

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

Date of decision : 07.03.2025

Name of the Builder		M/s Imperia Structures Ltd.	
Project Name		"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/4898/2022	Kirti Vs. M/s Imperia Structures Ltd.	Shri Sunil Kumar, Adv. (Complainant) Shri Yash Gupta, Adv. (Respondent)
2.	CR/5230/2022	Abhay Bansal Vs. M/s Imperia Structures Ltd.	Shri Nishant Jain, Adv. (Complainant) Shri Yash Gupta, Adv. (Respondent)
3.	CR/6279/2022	Ruchika Lamba Vs. M/s Imperia Structures Ltd.	Shri Rishabh Jain, Adv. (Complainant) Shri Yash Gupta, Adv. (Respondent)

**CORAM:**

Shri Arun Kumar

**Chairman**

**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority in form CRA 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 allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Esfera" Phase II at sector 37-C, Gurgaon, Haryana being developed by the respondent/promoter i.e., Imperia Structure Limited. The terms and conditions of the builder buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of possession and delayed possession charges.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project Name and Location	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana
Project area	17 acres
Nature of the project	Group Housing Complex
DTCP license no.	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
Name of licensee	M/s Phonix Datatech Services Pvt Ltd and 4 others
RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
Occupation certificate received on	Only for tower H on 07.02.2018
Possession clause as per clause 10.1. of BBA	<b>10.1. SCHEDULE FOR POSSESSION</b> <i>"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</i>

*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."*

S.No.	Particulars	Details w.r.t CR/4898/2022	Details w.r.t CR/5230/2022	Details w.r.t. CR/6279/2022
1.	Complaint filed on	04.08.2022	27.07.2022	21.09.2022
2.	Reply filed on	25.04.2023	25.04.2023	25.04.2023
3.	Allotment letter	20.06.2013 (pg. 17 of complaint)	01.03.2012 (pg. 17 of complaint)	29.08.2011 (pg. 24 of complaint)
4.	Unit no.	1603, 16 <sup>th</sup> Floor, Tower E (pg. 17 of complaint)	803, 8 <sup>th</sup> Floor, Tower D (pg. 24 of complaint)	703, 7 <sup>th</sup> Floor, Tower H (pg. 41 of complaint)
5.	Unit area	3395 sq. ft. (pg. 17 of complaint)	1650 sq. ft. (pg. 24 of complaint)	1435 sq. ft. (pg. 41 of complaint)
6.	Builder buyer agreement executed on	23.05.2013 (pg. 54 of complaint)	13.12.2012 (pg. 29 of complaint)	Signed and undated copy annexed on file.  Stamp paper dated 11.09.2012
7.	Due date of possession	23.11.2016	13.06.2016	11.03.2015

8.	Total sale price of the flat	₹ 76,43,000/- [as per the agreement at pg. 12 of complaint]	₹ 69,08,750/- [as per the agreement at pg. 37 of complaint]	₹ 59,82,375/- [as per the agreement at pg. 43 of complaint]
9.	Amount paid by the complainant	₹ 72,38,695/- [Pg. 14 of reply]	₹ 67,70,690/- [as per applicant file dated 21.03.2022 at pg. 82 of compliant]	₹ 56,16,455/- [pg. 83 of compliant]
10.	Occupation certificate	22.11.2024 (In principal Occupation certificate)	22.11.2024 (In principal Occupation certificate)	07.02.2018
11.	Offer of possession	N/A	07.09.2021 (pg. 79 of complaint)	27.02.2018 (pg. 81 of complaint)
12.	Relief sought	1. DPC and Possession 2. Quash escalation charges and increase in super area.	1. DPC and Possession 2. Direct the respondent to remove the PLC charges. 3. Quash escalation charges and increase in super area.	1. DPC and Possession 3. Quash escalation charges and increase in super area

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of possession and delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the

promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4898/2022 titled as Kirti Vs. M/s Imperia Structures Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana
2.	Nature of the project	Group Housing Complex
3.	Project area	17 acres
4.	DTCP license no.	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
5.	Name of licensee	M/s Phonix Datatech Services Pvt Ltd and 4 others
6.	RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
7.	Apartment no.	1603, 16 <sup>th</sup> Floor, Tower E (pg. 17 of complaint)



8.	Unit area admeasuring	3395 sq. ft. (pg. 17 of complaint)
9.	Date of booking	16.01.2012 (pg. 57 of complaint)
10.	Date of allotment letter	20.06.2013 (pg. 17 of complaint)
11.	Date of builder buyer agreement	23.05.2013 (pg. 54 of complaint)
12.	Possession clause	<b>10.1. SCHEDULE FOR POSSESSION</b> "The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the <b>construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement</b> unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement." <b>(Emphasis supplied)</b>
13.	Due date of possession	23.11.2016 [calculated as per possession clause]
14.	Total sale consideration	₹ 76,43,000/- [as per the agreement at pg. 12 of complaint]
15.	Amount paid by the complainant	₹ 72,38,695/- [Pg. 14 of reply]



16.	In principal Occupation certificate dated	22.11.2024	
17.	Offer of possession	Not offered	

### B. Facts of the complaint

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

- i. That the Complainant, Mrs. Kirti, is a peace-loving and law-abiding citizen of India, who has long nurtured the dream of owning a home in a well-developed residential society with modern amenities and standards. In pursuit of this aspiration, the Complainant booked an apartment in the project known as "*The Esfera*", developed by the Respondent, Imperia Structures Limited.
- ii. That the grievance of the Complainant arises from breach of contract, false assurances, grossly unfair trade practices, and deficiencies in services rendered by the Respondent in connection with the said apartment booking.
- iii. That the Complainant had applied for an apartment on 16.01.2012 and was allotted Apartment No. E-1603, Block-E, 16th Floor, Super Area measuring 1650 sq. ft., for a total sale consideration of ₹76,43,000/- (exclusive of taxes) and a Basic Sale Price (BSP) of ₹56,01,750/-. The booking was made through the Complainant's hard-earned savings, with the expectation of timely possession and proper delivery of promised amenities.
- iv. That the project "*The Esfera*" is situated in Sector 37-C, Village Gharoli Khurd and Basai, Gurugram, Haryana, on a land parcel measuring approximately 60,460 square meters.
- v. That the Director, Town and Country Planning, Government of Haryana, vide License No. 64 of 2011 dated 16.07.2011, granted permission to the Respondent for the establishment of a Group

Housing Colony under the name "ESFERA". It was on the basis of this official approval that the Respondent commenced the marketing, booking, and collection of substantial amounts from prospective homebuyers, including the Complainant.

- vi. On the basis of the project license granted to it, the Respondent company, Imperia Structures Limited, collected a substantial amount in advance from the Complainant—₹11,49,200, which constitutes more than 20% of the Basic Sale Price (BSP) of the apartment—during the period from January 2012 to March 2012, even before executing the Apartment Buyer's Agreement. This act is in clear violation of the provisions of Section 13(1) of the Real Estate (Regulation and Development) Act, 2016, which prohibits a promoter from accepting more than 10% of the sale consideration without first entering into a written agreement for sale with the allottee.
- vii. Subsequently, the Apartment Buyer's Agreement was executed belatedly on 23rd May 2013, more than a year after the initial collection of funds. In this agreement, the Respondent promised to deliver possession of the apartment to the Complainant by 23rd November 2016. However, despite the lapse of more than five years beyond the promised date, the Respondent has neither handed over possession of the apartment nor provided any compensation or interest for the inordinate delay, as required under Section 18(1) of the RERA Act.
- viii. Subsequently, vide letter dated 02.02.2017, the Respondent assured the Complainant that it would waive the Floor Preferential Location Charges (PLC) of ₹100 per sq. ft., which had been wrongly charged earlier. However, instead of honoring this assurance in full



and providing relief to the Complainant, the Respondent unilaterally and arbitrarily increased the Super Area of the apartment from 1650 sq. ft. to 1850 sq. ft., and accordingly demanded an additional amount of ₹7,29,300/- under the pretext of increased area and a further ₹6,29,868/- as "Average Escalation Cost", vide letter dated 07.09.2021.

- ix. Shockingly, this demand was made without any corresponding increase in the Carpet Area of the apartment, thereby making such charges unjustified, arbitrary, and one-sided. The Respondent, in a clandestine and non-transparent manner, further levied irrelevant taxes, unexplained escalation charges, and miscellaneous costs which were neither agreed upon in the Apartment Buyer's Agreement nor disclosed to the Complainant at any earlier stage.
- x. Despite a delay of over five years beyond the originally promised possession date, the Respondent has failed to hand over possession of the apartment to the Complainant and has not paid any interest or compensation as mandated under Section 18(1) of the RERA Act. Instead, it continues to raise unethical, baseless, and one-sided demands, further compounding the harassment and financial burden of the Complainant.

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

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

- (i) Direct the respondent to handover the actual, physical and vacant possession of the apartment along with delay possession charges.
- (ii) Direct the respondent to quash escalation charges and increase in super area.
- (iii) Direct the Respondent to pay legal expenses of Rs.80,000/-.

10. 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.**

11. The respondent has contested the complaint on the following grounds.
- I. That the complainant has not approached the authority with clean hands and thus suppressed misconceived the material facts with an intention to mislead the authority by making incorrect and false averments and stating untrue and incomplete facts and as such is guilty of suppression very suggestion false.
  - II. That after making independent enquiries and only after being fully satisfied about the project, the complainants approached the respondent company for booking of a residential unit in its project "The ESFERA", phase II, located in sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. 1603, 16<sup>th</sup> Floor, Tower Admeasuring with of 3395 sq. ft. to complainant for a total consideration of ₹ 76,43,000/- (including applicable tax) plus other charges vide booking dated 16.01.20112 and opted the construction linked plan on the terms and conditions mutually agreed by them.
  - III. That the complainant has failed to make out a case under section 18 of Act, as the respondent has already completed the construction and development of the towers and applied to the competent authority for grant of occupancy certificate on 15.04.2021 after complying with all the requisite formalities and is expecting to receive the same by end of May.

- IV. That, the respondent company is in extreme liquidity crunch at this critical juncture and has also been saddled with orders of refund in relation to around 20-25 apartments in the project, on account of orders passed by various other courts. The total amount payable in terms of those decrees exceeds an amount of Rs.20 crores.
- V. That, on account of many allottees exiting the project and many other allottees not paying their installment amounts, the company, with great difficulty, in these turbulent times has managed to secure a last mile funding of Rs.99 crores from SWAMIH Investment Fund – I. The said alternate investment fund (AIF) was established under the special window declared on 6.11.2019 by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brownfield, RERA registered residential developments that are in the affordable housing/mid-income category, are net-worth positive and require last mile funding to complete construction. The company was granted sanction on 23.09.2020 after examination of its status and its subject project "Esfera" for the amount of Rs.99 crores. The first transaction of installment has already been received by the respondent company from the said fund as loan.
- VI. That the respondent company is extremely committed to complete the phase 2 of the project Esfera. In fact, the super structure of all towers in phase 2 (incl. Tower B) has already been completed. The internal finishing work and MEP works is going in a full swing with almost 450 construction labourers are working hard to chieve the intent of the appellant to complete the entire project despite all prevailing adversaries.

- VII. That the respondent company fulfilled its promise and had constructed the said unit of the complainants and with due procedure of law, applied for occupation certificate.
12. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

14. 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**

15. 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.*

16. 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 complainants at a later stage.

**F. Findings on the relief sought by the complainant:**

**FI. Direct the respondent to handover the actual, physical and vacant possession of the apartment along with delay possession charges.**

**F.II Direct the respondent to quash escalation charges and increase in super area.**

**F.III. Direct the Respondent to pay legal expenses of Rs.80,000/-.**

17. In the present complaint, the complainant intends 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."*

18. Clause 10.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

***"10.1. SCHEDULE FOR POSSESSION:***



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

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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.

20. 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.
21. 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., 07.03.2025 is 9.10%. Accordingly, the prescribed rate of





interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.

22. 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;"*

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

24. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of fact that buyer's agreement executed between the parties on 23.05.2013, the possession of the booked unit was to be delivered within a period of three and half years from the date of execution of this agreement which comes out to be 23.11.2016. However, the respondent has failed to handover possession of the subject apartment to the complainant till the 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 observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. 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.

25. 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., 23.11.2016 till valid offer of possession plus 2 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.

**F.II. Direct the respondent to quash escalation charges and increase in super area.**

26. 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. 6,55,875/-but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 23.05.2013 and clause 9.2 provides with regard to major alteration/modification resulting in excess of +/- 10% change in the super area of the apartment or material/ substantial change in

the sole opinion of and as determined by the developer/company. A reference to clause 9.2 of the agreement must detail as under:

**9.2 Major alteration/modification**

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

27. It is not disputed that the due date for completion of the project has already expired on 23.11.2016. The impugned demand against the above-mentioned head was raised vide letters dated 07.09.2021 and the same is as per the above-mentioned provision of the buyer agreement. If the complainant has any objection against the purposed 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.
28. Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 1650 sq. ft. to 1815 sq. ft. vide offer of possession for fit outs dated 07.09.2021 with increase in area of 165 sq. ft. i.e. 10% without any justification or prior intimation to the complainant.

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



*however the, problem of super area is not yet fully solved and further reforms are required.*

27. 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 cannot charge any amount from the complainant merely on account of increase in the super area without providing proper justification and specific details regarding the increase in the super area/carpet area.

- **Escalation charges**

28. The complainant took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of fit out possession. The respondent-builder submits that cost of escalation was duly agreed by the complainants 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 Allottee(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.*

29. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines. It is imperative to uphold the provisions of the buyer agreement and the delay was a result of the respondent failure to hand over the possession of the unit, leading to an increase in escalation cost. Therefore, it would be unjust to attribute the delay to the complainants. Hence, the imposition of escalation charges is not justified, and the same cannot be charged from the complainant.

- **Apart from the aforementioned reliefs, the following additional relief is also sought in Complaint No. 5230 of 2022, titled *Abhay Bansal vs. Imperia Structure Limited*.**

30. On 10.01.2025, a Local Commissioner was appointed to visit the project site and ascertain whether the subject unit is a PLC (Preferential Location Charges) unit or not. The Local Commissioner submitted the report on 06.03.2025."

**Conclusion:**

*The site of project namely "Esfera Phase-II" being developed by M/s Imperia Structure Limited in sector-37C, Gurugram has been inspected on 05.05.2025 particularly w.r.t. fact that the complainant unit is preferentially located or not and it is concluded that:*

*A. Tower C, D, E are developed/constructed by the promoter which are adjacent/joint with each other as per site status*





*as well as approved site plan. The complainant unit exists in tower D and the tower D is in middle of three towers i.e., C, D, E. The complainant unit is attached/adjacent to the other unit in another tower i.e., tower C due to which it becomes a continuity not the corner/end unit. The green area has been developed by the promoter along with the three towers i.e., C, D, E. The green area may also be termed/called as a park. The green area is clearly visible from the complainant unit balcony. B. The complainant unit is preferentially located for park facing only but not preferentially located for corner.*

Therefore, the respondent is not entitled to levy Preferential Location Charges (PLC) upon the complainant.

**F. III Direct the respondent to pay Rs.80,000/- as litigation charges.**

31. The complainant is also seeking relief w.r.t litigation expenses. 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.
32. The following table concludes the time period for which the complainants-allottees are entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:



S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainants are entitled to DPC
1.	CR/4898/2022	23.11.2016	Not offered	W.e.f. 23.11.2016 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.
2.	CR/5230/2022	13.06.2016	Not offered	W.e.f. 13.06.2016 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.
3.	CR/6279/2022	11.03.2015	27.02.2018	W.e.f. 11.03.2015 till 27.04.2018 i.e. expiry of 2 months from the date of offer of possession. (27.02.2018)

**G. Directions of the authority**

31. 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 shall handover possession of the unit to the complainant as agreed by the respondent in terms of the builder buyer's agreement dated 23.05.2011 executed inter se parties in terms of section 19(10) of the Act and is further directed not to create any third party right against the said unit.
- II. The respondent is directed to pay delayed possession charges at the prescribed rate of interest @11.10% p.a. for every month of delay from the due date of possession i.e., 23.11.2016 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of the unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- III. The arrears of such interest accrued from 23.11.2016 till the date of order by the authority shall be paid by the promoter to the allottee(s) 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(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- IV. 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- V. 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.

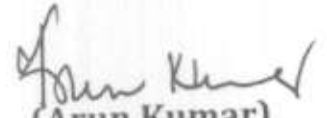
VI. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.

32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

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

34. File be consigned to registry.



  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2025

**HARERA**  
**GURUGRAM**