

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

Complaint no. : 4877 of 2024
Order reserved on: 18.04.2025
Order pronounced on: 23.07.2025

Aruna Singh

R/o Flat No. 403, Beauty Tower, Vatika Seven
Lamps, Sector 82, Gurugram, Haryana-
122004

Complainant

Versus

M/s Imperia Structures Ltd.

Regd. office: A-25, Mohan Co-operative
Industrial Estate, New Delhi-110044

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sunil Kumar

Shri Shubham Mishra

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 d vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
7.	Apartment no.	003, tower-C, Ground floor
8.	Unit area admeasuring	1650 sq. ft.
9.	Date of builder buyer agreement	12.09.2013
10.	Possession clause	10.1. SCHEDULE FOR POSSESSION <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 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</i>

		<p><i>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."</i></p> <p>(Emphasis supplied)</p>
11.	Due date of possession	<p>12.03.2017</p> <p>[calculated as per possession clause]</p>
12.	Total sale consideration	<p>Rs. 89,49,733/-</p> <p>(as per price 1.1 of the BBA)</p>
13.	Amount paid by the complainants	<p>Rs. 79,22,467/-</p> <p>(Page 19 of the reply)</p>
14.	Occupation certificate	<p>12.07.2024</p> <p>[Page 5 of application filed by respondent on 17.07.2024]</p>
15.	Offer of possession for fit outs	<p>15.03.2024</p>
16.	Offer of possession	<p>17.07.2024</p>
17.	Reminder 1	<p>17.08.2024</p>
18.	Reminder 2/ Pre-cancellation	<p>28.08.2024</p>
19.	Final cancellation letter	<p>28.10.2024</p>

B. Facts of the complaint

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

- i. That the Complainant, Ms. Aruna Singh, is a peace-loving and law-abiding citizen of India, who nurtured a long-standing dream of owning a modern apartment equipped with all standard facilities and amenities in a reputed housing project.
- ii. That the Complainant applied for the purchase of an apartment in the residential project "The Esfera – Phase 2", developed by the Respondent M/s Imperia Structures Limited, situated in Sector 37C, Village Gharoli Khurd and Basai, Gurugram, Haryana, over land admeasuring approximately 1650 sq. ft. That the Respondent was granted License No. 64 of 2011 dated 16.07.2011 by the Director, Town and Country Planning, Government of Haryana, to develop the said project as a Group Housing Colony under the name "The Esfera".
- iii. That the Complainant, relying upon the representations and promises made by the Respondent, booked Apartment No. C-0003, Block C, Ground Floor, measuring 1650 sq. ft. with a private lawn, on a total sale price of Rs. 84,66,500/- (exclusive of taxes), and BSP Rs. 52,55,250/-, by paying her hard-earned savings.
- iv. That the Respondent collected over 20% of the Basic Sale Price (Rs.10,78,114/-) from the Complainant at the time of application in September 2011, but unduly delayed the execution of the Apartment Buyer's Agreement (ABA), which was finally signed only on 12.09.2013—two years after the initial booking.
- v. That the Respondent, as per Clause 10.1 of the ABA, promised to hand over possession of the said Apartment within 3 years and 6 months from the execution of the ABA, i.e., by 12.03.2017. However, despite this contractual obligation, the Respondent failed to deliver possession on time.

vi. That the Respondent, instead of compensating the Complainant for the delay as mandated under the RERA Act and contractual provisions, has illegally demanded excessive, arbitrary, and unjustified charges, including:

- Increase in area from 1650 sq. ft. to 1815 sq. ft. without mutual agreement.
- Unreasonable escalation costs.
- Additional GST and miscellaneous charges.
- No offer of interest or compensation for delay.
- Total Outstanding Dues arbitrarily demanded: ₹16,24,886/- (as per possession letter dated 17.07.2024).

vii. That the Complainant, after patiently waiting for over 12 years, including a delay of more than 7 years and 4 months, has been further harassed by being made subject to unjustified financial demands, in gross violation of the principles of equity, fairness, and consumer protection under the Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant:

4. 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 execute the conveyance deed as per terms of Rera act in favour of complainant.
 - (iii) Direct the Respondent to reverse back unethical and wrong demand raised by the Respondent on dated 17.07.2024.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have

been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.

- i. That the Complainant's claim of inducement is false and baseless. The Complainant, after conducting independent due diligence, voluntarily applied for the booking of Unit No. C-003 in the Respondent's project "**The Esfera**", located at Sector 37-C, Gurugram, Haryana, vide booking dated 10.09.2011, under the Construction Linked Payment Plan, for a total consideration of Rs. 89,24,983/-, inclusive of applicable taxes and charges.
- ii. That the Builder Buyer Agreement (BBA) was duly executed on 12.09.2013, outlining the rights, obligations, and liabilities of both parties. A true copy of the BBA is already on record. That the BBA was executed after full understanding and without coercion. Both parties voluntarily agreed to its terms.
- iii. The Complainant's assertion regarding the absence of an Occupancy Certificate (OC) at the time of possession is incorrect. The Respondent obtained:
 - In-Principal OC on 13.03.2024, and
 - Final OC on 12.07.2024, specifically for the tower in which the Complainant's unit is located.
 - Accordingly, the Respondent issued an offer of possession on 15.03.2024 and again on 17.07.2024, subsequent to receiving the final OC.
 - The Complainant was liable to pay Rs. 5,51,085/- in 2020 and a further Rs. 4,48,777/- at the time of possession. Despite multiple communications, these dues remain unpaid. The

total outstanding amount is Rs. 14,55,695/-, comprising increased area charges, escalation charges, and GST.

- Letters dated 15.03.2024, 17.07.2024, and 17.08.2024 duly reminded the Complainant of the outstanding dues. All charges are based on contractual clauses, especially Clause 1.2 of the BBA, which clearly allows adjustment for increases in labour and material costs.
- iv. The escalation charges are a direct consequence of inflationary pressures, beyond the control of the Respondent. The methodology for computing such charges is detailed in Annexure G of the BBA. Thus, allegations of illegal demands are unfounded, as all conditions are transparently specified in the BBA.
- v. The interest on delayed payments is also contractually agreed to by the Complainant and is legally enforceable. Time was agreed to be of the essence under the BBA, and the Complainant failed to adhere to the payment plan. The Respondent did not coerce the Complainant into signing the agreement.
- vi. Despite repeated notices, the Complainant failed to clear the outstanding Rs. 16,24,886/-. At the time of BBA execution, the Complainant agreed to bear costs related to increased area and escalation. The current objections are an afterthought.
- vii. The BBA delineates clear consequences for breach, which the Complainant is now attempting to evade under the guise of false claims. The delay in project completion was also caused by external and uncontrollable factors:
 - Ban on construction due to Supreme Court orders in Nov 2019.

- COVID-19 lockdown and labour migration from March 2020 onwards, severely impacted construction timelines and material procurement.
- viii. After issuance of possession letters and multiple reminders, including a pre-cancellation notice dated 28.08.2024, the Complainant still failed to pay. Consequently, the Respondent had no option but to cancel the unit on 28.10.2024.
- ix. The cancellation followed multiple opportunities provided to the Complainant and is valid and legally sound, as per the contract. The Respondent also underwent CIRP proceedings, initiated by NCLT on 31.08.2023, and discharged by NCLAT on 01.02.2024, leading to operational delays beyond the Respondent's control.
- x. In light of the Complainant's continued default and prevailing financial and legal constraints, the cancellation was the only feasible course of action. The Respondent is still willing to refund the paid amount, after deducting 15% earnest money, as per Clause 4 of the BBA, which was agreed to by both parties.
- xi. It is humbly submitted that the present complaint is an abuse of process and deserves to be dismissed with exemplary costs. The Complainant has not complied with her contractual obligations and has concealed material facts. Hence, the complaint is infructuous and not maintainable.

7. Written submission filed by the respondent:

- i. The present synopsis is filed in pursuance of the order dated 18.04.2025 passed by this Authority, whereby both parties were directed to file written submissions within two weeks. A duly executed Builder Buyer Agreement (BBA) was signed on

- 12.09.2013, voluntarily and after full understanding of the terms. No coercion or undue influence was exercised.
- ii. Contrary to the Complainant's claim, the Occupancy Certificate (OC) was obtained:
- o In-Principle OC on 13.03.2024 (Memo No. ZP-768-VOL-II/JD(RA)/2024/9245)
 - o Final OC on 12.07.2024 (Memo No. ZP-768-VOL-II/JD(RA)/2024/21165)
- iii. Offer of Possession was first issued on 15.03.2024, and again on 17.07.2024, post-OC issuance. The Complainant has been in continuous default of payments since 2020.
- o Outstanding dues in 2020: Rs. 5,51,085/-
 - o Outstanding at time of possession: Rs. 4,48,777/-
 - o Total dues (as on date): Rs. 16,24,886/-, including:
 - Increased Area Charges: Rs. 6,61,650/-
 - Escalation Charges: Rs. 5,64,407/-
 - GST: Rs. 2,29,638/-
- iv. The Complainant was repeatedly notified through letters dated 15.03.2024, 17.07.2024, and 17.08.2024 but failed to comply. Allegations regarding illegality of demands and interest on delayed payments are baseless. These charges are contractually stipulated and were fully disclosed at the time of signing the BBA.
- v. Despite repeated reminders, the Complainant failed to take possession or clear dues, prompting issuance of a Pre-Cancellation Notice on 28.08.2024, and subsequent cancellation of the unit on 28.10.2024.
- vi. The Respondent entered CIRP on 31.08.2023 (NCLT order) and was discharged on 01.02.2024 (NCLAT order), which further delayed operations. This fact has also been ignored by the Complainant.

- vii. Third-party rights have since been lawfully created in the cancelled unit. However, the Respondent is willing to refund the amount paid by the Complainant, subject to 15% deduction of earnest money, as per Clause 4 of the BBA.
- viii. The Complainant's conduct shows continued default, willful non-compliance, and an attempt to resile from a validly executed agreement.
8. 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

9. The authority has complete territorial and 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, 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

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 complainants at a later stage.

F. Entitlement of the Complainants:

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

G.II. Direct the respondent to execute the conveyance deed as per terms of Rera act in favour of complainant.

G.III. Direct the Respondent to reverse back unethical and wrong demand raised by the Respondent on dated 17.07.2024.

13. The complainant was allotted Unit No. 003, Tower-C, Ground Floor, admeasuring 1650 sq. ft., in the project "The Esfera" Phase II, located at Sector 37-C, Gurgaon, Haryana, by the respondent/builder, for a sale price of Rs. 89,49,733/-. The complainant paid a sum of Rs. 79,22,467/- which constitutes approximately 88% of the sale consideration. A Builder Buyer Agreement dated 12.09.2013 was duly executed between the parties in respect of the said unit. As per the terms of the agreement, the due date for completion of the project and offer of possession was stipulated as 12.03.2017.

14. The respondent obtained the Occupation Certificate (OC) from the competent authority on 12.07.2024 and subsequently issued a possession offer letter to the complainant on 17.07.2024, requesting the clearance of outstanding dues and taking over of possession. However, the complainant failed to pay the balance amount due against the allotted unit.
15. Thereafter, the respondent issued reminder notices dated 17.08.2024 and 28.08.2024. Despite these reminders, the complainant failed to comply. Consequently, the respondent was constrained to issue a cancellation letter dated 28.10.2024. The said cancellation is valid and legally sustainable, having been effected after due notice and multiple reminders.
16. It is reiterated that the Occupation Certificate for the project was granted on 12.07.2024. Following receipt of the OC, the respondent promptly offered possession to the complainant on 17.07.2024. It is evident from the aforementioned facts that the complainant paid Rs. 79,22,467/- against the total sale consideration of Rs. 89,49,733/- for the unit allotted to her pursuant to the agreement dated 12.09.2013. However, the complainant has failed to adhere to the terms and conditions of the Builder Buyer Agreement, thereby justifying the respondent's action.
17. However, the deductions of earnest money shall be made accordance with the applicable laws and as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of*

Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in **CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in **CC/2766/2017** in case titled as **Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

18. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs. 79,22,467/- after deducting 10% of the sale consideration of Rs. 89,49,733/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the

refundable amount, from the date of cancellation i.e., 28.10.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

19. 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 respondents/promoter is directed to refund the paid-up amount of Rs. 79,22,467/- after deducting 10% of the sale consideration of Rs. 89,49,733/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 28.10.2024 till its realization.

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

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

21. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2025



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