Private Limited is a Maintenance Service Agency and not a Resident Welfare Association (RWA), Therefore, respondent no. 2 operates as a commercial service provider, working for profit and is required to provide services as per the scope of work, and not to distribute financial details in the same manner as an RWA. Furthermore, the audited books of accounts of the respondent no.1 are always available in the public domain, such as on the MCA (Ministry of Corporate Affairs) website.
- m. That the respondent no. 1 had noticed certain maintenance issues during the rainy season of 2024. Thereafter, a team of experts had visited the site, assessed the situation, and suggested certain remedies. That the remedies will be implemented, and the issue will be resolved before the next rainy season.
- n. That based on the feedback from the residents, respondent no. 1 has already replaced the security agency and appointed a more qualified housekeeping service to better serve the residents. Therefore, respondent no. 1 is committed in providing the best to its residents and is continuously monitoring the situation and will make further changes, if necessary, to ensure the required standards are met.
- o. That Interest-Free Maintenance Services (IFMS) and Sinking Fund are two distinct entities and serve distinct purposes and managed by different parties:

- **IFMS:** That this fund falls within the scope of the respondent no. 1. The same was collected at the time of delivery of the apartments and is not intended for immediate use. The expenses related to IFMS can be provided in an account format if required for transparency.
 - **Sinking Fund:** That this fund falls under the purview of the respondent no. 2. The same was initiated in August 2024 and is specifically for capital replacement of other significant expenses required for the development and maintenance of the residential community, which is beyond the scope of the maintenance agency's regular duties. The collection and expenditure related to the Sinking Fund are openly displayed on the notice board every month for the resident's reference.
- p. That the complete control of the project, including all common facilities (clubhouse, gym, pool, restaurants, etc.), along with all financial records, receipts, expenditure details, and the transfer of IFMS and Sinking Fund cannot be handed over to the Complainant due to the following reasons:
- The Esfera project is divided into two phases, with common facilities shared by residents of both the phases.
 - Phase I was completed and delivered prior to the enactment of the RERA Act, while Phase II is still under development. Out of six towers, commercial spaces, and the clubhouse, Occupancy Certificates (OC) are pending for three towers in Phase II.
 - That the common facilities are shared among all the residents of the project, the same cannot be handed over solely to the complainant representing Phase I residents.

- The respondent no. 1 has a responsibility, as per RERA norms, to maintain and address any faults or defects during the ongoing development of Phase II. Until the completion and handover of Phase II, the respondent no. 1 must ensure the integrity and functionality of the infrastructure.
- The respondent no. 1 has committed to deliver facilities such as the gym, swimming pool, and restaurant within the clubhouse. These facilities are currently in the process of being operationalized, with suitable operators being identified to manage and maintain them for the benefit of all residents.
- The inter-twined nature of the common facilities across both phases makes it impractical to segregate or transfer control exclusively to the complainant representing Phase I residents.
- The respondent no. 1 has already offered to hand over the maintenance of Phase I to the Resident Welfare Association (RWA), excluding the shared common facilities. Furthermore, the respondent no. 1 is committed to working with the complainant to ensure a smooth transition of maintenance services.
- That the respondent no. 1 remains committed to fulfilling its obligations towards the residents of both phases and ensuring that all promised facilities are delivered. However, the handover of common facilities, financial records, and other assets cannot be executed until the completion of Phase II and the receipt of necessary approvals, ensuring equitable treatment of all residents.

- q. That the electricity charges charged by the respondent no. 2 at the rate of Rs. 7.30/- per unit are well within the rates specified by Dakshin Haryana Bijli Vitran Nigam (DHBVN) and can be verified against the November 2024 bill issued by the said department.

Sr. No.	Details from November 2024 DHBVN Bill	
1.	Total Units Consumed	76,945
2.	Total Bill Amount	Rs. 6,01,817/-
3.	Per Unit Cost (DHBVN)	Rs. 7.82/-
4.	Rate Charged to Residents	Rs. 7.30/-
5.	Loss Absorbed by the Respondent No. 2	Rs. 0.52/-

That the rates charged by the respondent no. 2 are not only in compliance with the agreement but are also less than the per-unit cost incurred from DHBVN. Therefore, this demonstrates a proactive approach to subsidize a portion of the electricity cost for the benefit of the residents.

- r. That the increase in DG set charges from Rs. 15/- per unit to Rs. 29/- per unit in August 2024, was necessitated due to rising operational costs and the responsibility to provide backup power for common areas. Therefore, the respondent no. 2 has acted transparently and in the interest of maintaining and running essential services of the project. The following points clarify the circumstances and rationale behind the following:

- The use of alternate energy generated by DG sets is not mandatory for residents.
- Many residents have opted to install inverters on their premises to manage power cuts independently. However, during power outages,

residents often use common facilities such as elevators and open areas, which consume electricity generated by the DG sets. Therefore, the respondent no. 2 is responsible for maintenance and operation.

- That in the absence of power supply from the electricity board, the respondent no. 2 is obligated to switch to alternate power supply through DG sets to ensure the smooth functioning of common areas and essential services.
 - The increase in DG set charges is due to high maintenance costs associated with operating DG sets and further a significant rise in the diesel prices, which directly impacts operational costs.
 - The revised charge of Rs. 29/- per unit still does not fully cover the cost of running the DG sets, as only a limited number of residents opt to use the alternate power supply.
 - The respondent no. 2 bears the financial burden of providing backup power to common areas, even when individual residents choose not to use DG-generated electricity in their premises.
- s. That the respondent no. 2 is committed to maintaining the infrastructure and supporting residents in exploring sustainable energy options, and the issues of frequent power cuts and power infrastructure upgrades are largely dependent on the electricity department. Additionally, the solar panel system's current status reflects the need for a collaborative approach to explore feasible solutions. The following points address these issues:
- The frequent power cuts in the area are caused by the electricity department and are not within the control of the respondent no. 2.

These power outages affect all societies in the vicinity, and not just the Esfera project.

- The installation of a 33 KV power switching station is the prerogative of the electricity department and determined on total power consumption. As respondent no. 1 moves towards delivering additional apartments in Phase II, the overall power consumption will increase, thereby encouraging the electricity department to consider upgrading the power infrastructure accordingly.
 - The solar panels installed on the terrace have a capacity of 20 KW. However, the existing system has become obsolete over time and replacing the same with newer technology involves a substantial cost. Therefore, if the residents are willing to repair or replace the solar panels using their own resources, the respondent no. 2 will fully support this initiative. That all units generated from the solar panels will be credited towards reducing the common area electricity charges for the benefit of the residents.
 - To address power outages, the respondent no. 2 ensures the availability of alternate power supply through DG sets, providing uninterrupted electricity to common areas and essential services.
 - The maintenance team is actively working to ensure that all power-related systems are operational and efficiently managed to minimize inconvenience to residents.
- t. That the respondent no. 1 is committed to addressing the residents' requests while adhering to the legal framework and ensuring compliance with all regulations. Therefore, until the necessary approvals are obtained and the

legal challenges are resolved, the emergency gate near the EWS flats at the backside of the project cannot be opened. The following points clarify the current status and actions taken:

- The emergency gate in question was not a part of the original sanctioned plan of the project.
 - Based on the residents' request, the respondent no. 1 has proactively submitted a revised sanction plan to the appropriate authority, seeking approval for the opening of the gate. That the revised sanction plan is currently under consideration, and the decision rests with the Competent Authority.
 - Furthermore, the proposal to open the gate has been challenged in Gurugram Court is CS/2003/2024 by certain residents from outside the society, who believe it could negatively affect their interests.
- u. That the location of the STP is fixed as per the sanctioned plan, and its relocation is not possible. However, the respondent no. 2 is committed to improving the operation and management of the STP to address residents' concerns and ensure a better living environment. The following points clarify the situation:
- The STP is installed as per the original sanctioned plan of the project, and all underground sewerage systems have been constructed accordingly.
 - The current location of the STP has been approved by the competent authority and is part of the Occupancy Certificate (OC).
 - Relocating the STP would require completely redoing the underground sewerage infrastructure, which is not practically feasible due to the

extensive redesign, construction, and associated costs. Additionally, there is no other designated location for the STP in Phase 2 as per the approved plan.

- The respondent no. 2 acknowledges the residents' concerns regarding cleanliness and odor near the STP area and submits that steps are being taken to enhance the efficiency and maintenance of the STP system to mitigate these issues which includes regular cleaning, odor control measures, and ensuring the system operates at optimal capacity.

v. That the relocation of the DG set to the designated area in Phase 2 is in progress and will be completed within two to three months. The Respondent No. 2 is committed to fulfilling this requirement as per the approved plan and in the interest of the residents. The following points provide clarification:

- That a location for the DG set has been earmarked in Phase 2 of the project, and the process to shift the DG set to this designated area is underway.
- That the foundation work for placing the DG set at the new location has already begun and the relocation and installation process is expected to be completed within two to three months.
- The respondent no. 2 is actively addressing this matter to ensure the Dg set is relocated to the approved location in a timely manner, minimizing inconvenience to the residents.

w. The respondent no. 2 denies each and every paragraphs of the complaint and seeks to rely on the reply and submissions made above.

D. Reply by the respondent no. 2

6. The respondent is contesting the complaint on the following grounds:-
- a. That the respondent no.2 is a company duly, registered under the Companies Act, 1956 and filling the reply through Mr. Harsh Pushkarna, who is the authorized representative of the respondent no. 1, and has been authorized vide board resolution dated 18.11.2024.
 - b. That the complaint is prima facie not maintainable and must be dismissed for being vexatious to law. That the complainant has approached without this Authority with malice and has tried to mislead this Authority by placing on record concocted facts and making incorrect and false averments and stating untrue and/or incomplete facts and, as such, the complainant is guilty of *suppression very suggestion falsi*. The complainant has suppressed and/or mis-stated the facts and, thus, the complaint, apart from being wholly misconceived, is also an abuse of the process of law. That the complaint deserves to be dismissed at the very threshold.
7. That the contentions raised by respondent no. 2 are similar with the contention raised by the respondent no. 1 and same are not repeated here for the sake of brevity.
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 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

10. 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

11. 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.

12. 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 the relief sought by the complainant /association

F.I Direct the respondents, to handover the complete control of the project including clubhouse, gym, pool, restaurants, etc. and all books and documents

regarding the account details, receipts and expenditure of the project, to the governing board of the association.

13. The said relief governed by the deed of declaration and the same shall be regulated according to the terms and conditions of the deed of declaration.

F.II Direct the respondent no.1, to transfer the Interest Free Maintenance Security and Sinking Fund collected from the allottees of the project to the complainant association.

F.III Direct the respondent nos. 1 & 2, to conduct a forensic audit of the account of common area maintenance (CAM) charges with regard to all the expenditure incurred on maintenance of the common area in the project and all the money received from the allottees till date

14. The complainant association has submitted that the respondent no.1 misappropriated and embezzled huge amount of fund, which was taken by the developer in the name of Interest Free maintenance Security while giving possession to the allottee, and sinking fund to be utilized for welfare of the society. Therefore, the complainant association has requested the respondent no.1 to transfer the IFMS and sinking fund to the association. In its reply, the respondent has submitted that IFMS and sinking fund are two distinct entities and serves distinct purposes and managed by different parties. The IFMS falls within the scope of the respondent no.1. The same was collected at the time of delivery of the apartments and is not intended for immediate use. The expenses related to IFMS can be provided in an account format if required for transparency. Whereas, the sinking funds falls under the purview of the respondent no.2 the same was initiated in August 2024 and is specifically for capital replacement or other significant expenses required for the development and maintenance of the residential community, which is beyond the scope of the maintenance agency's regular duties. The collection and expenditure related to the sinking fund are openly displayed on the notice board every month for the

residents' reference. Moreover, the counsel for the respondent no.1 submitted that the respondent/promoters have not earned any interest on the said amount.

15. The Act mandates under Section 11(4)(d), that developers would be responsible for providing and maintaining the essential services, on reasonable charges, till the time the same is taken over by the association of the allottees. Further, Section 11(4)(g), provides that the developer will be responsible to pay all outgoings until it transfers the physical possession of the real estate project to the allottees or the association of allottees, as the case may be, which it has collected from the allottees, for the payment of outgoing including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authority banks and financial institutions which are related to the project. It is further provided that where any promoter fails to pay all or any of the outgoings collected by it from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoing and penal charges, if any, to the Authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person.
16. Section 17(2) of the Act, 2016 says that after obtaining OC and handing over physical possession to the allottee in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to association of the allottees or the competent

authority, as the case may be, as per the local laws. The clause is reproduced below for reference:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

(2) After obtaining the occupation certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws;

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.

17. Further, STP, Gurugram vide memo no. 421-456 dated 21.02.2013, directed all the colonizers, to handover and transfer the administration of the project to the resident welfare associations after receipt of OC and execution and registration of deed of declaration under Section 2 of the Haryana Apartment Ownership Act, 1983. Section 2 of the Haryana Apartment Ownership Act, 1983 provides for execution and registration of declaration within a period of ninety days after obtaining Occupation Certificate/part Occupation Certificate. After execution and registration of Deed of Declaration, the administration of that part of the

condominium for which Occupation Certificate has been granted is to be transferred to the Board of Managers of the association. Not only this, by virtue of these provisions, the respondent/promoters *ipso facto* becomes liable to transfer the amount which it has collected from the allottees on account of IFMS along with the interest accrued thereon the association. The promoter cannot treat this money as his own or be free to utilize it for any purpose he considers appropriate. However, if any money out of this is spent on the project, an account thereof along with justification has to be provided to the association of allottees. The Authority considers that the IFMS and sinking funds collected by the developer from the allottees of the project is not a part of the sale consideration of the apartment/plot. This charge is charged in addition to the consideration of the unit for further contingencies of the project which is meant to be handed over to the association whenever a lawful association is created, and the project is handed over to them. However, it has been observed that even after execution and registration of the deed of declaration, the administration is still being run by the promoters themselves or their agency which is totally against the spirit of the Apartment Ownership Act, 1983. Thus, the respondent/promoters are directed to transfer the unutilized IFMS to the association with a period of thirty days from the date of this order. In so far as, the amount that has been spent by the promoter from the IFMS and sinking funds so collected from the allottees is concerned, the promoter shall give the justification with respect to such expenditure incurred and if any such expenditure is found to be in conflict with the permissible deductions as per law, the same shall also be transferred to the association. It is further clarified that the amount so collected under the head of

IFMS is concerned, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability under Section 14 of the Act.

18. In view of the above, the respondent promoter is obligated to handover the amount of IFMS and sinking funds collected by it with all the details regarding to handover the amount of IFMS and sinking funds collected by it with all the details regarding the IFMS amount and the interest accrued thereon if any to the complainant association.

F.IV Direct the respondents not to demand maintenance charges at escalated rate from the members of the complainant association and charge maintenance charges at old rate i.e. ₹3.15/- per square feet inclusive of all charges, as per the maintenance and service agreements executed by the respondents with the allottees for maintaining the project 'Imperia Esfera.

19. As per the provisions of Section 11(4) (a) and (g) of the Act of 2016, the respondent no. 1 is liable/responsible to maintain the project. Respondent no.2 is a maintenance agency, the Act cast obligation upon the promoters, real estate agent and the allottee not on the maintenance agency. However, the respondent no.2 cannot in any event be said to fall within the definition of promoter.
20. The Authority observes that Section 31 of the Act empowers an aggrieved person to file a complaint against any promoter, allottee or real estate agent as the case may be. Section 31 of the Act reads as under:-

"31. Filing of complaints with the Authority or the adjudicating officer. -

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulation made thereunder, against any promoter, allottee or real estate agent, as the case may be.

21. It is pertinent to note that the aforesaid provision entitles any aggrieved person to file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules

and regulations made thereunder, against the promoter, allottee or real estate agent, as the case may be. The respondent no.2 does not fall within the definition of promoter, allottee or a real estate agent as per Section 2(zk), 2(d) or 2(zm) of the Act respectively. The respondent no.2 is not covered under either of the definitions under the Act. Thus, the present complaint is not maintainable against the respondent no.2.

F.V Direct the respondent nos. 1 & 2, to provide details of all the expenses and money received towards Common Area Maintenance (CAM) charges from all the allottees in the project from the date of receiving Occupation Certificates, till the date of handing over of project to the complainant association.

22. The amount charged in the above head from the allottees of the project shall be as per the terms and conditions agreed in the builder buyer agreement being in conformity with the provisions with the law and if any allottee has any grievance against the amount so collected, he/she may seek such details from the respondents and the respondents are bound to provide the same to the aggrieved upon the request so made by the allottee. Moreover, the promoter is duty bound to provide the details to the complainant/association in furtherance to his obligation under section 11(4)(d)

F.VII Direct the respondents to restructure/repaint/repair the breakage, leakage, seepage, wear and tear of the external and internal areas of the buildings, towers, basement of the premises immediately.

23. Under Section 14(3) of the Act, 2016, it is the obligation of the promoter to rectify any structural defects or defects in workmanship, quality, or provision of services that are brought to their notice by the allottee within five years from the date of possession. These defects must be rectified within 30 days of such notice, and at no additional cost to the allottee.

24. In case the promoter fails to rectify these defects within the stipulated period, the allottee becomes legally entitled to claim appropriate compensation as prescribed under the Act. Relevant part of Section 14(3) is reproduced below

Section 14(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act

25. The hon'ble Supreme Court of India, in *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. (Civil Appeal Nos. 6745-6749 of 2021)*, has held that the Adjudicating officer as per Section 71 has exclusive jurisdiction to decide matters relating to compensation under Section 12, 14, 18 and 19 of the Act, 2016. Accordingly, the complainant may approach the Adjudicating officer for redressal of his grievances pertaining to relief of compensation in case respondent 1 fails to rectify the defects as stipulated.

F.VIII Direct the respondent no. 1 to relocate the Sewage Treatment Plant (STP) to the designated place as earmarked in Phase 2 of the project.

F.IX Direct the respondent no. 1 to relocate and install the DG Set to the designated place as earmarked in Phase 2 of the project.

F. X Direct the respondents to install and activate 33KV power switching station for providing power supply to the allottees of the project

26. Thus, the respondent/promoters are directed to provide all the requisite facilities as per plan approved by DTCP, Haryana and promoter to be provided as per BBA.
27. Section 14 of the Act of 2016 mandates the promoter to develop and complete the proposed project in accordance with the sanctioned plans, layout plans and specification as approved by the competent authority. Thus, the respondent/

promoters are directed to provide all the requisite facilities as per plan approved by DTCP, Haryana and promoter to be provided as per BBA.

F.XI Direct the respondents to demand monthly electricity charges from the allottees based on their actual consumption at the predetermined rates which is equivalent to the rates charged by the Dakshin Haryana Bijli Vitran Nigan Limited (DHBVNL).

28. The said relief is governed by the DHBVNL. Therefore, the complainant/ association have any grievances in this regard they may approach the DHBVNL for redressed of the same.

F.XII Direct the respondents to open emergency gate near EWS Flats at the backside of the project, for use of the allottees of the project.

29. It is important to note that the above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also the complainant failed to provide or describe any information related to the above mentioned relief sought. The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above mentioned reliefs.

F. XIII Direct the respondents to pay legal expenses of Rs.5,00,000/- incurred by the complainant association for filing and pursuing the case.

30. The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has

exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions of the Authority

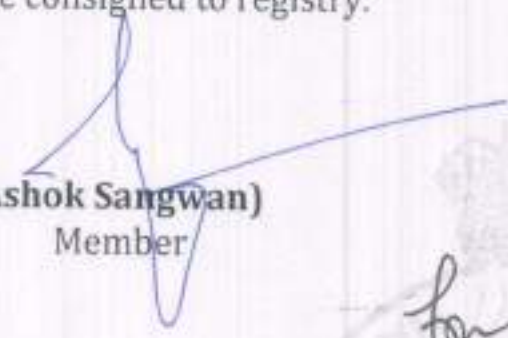
31. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent-promoter is directed to transfer the IFMS and Sinking Funds to the association of allottees within a period of thirty days from the date of uploading this order.
- ii. The respondent-promoters is further directed to provide details of all the expenses and money received towards Common Area Maintenance charges.
- iii. The respondent shall handover necessary documents and plans, including common areas, to the association of allottees or the competent authority, as the case may be, within 30 days after obtaining the completion certificate in terms of proviso to Section 17(2) of the Act, 2016.
- iv. The respondent is directed to rectify any structural defects or defects in workmanship, quality, or provision of services that are brought to their notice by the allottee within five years from the date of possession. These defects must be rectified within 30 days of such notice, and at no additional cost to the allottee. The complainant may approach the Adjudicating Officer for redressal of his grievances pertaining to relief of compensation in case respondent no.1 fails to rectify the defects as stipulated.

- v. A period of 90 days is given to the respondent/promoters to comply with the directions given in this order and failing which legal consequences would follow.

32. Complaint stands disposed of.

33. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2025

HARERA
GURUGRAM