BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**841 of 2023**
Date of filing of complaint:	**09.03.2023**
Date of Order:	**15.05.2025**

1. Dr. Prasant Kumar
2. Mr. Kumari Malti

Both R/o: Flat No.531, Arrah Garden Residency, Arrah Garden Road, Pillor No. 04, Bailey Road, Patna -800014 — **Complainants**

Versus

Imperia Structures Ltd.
Regd. office at: A-25, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044 — **Respondent**

CORAM:

Shri Vijay Kumar Goyal — **Member**

APPEARANCE:

Sh. Pushkar Rai Garg (Advocate) — Complainants
Sh. Rishi Kapoor (Advocate) — Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase 1, Sector 37 C, Gurugram
2.	Nature of the project	Group Housing
3.	Project Area	17 acres
4.	DTCP license no. and validity	64 of 2011 dated 16.07.2011 valid up to 15.07.2024
5.	Name of licensee	Prime IT Solutions Pvt. Ltd. and 4 others
6.	Unit no.	1903, 19th floor & Block-C (As per page no. 26 of the complaint)
7.	Unit area admeasuring	1815 sq. ft. (Super area) (As per offer of possession on page no.11-12 of additional documents submitted by the respondent) (**Note:** Area was increased to 1815 sq. ft. from 1650 sq. ft.)
8.	Allotment letter	01.02.2013 (As per page no. 17 of the complaint)
9.	Date of execution of buyer's agreement	15.03.2013 (As per page no. 24 of the complaint)
10.	Possession clause	*10.1 Schedule for possession of the said apartment* ***The developer/company based on***

		its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement *unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3 & clause 41.....* (As per page no. 40 of the compliant)
11.	Due date of possession	15.09.2016 (**Note:** Due date to be calculated three and half years from the date of execution of agreement i.e., 15.03.2013)
12.	Total sale consideration	Rs.84,11,250/- (As per page no. 30 of the complaint) Rs.88,44,970/- (including taxes) (As per SOA on page no. 69 of the complaint)
13.	Amount paid by the complainants	Rs.83,35,411/- (As claimed by the complainants during the course of proceedings dated 15.05.2025 and as per details given in tabular form on page no. 13 & 14 of the complaint and also as per receipt information on page no. 18 of the reply) (Inadvertently mentioned as Rs.82,96,239/- in proceedings of the day dated 15.05.2025)
14.	Occupation Certificate	12.07.2024

		(As per page no. 08 of the additional documents submitted by the respondent)
15.	Offer of possession cum demand letter	17.07.2024 (As per page no. 11-12 of additional documents submitted by the respondent)
16.	Reminder letter	17.08.2024 (As per page no. 16 of application by respondent to bring on record the documents)
17.	Pre-cancellation notice/reminder-2	28.08.2024 (As per page no. 17 of application by respondent to bring on record the documents)
18.	Final cancellation notice	28.10.2024 (As per page no. 18 of application by respondent to bring on record the documents)

B. Facts of the complaint:

3. That the complainants have made following submissions:

I. That the complainants booked a residential apartment measuring 1650 sq. ft. under IMP-E-0535 at a basic sale price of Rs.3,800/- per sq. ft. and were allotted unit no. C-1903 on 19th Floor in Tower 'C' in residential project 'THE ESFERA' at Sector-37 C, Gurugram, Haryana of the respondent. The complainants paid Rs.5,00,000/- on 28.05.2012 as booking amount.

II. That the complainants paid Rs.24,43,147/- before signing the apartment buyer's agreement on 15.03.2013. The complainants paid a total amount of Rs.83,35,411/- between 18.06.2012 to 06.02.2018 in instalment as per demands as against the total price of

Rs.84,11,250/-. The total sale price is inclusive of PLC, parking and other charges.

III. That as per clause 10.1 of the apartment buyer's agreement dated 15.03.2013, the respondent contemplated to complete construction of the said building/said apartment within a period of three and half years form the date of execution of the agreement. However, as per clause 22.4, it is stated that on becoming unable to give possession within three years from the date of execution of this agreement or such extended periods as permitted under this agreement, the developer shall be entitled to terminate this agreement whereupon the liability of the developer shall be limited to the refund of the amounts paid by the intending allottee with simple interest @ 9% per annum for the period such amount were lying with the developer. Therefore, the period of possession should be three years from the date of execution of agreement. Thus, as per clause 10.1, the possession should have been given up to 15.09.2016, but the respondents have not offered the same till date.

IV. That the complainants are in receipt of a letter dated 07.12.2022 from the respondent informing that they are expecting the occupation certificate in few weeks and the complainants should clear the outstanding amount. The demand letter includes an amount of Rs.7,96,125/- towards Increased Area Charges and Rs.6,94,531/- on account of Average Escalation Cost as per indexed construction escalation between 2014-2017. The demand also includes an amount of Rs.1,85,870/- on account of Service Tax/GST.

V. That the complaints are being charged interest on certain items. The rate of interest being charged is not in conformity with RERA Rules, therefore, any charge above the RERA rates is illegal.

VI. That as per Section 3(3)(a)(iv) of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rule 11(1)(e) of the Haryana Development and Regulation of Urban Areas Rules, 1976 the respondent is required to undertake construction at his own cost or get constructed by any other institution or individual at its cost a community centre among other facilities. In the project there is no mention of construction of community centre which is a violation of the Act/Rules.

VII. That as per HAREDA Order No. 22/52/05-5P dated 29.07.2005 the respondent is to provide operational 'Solar Water Hearing Systems' in each building block as a mandatory requirement. This is also a requirement of environmental clearance and the Haryana Building Code, 2016. The respondent has not provisioned the 'Solar Water Hearing Systems' in the block of the complainants.

VIII. That as per HAREDA Order No. 22/52/2005-5 Power dated 03.09.2014 the respondent are to install 'Solar Photovoltaic Power Plants' of specified capacity as a mandatory requirement. This is also a requirement of Environmental clearance and he Haryana Building Code, 2016. The respondent has not provisioned 'Solar Photovoltaic Power Plants' in the block of the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

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

ii. Direct the respondent to make the payment of delay possession charges as per Act of 2016.

iii. Direct the respondent not to charge any amount on account of increased area charges without providing approval of DTCP on the issue.

iv. Direct the respondent not to charge any amount on account of escalation cost without providing indexation formula of RBI and duly approval of DTCP.

v. Direct the respondent to bear GST as the same became application after due date of possession i.e. 15.09.2016.

vi. Direct the respondent to provide Community Centre as per Section 3(3)(a)(iv) of The Haryana Development and Regulation of Urban Areas Act, 1975 and Rule 11(1)(e) of The Haryana Development and Regulation of Urban Areas Rules, 1976.

vii. Direct the respondent to provide fully operational 'Solar Water Hearing Systems' in each building block which is a mandatory requirement as per HAREDA Order No. 22/52/05-5P dated 29.07.2005, Environmental clearance and The Haryana Building Code, 2016.

viii. Direct the respondent to provide 'Photo Voltaic Power Plant', which is a mandatory requirement as per HAREDA Order No. 22/52/2005-5 Power dated 03.09.2014, Environmental clearance and The Haryana Building Code, 2016.

ix. Direct the respondent to pay Rs.75,000/- as litigation cost.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondents have contested the complaint on the following grounds:

I. That the complainants, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent company for booking of a residential unit in respondent's project "The Esfera" located in sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. Tower C 1903 in favor of them for a total consideration amount of Rs.88,44,970/- including applicable tax and additional miscellaneous charges vide booking dated 28.05.2012 and opted for return on investment plan on the terms and conditions mutually agreed by the complainant and the respondent.

II. That the respondent company had successfully completed the construction of the said project, way before the agreed timeline, and has applied to the competent authority for issuance of occupancy certificate on 15.04.2021itself, after complying with all the requisite formalities, and the same is awaited to be procured anytime now by the end of month of August, 2023.

III. That consequently respondent company entered into a buyer's agreement dated 15.03.2013 with the complainants in the interest of the booked unit. The BBA duly covers all the liabilities and rights pertaining to both the parties involved.

IV. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainants. The BBA executed between the parties have clearly depicted the intention of the respondent company with respect to schedule of payment.

V. That the terms of the BBA were agreed to and signed by the complainants and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. As per the clause of the BBA entered between the parties, time was agreed to be a matter of essence in the BBA and the allottees were bound to make timely payments of the instalments due as per the payment plan opted by the complainants. The said BBA was duly acknowledged by the complainants after completely and thoroughly understanding each and every clause therein. The complainants were neither coerced nor influenced by the respondent company to sign the said BBA. It was the complainants who voluntarily and knowingly breached the provisions of the said agreement.

VI. That despite numerous reminders, the complainants failed to comply by the obligations laid down by the BBA they willingly entered into in a timely manner and the delay in making the payments have caused delay in completion of the said project.

VII. That it is a trite law that the terms of the BBA are binding between the parties. The Hon'ble Supreme Court of India in the case of **Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704** observed that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It has been observed that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract. Thus, it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

VIII. That the Hon'ble Apex Court, in the case of **Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699** held that a person who signs a document, which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

IX. That the complainants have not approached this Hon'ble Authority with clean hands. It is submitted that the complainants are attempting to raise non-issues in order to acquire benefits for which the complainants are not entitled in the least.

X. That the default of the complainants in paying the outstanding amount and honoring the payment plan, in addition to default in payment by various other buyers in the said project, the respondent company has incurred huge losses/damages. On account of the breach of the terms of the agreement by the complainants, and other buyers in the said project, the respondent company had no option left but to resort to availing 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 by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brown field, 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. After long overdue application to the said policy, the respondent company was finally granted a sanction on 23.09.2020. It is pertinent to mention that this act of the respondent company depicts the will and bona fide intention of completing the said project and delivering their duties.

XI. That it must be brought to light that despite the obstructions and impediments faced in completion of the said project, the respondent company had completed the construction and development of the said project way before the agreed timeline and has already applied to the competent authority on 15.04.2021 for the issuance of occupancy certificate after complying with all the requisite formalities.

XII. That the terms under buyer's agreement delineates the respective obligations of the complainants as well as of the respondent as an aftermath of breach of any of the conditions specified therein.

XIII. That this provision was also confirmed and agreed to by the complainants, who are now attempting to put on an innocent facade to escape his responsibilities and liabilities. This complaint has been made to injure and damage the interest and reputation of the respondent and that of the said project. Therefore, the instant complaint is liable to be dismissed in limine.

XIV. That delay was caused in completion of construction of the said project due to certain unforeseeable circumstances. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court directed a ban on construction activities in the said region from November 4, 2019 onwards, which was a huge hurdle to realty developers in the city. The Air Quality Index (AQI) at the time was running as high as 900 PM, which is severely unsafe for the health. Later, in furtherance of declaration of the AQI levels as 'not severe' by the Central Pollution Control Board (CPCB, the Hon'ble Supreme Court lifted the ban conditionally on 09.12.2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. and consequently, the complete ban was lifted by the Hon'ble Supreme

Court on 14.02.2020. It is submitted that this had caused the project to be delayed and thus, there was a delay in application for Occupancy Certificate. Secondly, when the complete ban was lifted on 14.02.2020, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and later lifted the lockdown, conditionally, on 17.05.2020. It must be pertinent to mention herein that the pandemic COVID-19 has caused immense delay and obstruction to the construction of the building, as the procurement of labour and raw material proved to be highly challenging. The whole situation led to a reverse migration of workers, who left cities and returned back to their villages, for safety of themselves and their families. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods have left great impact on the realty sector for resuming their respective constructions. Thus, causing delay in the completion of the said project, which was already hampered by the non-payment of outstanding dues by numerous allottees, including the complainants.

XV. That the respondent company had allotted the unit to the complainants at the price prevalent in the market on the assurance that the complainants will make timely payments and honor the terms of the BBA. However, the complainants defaulted in making payment despite several opportunities given by the respondent company to complete the payment and thus, the respondent company could not allot the said unit to any third party, who was willing to book the said unit at a higher price. The complainants have caused the respondent company to incur loss of opportunity & cost, and are thus, liable to indemnify the respondent company towards the same.

It is no longer a res integra that failure on the part of the complainants to perform their contractual obligations disentitles them from any relief. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract leaving the responsibility of the court to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract rather than metamorphosing the nature of the contract. Thereafter, the complainants are not entitled to get any relief, as has been sought for in this complaint.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram

district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

> ***Section 11(4)(a)***
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

9. 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 objections raised by the respondents:

F.I Objection regarding force majeure conditions:

10. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, demonetisation, shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter

period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainants:

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

G.II Direct the respondent to make the payment of delay possession charges as per Act of 2016.

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

12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> ***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***
>
> ***(Emphasis supplied)***

13. The due date of possession of the apartment as per clause 10.1 of the builder's buyer's agreement dated 15.03.2013, is to be calculated as three and half a years from the date of execution of buyer's agreement i.e., 15.03.2013. Therefore, the due date of possession comes to 15.09.2016.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prevailing rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by

the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

16. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation. —For the purpose of this clause—*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the*

allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

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

19. The counsel for the complainants has filed an application for restoration of complaint on 24.09.2024. It is mentioned in the facts of the application that the respondents have failed to adhere to the contractual obligations arising out of the agreement dated 15.03.2013. As per the possession clause of the agreement, the possession of the unit was to be delivered on or before 15.09.2016 but the respondents failed to fulfil their commitments. It is mentioned in the application that the occupation certificate of the project was received on 12.07.2024 and the respondent has offered the possession of the unit to the complainants along with a demand for payment of outstanding dues of Rs.13,79,186/- on account of remaining consideration, increased area charges, average escalation cost and GST etc.

20. The counsel for the respondent has filed an application on 06.03.2025 to bring on record the documents relating to certain facts. It was mentioned in the application that the occupation certificate of the project was obtained on 13.03.2024 and the offer of possession of the unit was made on 15.03.2024. And as per possession letter dated 15.03.2024, an outstanding amount of Rs.13,79,186/- was to be paid by the complainants on offer of possession in the name of balance amount, increased area change, escalation cost, GST etc. He further stated that the complainants never come forward to take possession and payment of outstanding dues despite issuance of multiple reminders for the same. On

28.08.2024, the respondent issued a pre-cancellation letter after issuing a possession letter dated 17.07.2024 which consists the details of outstanding dues to be paid by the complainants. Further, on 28.10.2024 the respondent cancelled the unit of the complainants on account of non-payment.

21. The counsel for the complainants during proceedings of the day dated 15.05.2025 brought to the notice of the Authority that the complainants have paid Rs.83,35,411/- against the sale consideration of Rs.84,11,250/- which is almost 100% of total sale consideration way back in 2018 and seeking possession of the unit along with delay possession charges. He further stated that the complainants have never received an offer of possession dated 15.03.2024. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainant is valid or not?

22. The respondent has cancelled the unit vide cancellation letter dated 28.10.2024 after obtaining occupation certificate from the competent Authority on 13.03.2024 and offer of possession on 17.07.2024 on account of outstanding dues after issuing various reminders and thereafter issuing pre-cancellation letter dated 28.08.2024. The complainant has paid an amount of Rs.83,35,411/- i.e., almost 100% of the total sale consideration of Rs.84,11,250/- way back in 2018 and the due date of possession was lapsed in 2016. There is substantial delay of almost 8 years in offer of possession as the due date of possession has lapsed on 15.09.2016 only and if the delay possession charges to be paid by the respondent is considered it is the respondent who has to pay even after considering the additional demands made by the respondent on offer of possession. On consideration of all the submissions made by the

parties and documents place on record, the cancellation of the unit stands invalid.

23. Although there is substantial delay in making offer of possession i.e., 17.07.2024 after obtaining occupation certificate on 13.03.2024 and it was admitted by the complainants that the offer of possession dated 17.07.2024 was duly received by them.

24. As per Section 19(10) of the Act of 2016, it is the obligation of the allottee to take possession within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit to the complainants after obtaining occupation certificate on 17.07.2024. So, it can be said that the complainants would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 15.09.2016 till actual handing over of possession or offer of possession made on 17.07.2024 after obtaining occupation certificate from competent authority plus two months, whichever is earlier.

25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per buyer's agreement dated 15.03.2013 to hand over the possession within the stipulated period. Accordingly, the non-

compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 15.09.2016 till offer of possession plus 2 months i.e., up to 17.09.2024 at the prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent not to charge any amount on account of increased area charges without providing approval of DTCP on the issue.

G.IV Direct the respondent not to charge any amount on account of escalation cost without providing indexation formula of RBI and duly approval of DTCP.

G.V Direct the respondent to bear GST as the same became application after due date of possession i.e., 15.09.2016.

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

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

S. No.	Particulars	Amount (Rs.)
1.	Demand towards Balance Sale Consideration	4,85,452/-
2.	Increased Area Charges (i.e., Increase in Area x Booking/ Allotment Rate)	7,96,125/-
3.	Average Escalation Cost, as per indexed construction Escalation between 2014-2017	6,94,531/-
4.	GST (As applicable)	2,27,542/-
5.	Less: Delay Penalty @ Rs.5/- sq. ft.	8,24,464/-
6.	Total Outstanding Dues	13,79,186/-

28. It is pleaded that out of the above-mentioned charges detailed, there is no basis to demand charges against increase in area, average escalation cost

and balance service tax/GST. Though demand under the heading increased area charges (i.e., increase in area x booking/ allotment rate) has been mentioned as Rs.7,96,125/-but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 15.03.2013 and clause 9.2 provides with regard to major alteration/modification resulting in excess of +/- 10% change in the super area of the apartment or material/ substantial change in the sole opinion of and as determined by the developer/company. A reference to clause 9.2 of the agreement must detail as under:

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

29. It is not disputed that the due date for completion of the project has already expired on 15.09.2016 and occupation certificate has received on 13.03.2024. The impugned demand against the above-mentioned head was raised vide letters dated 17.07.2024 and the same is as per the above-mentioned provision of the buyer's agreement. If the complainants have any objection against the proposed change/increase, then they have a right to challenge the same within the period stipulated as per buyers' agreement. However, the respondent-builder is also duty bound to explain that increase in the super area of the unit vis a vis the project before raising such demand.

30. Considering the above-mentioned facts, the Authority observes that the respondent has increased the super area of the flat from 1650 sq. ft. to 1815 sq. ft. vide offer of possession dated 15.03.2024 (which was never received by the complainants) with increase in area of 165 sq. ft. i.e., 10% without any justification or prior intimation to the complainants.

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

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

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

32. In view of the above, the Authority has clear observation that there was an increase in a super area which was intimated to the complainants at the time of offer of possession for fit outs and not before. Further, no justification and intimation were made to the complainants in respect of increase in area. So, the respondent can charge from the complainants only on account of increase in the super area up to 10% as per clause 9.2 of the buyer's agreement after providing proper justification and specific details regarding the increase in the super area/carpet area.

- **Escalation charges**

33. The complainants took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of offer of possession. The respondent-builder submits that cost of escalation was duly agreed by the complainants at the time of booking/agreement and the same was incorporated in the buyer's 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 Allotiee(s). Escalation Charges, as intimated to the Allottee(s) shall be final and binding on the Allottee(s). The Allottee(s) agrees and understands that any default in payment of the

Escalation Charges shall be deemed to be a breach under the terms and conditions of the Agreement. No possession shall be handed over to the Allottee(s) unless Escalation Charges are paid in full along with delayed interest, if any.

34. This is just to comment as to how the builder has misused his dominant position and drafted such one-sided clause in the agreement and the delay was a result of the respondent's failure to hand over the possession of the unit, leading to an increase in escalation cost. However, buyer's agreement being a pre-RERA agreement, the respondent can charge the escalations charges from the complainants as per clause 1.2 of the buyer's agreement dated 15.03.2013 executed between the complainants and the respondent subject of furnishing details and requisite certificates.

- **GST charges:**

35. It is contended on behalf of the complainants that vide letter dated 17.07.2024 the respondent raised a demand for a sum of Rs.2,27,542/ on account of balance service tax/GST. The possession of the subject unit was required to be delivered by 15.09.2016 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees where the same was leviable, at the applicable rate, the respondent-builder has to pass on the benefit of input tax credit to allottees as per applicable GST rules subject to furnishing of such proof of payments and relevant details.

G.VI Direct the respondent to provide Community Centre as per Section 3(3)(a)(iv) of The Haryana Development and Regulation of Urban Areas Act, 1975 and Rule 11(1)(e) of The Haryana Development and Regulation of Urban Areas Rules, 1976.

G.VII Direct the respondent to provide fully operational 'Solar Water Hearing Systems' in each building block which is a mandatory requirement as per HAREDA Order No. 22/52/05-5P dated

29.07.2005, Environmental clearance and The Haryana Building Code, 2016.

G.VIII Direct the respondent to provide 'Photo Voltaic Power Plant', which is a mandatory requirement as per HAREDA Order No. 22/52/2005-5 Power dated 03.09.2014, Environmental clearance and The Haryana Building Code, 2016.

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

37. The Authority after carefully considering the submissions presented by the complainant, finds that the complainants have failed to substantiate their claims with any documentary evidence and it has not been pressed during the proceedings by the counsel for the complainant. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainant's concerns about the claimed reliefs. Thus, no direction to this effect.

G.IX Direct the respondent to pay Rs.75,000/- as litigation cost.

38. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. The 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.***, 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.

H. Directions of the Authority:

39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. Cancellation dated 28.10.2024 is bad in eyes of law and hence set-aside and the respondent is directed to reinstate the unit of the complainant within 30 days of this order.

ii. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 15.09.2016 till 17.09.2024 i.e., expiry of 2 months from the date of offer of possession (17.07.2024). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

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

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

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

vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by ***Hon'ble Supreme Court*** in ***Civil Appeal Nos. 3864-3889/2020*** decided on **14.12.2020**.

40. Complaint stands disposed of.

41. File be consigned to the registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.05.2025