BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision : 04.07.2025

Project Name		"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/378/2022	Som Parkash Shrivastava and others Vs. M/s Imperia Structures Ltd.	Shri Rishi Sexena, Adv. (Complainant) Ms. Daggar Malhotra, Adv. (Respondent)
2.	CR/379/2022	Som Parkash Shrivastava and others Vs. M/s Imperia Structures Ltd.	Shri Rishi Sexena, Adv. (Complainant) Ms. Daggar Malhotra, Adv. (Respondent)

CORAM:

Shri Arun Kumar **Chairman**

ORDER

1. This order shall dispose of both 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 both 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. **Name of licensee**	64 of 2011 dated 06.07.2011 valid upto 15.07.2017 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	12.07.2024
Possession clause as per clause 10.1. of BBA	***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."

S.No.	Particulars	Details w.r.t CR/378/2022	Details w.r.t. CR/379/2022
1.	Complaint filed on	22.02.2022	22.02.2022
2.	Reply filed on	25.04.2023	25.04.2023
3.	Allotment letter	02.02.2015 (pg. 58 of complaint)	02.02.2015 (pg. 55 of complaint)
4.	Unit no.	1501, 15th Floor, Tower B (pg. 58 of complaint)	1401, 14th Floor, Tower B (pg. 64 of complaint)
5.	Unit area	2400 sq. ft. (pg. 68 of complaint)	2400 sq. ft. (pg. 64 of complaint)
6.	Builder buyer agreement executed on	15.04.2015 (pg. 66 of complaint)	15.04.2015 (pg. 62 of complaint)
7.	Due date of possession	15.10.2018 [calculated as per possession clause]	15.10.2018 [calculated as per possession clause]
8.	Total sale price of the flat	₹ 1,30,50,000/- [as per the agreement at pg. 73 of complaint]	₹ 1,30,50,000/- [as per the agreement at pg. 69 of complaint]

9.	Amount paid by the complainant	₹ 51,31,287/- [pg. 16 of reply]	₹ 51,31,287/- [pg. 16 of reply]
10.	In principle Occupation certificate	13.03.2024 [pg. 5 of application filed by respondent on 17.07.2024]	13.03.2024 [pg. 5 of application filed by respondent on 17.07.2024]
11.	Offer of possession for fit outs	15.03.2024 [pg. 7 of application filed by respondent on 17.07.2024]	15.03.2024 [pg. 7 of application filed by respondent on 17.07.2024]
12.	Occupation certificate	12.07.2024	12.07.2024
13.	Offer of possession	17.07.2024	17.07.2024
14.	Pre-cancellation letter dated	28.08.2024	28.08.2024
15.	Cancellation letter dated	18.10.2024	18.10.2024
16.	Relief sought	1. DPC and Possession 2. Quash escalation charges and increase in super area.	1. DPC and Possession 2. 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/378/2022** ***titled as Som Parkash Shrivastava and others 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and 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.	1501, 15th Floor, Tower B (pg. 58 of complaint)
8.	Unit area admeasuring	2400 sq. ft. (pg. 68 of complaint)
9.	Area increased on offer of possession	2600 sq. ft. [pg. 8 of application filed by complainants on 10.09.2024]
10.	Date of booking	30.04.2014 (pg. 58 of complaint)
11.	Date of allotment letter	02.02.2015 (pg. 58 of complaint)
12.	Date of builder buyer agreement	15.04.2015 (pg. 66 of complaint)
13.	Possession clause	***10.1. SCHEDULE FOR POSSESSION*** *"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the* ***construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement*** *unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in*

		accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement." ***(Emphasis supplied)***
14.	Due date of possession	15.10.2018 [calculated as per possession clause]
15.	Total sale consideration	₹ 1,30,50,000/- [as per the agreement at pg. 73 of complaint]
16.	Amount paid by the complainant	₹ 51,31,287/- [as per applicant file dated 12.03.2019 at pg. 16 of reply]
17.	Offer of possession for fit outs	16.08.2021 (pg. 124 of complaint)
18.	In principle Occupation certificate	13.03.2024 [pg. 5 of application filed by respondent on 17.07.2024]
19.	Offer of possession for fit outs	15.03.2024 [pg. 7 of application filed by respondent on 17.07.2024]
20	Occupation certificate	12.07.2024
21.	Possession letter	17.07.2024
22.	Pre-cancellation letter dated	28.08.2024

23.	Cancellation letter dated	18.10.2024

B. Facts of the complaint:

8. The complainants have made the following submissions in the complaint:

i. That in the year 2014, the Complainants, allured by the promotional advertisements, representations made in person during meetings with the Director of the Respondent-Developer and its Property Agents, decided to book a residential apartment in the project being developed by the Respondent. It is submitted that the Complainants arranged substantial funds for the said booking by liquidating their fixed deposits.

ii. That pursuant thereto, the Complainants applied for the allotment of an apartment in the said project and accordingly, on 15th April 2015, an Apartment Buyer's Agreement was executed between the Complainants and the Respondent for Apartment No. 1501, admeasuring approximately 223.04 square meters (2400 square feet) of super area (hereinafter referred to as the *"Said Apartment"*) situated on the 15th Floor of Block B (hereinafter referred to as the *"Said Building"*), along with one (1) covered parking space.

iii. That the total sale consideration for the Said Apartment was as follows:

- **Basic Sale Price**: ₹1,02,00,000/- (Rupees One Crore Two Lakhs only), calculated at ₹45,730/- per square meter (₹4,250/- per square foot);

- **Preferential Location Charges (PLC)**: ₹9,00,000/- (Rupees Nine Lakhs only);
- **Parking Charges**: ₹3,50,000/- (Rupees Three Lakhs Fifty Thousand only);
- **Other Charges**, including development charges and IFMS;
- **Total Cost**: ₹1,30,50,000/- (Rupees One Crore Thirty Lakhs Fifty Thousand only).

iv. That the booking was made under a Possession-Linked Payment Plan. The payment schedule was as follows:

- **Booking Amount**: 10% of BSP
- **Within 150 Days of Booking**: 30% of BSP
- **Development Charges**: 100%
- **At the time of Offer of Possession**: 60% of BSP + 100% of PLC + Other Charges + IFMS

v. That Clause 10.1 of the said Agreement clearly stipulates that the Developer/Company contemplated to complete the construction of the Said Apartment within a period of three and a half (3½) years from the date of execution of the Agreement, i.e., by 14th October 2018. However, despite the lapse of the stipulated period, the Respondent has failed to complete construction and offer possession of the Said Apartment.

vi. That the Complainants made timely payments in accordance with the demands raised by the Respondent from time to time. However, the Respondent also raised premature and unjustified demands, claiming that the construction was progressing rapidly and that possession would soon be offered.

vii. The Complainants utter shock and dismay, the Respondent, in the year 2021, raised a further demand for an additional payment,

contrary to the agreed Possession-Linked Plan, despite no valid Offer of Possession being made. That upon inquiry, the Respondent claimed to have applied for an Occupancy Certificate, but failed to produce any documentary evidence regarding the application, its status, date of submission, or any correspondence with the competent authority. Thus, the claim was vague, unsubstantiated, and misleading.

viii. That vide a letter dated 16th August 2021, received by the Complainants on 24th August 2021, the Respondent illegally and arbitrarily demanded an amount of ₹1,07,52,584/- (Rupees One Crore Seven Lakhs Fifty-Two Thousand Five Hundred Eighty-Four only) in direct contravention of the Apartment Buyer's Agreement, which stipulates that the balance payment is to be made at the time of Offer of Possession.

ix. It is pertinent to mention that the Respondent's own communication stated that the "Application for Occupation Certificate is in advanced stage" and that "the allotted flat is nearing possession," thereby clearly implying that possession had not yet been offered. Thus, any demand prior to such valid offer is premature and illegal.

x. Moreover, the said demand letter arbitrarily included Escalation Charges, which had been explicitly struck down in the Apartment Buyer's Agreement. Clause 1.2 of the Agreement (Page 11 of 52) was clearly struck off, and the Cost Escalation Sheet (Page 51 of 52) was never signed by the Complainants, which unequivocally establishes that the demand for escalation cost is unlawful and without contractual basis.

xi. Further, the Respondent unilaterally increased the super area from 2400 sq. ft. to 2600 sq. ft., amounting to an 8.3% increase, without furnishing any architectural documents, sanctioned plans, or reasonable justification. This arbitrary increase contributed to the inflation of the total demand from ₹80,70,000/- to ₹1,07,52,584/-, which is clearly illegal and unjustifiable.

xii. That the Respondent's demand appears to have been made with mala fide intent to harass, coerce, and exploit the Complainants financially and mentally. Upon visiting the project site on 27th August 2021, the Complainants observed and documented through photographs that the project was far from completion and not in a habitable condition, contradicting the Respondent's claim of nearing possession.

xiii. The Respondent has failed to fulfil its contractual obligations under the Apartment Buyer's Agreement, especially in completing and offering the Said Apartment for possession by 14th October 2018.

xiv. That the Complainants remain ready and willing to make the balance payment strictly in accordance with the terms of the Apartment Buyer's Agreement, only upon a valid offer of possession being made, and only after the Said Apartment is in a habitable condition and the Occupancy Certificate/Completion Certificate is obtained from the competent authorities.

C. Relief sought by the complainants:

9. The complainants have 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 withdraw and reverse the illegal, unethical, and unjustified demands raised in respect of the alleged increase in the super area of the Said Apartment and the unwarranted escalation in the price, which are contrary to the terms and conditions of the Apartment Buyer's Agreement and are not supported by any lawful or contractual basis.

D. Reply by respondent:

10. The respondent by way of written reply made following submissions:

i. At the outset, the Respondent respectfully submits that the Complainants have not approached this Authority with clean hands and have made the present Complaint with malafide intent by suppressing material facts and misrepresenting the true and correct circumstances pertaining to the subject transaction. The Complaint is based on false, misleading and incomplete averments, and thus constitutes a gross abuse of the process of law. On this short ground alone, the present Complaint is liable to be dismissed in limine.

ii. The Complaint is wholly misconceived, vexatious, and devoid of merit. It has been filed with an intent to create undue pressure on the Respondent and to tarnish its reputation, despite the Respondent having fulfilled its contractual obligations in accordance with the Apartment Buyer's Agreement executed between the parties. The Complaint deserves to be dismissed at the very threshold.

iii. Without prejudice to the above contentions, and assuming but not admitting the allegations made in the Complaint, it is respectfully

submitted that even otherwise the Complainants are not entitled to any reliefs from this Authority for the following reasons.

iv. That the Complainants, after making independent inquiries and upon full satisfaction with the Respondent's project "The Esfera" situated at Sector-37C, Gurugram, voluntarily approached the Respondent for the booking of a residential unit. The Respondent, after due diligence and documentation, provisionally allotted Unit No. TOWER B-1401 admeasuring approximately 2400 sq. ft., for a total consideration of Rs. 1,39,26,679/- (inclusive of applicable taxes and charges). The Complainants opted for the Possession Linked Plan – New, based on terms and conditions mutually agreed between the parties.

v. That in furtherance of the said allotment, a Buyer's Agreement was duly executed between the parties, which clearly sets out the respective rights, obligations, and liabilities of both parties. The Complainants executed the said Agreement after having understood its contents thoroughly and were under no duress, coercion or misrepresentation at any stage.

vi. That in terms of Section 18 of the Real Estate (Regulation and Development) Act, 2016, the Respondent was obligated to offer possession within the agreed timeline. It is respectfully submitted that the Respondent not only completed the construction of the project well within the stipulated time but also applied for the Occupancy Certificate on 15.04.2021 after fulfilling all necessary legal and technical formalities.

vii. That it is pertinent to submit that the Respondent Company is presently under a severe liquidity crisis. Furthermore, the

Respondent has been burdened with refund orders pertaining to approximately 20–25 apartments, as directed by various courts and forums, the cumulative liability of which exceeds Rs. 20 Crores. Any further monetary orders passed in the present matter may irreparably prejudice the project, which involves hundreds of genuine allottees awaiting timely possession.

viii. That due to the financial distress caused by delayed payments and withdrawal of many allottees, the Respondent successfully secured last-mile funding of Rs. 99 Crores from the SWAMIH Investment Fund – I, under the Special Window for Affordable and Mid-Income Housing (SWAMIH) Scheme announced by the Hon'ble Finance Minister on 06.11.2019. The said Alternate Investment Fund (AIF) was sanctioned on 23.09.2020, and funds are being disbursed in tranches. The said funding has enabled the Respondent to continue construction with approximately 450 workers engaged in completing internal finishing and MEP works across Phase 2, including Tower B.

ix. That the Respondent, in accordance with the Buyer's Agreement, issued a valid Offer of Possession for fit-outs to the Complainants on 07.09.2021, much before the agreed timeline. Despite this, the Complainants have defaulted in making timely payments, and substantial amounts remain outstanding despite several reminders and communications sent by the Respondent.

x. That the Complainants are now attempting to claim benefits while simultaneously defaulting on their own obligations under the Agreement. The Complainants have not come before this Hon'ble Authority with bona fide intentions, and their conduct clearly

evidences suppression of material facts and non-compliance with agreed payment obligations.

xi. It is a settled position of law that contractual terms are binding upon the parties. In this context, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Bharti Knitting Co. v. DHL Worldwide Express Courier*, (1996) 4 SCC 704**, wherein it was held that a person who signs a contractual document is bound by its terms, regardless of whether the person has read or understood the same, unless proven otherwise.

xii. That the Buyer's Agreement contains detailed clauses stipulating the consequences of non-payment and delay by the Allottee, including forfeiture and penalties. The Complainants were fully aware of these terms at the time of signing and are bound by the same. Their attempt to now wriggle out of their contractual obligations is not only contrary to law but also inequitable.

xiii. In light of the above, it is submitted that the present Complaint is nothing but an attempt to malign the reputation of the Respondent and obstruct the completion of the ongoing project. The Complainants have neither fulfilled their obligations nor disclosed material facts in this Complaint, which warrants summary dismissal of the Complaint with exemplary costs.

11. That on 23.05.2025, the Respondent submitted an Affidavit before this Authority, wherein it was categorically stated that the Respondent has acted strictly in accordance with the terms and conditions of the Apartment Buyer's Agreement (BBA). It was further averred that the Respondent extended every reasonable and fair opportunity to the Complainants for compliance. However, owing to the Complainants

persistent and deliberate defaults, including substantial non-payment of agreed instalments, the Respondent was constrained to cancel the allotment. The said cancellation was not arbitrary or hasty, but a measure of last resort, necessitated by the Complainants continuous non-compliance despite repeated reminders and extensions.

12. That owing to the Complainants failure to remit a significant outstanding amount within the stipulated time, the Respondent was left with no alternative but to create third-party rights in the said unit. Consequently, the subject unit was lawfully re-allotted and sold to Mr. Kapil Sharma, pursuant to which a fresh Apartment Buyer's Agreement dated 20.11.2024 was duly executed between the Respondent and the said third party.

13. 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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

14. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

15. 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

16. 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)(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.*

17. 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 complainants:

F.I 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 withdraw and reverse the illegal, unethical, and unjustified demands raised in respect of the alleged increase in the super area of the Said Apartment and the unwarranted escalation in the price, which are contrary to the

terms and conditions of the Apartment Buyer's Agreement and are not supported by any lawful or contractual basis.

18. The complainants submit that they were allotted Unit No. 1501, located on the 15th Floor of Tower-B, pursuant to the execution of a Builder Buyer Agreement (BBA) dated 15.04.2015, under a possession-linked payment plan. In compliance with the payment terms, the complainants paid a sum of ₹51,31,287/- towards the total agreed sale consideration of ₹1,30,50,000/-. As per Clause 10.1 of the said BBA, the respondent was contractually obligated to deliver possession of the unit within a period of three and a half years from the date of execution of the agreement. Accordingly, the due date of possession is computed as 15.10.2018.

19. The complainants further contend that the respondent, vide letter dated 15.03.2024, issued an offer for fit-outs, accompanied by a demand of ₹1,07,52,584/-, which is alleged to be illegal and unjustified, as the respondent had not obtained the Occupation Certificate (OC) from the competent authority at that time. That the alleged OC was only a conditional clarification, and not a valid or final certificate as required under the Act. Additionally, the complainants allege that the respondent unilaterally increased the super area of the unit by 8.3%, in contravention of the terms of the BBA, without obtaining prior consent from the complainants.

20. In response, the respondent has submitted that the complainants are in default of their payment obligations, having failed to adhere to the agreed payment plan as stipulated in the BBA. The respondent contends that multiple reminder-cum-demand letters were issued to the complainants, requesting them to clear the outstanding dues, but the

complainants failed to comply. As a result of such alleged non-payment, the respondent proceeded to cancel the allotment of the unit vide cancellation letter dated 18.10.2024. The respondent has argued that the complainants have breached the terms of the Agreement to Sell by failing to make timely payments in accordance with the stipulated schedule.

Now, **the question before the Authority is whether cancellation vide letter dated 18.10.2024 is valid in the eyes of law or not?**

21. Upon consideration of the overall facts, documents placed on record, and submissions made by both parties, the Authority observes that the complainants were allotted the subject unit vide Allotment Letter dated 02.02.2015. As per Clause 10.1 of the Builder Buyer Agreement (BBA) dated 15.04.2015, possession of the said unit was to be handed over to the complainants by 15.10.2018. The complainants have paid a sum of ₹51,31,287/- towards the total sale consideration of ₹1,30,50,000/-, which constitutes approximately 39.32% of the agreed consideration under the BBA. That the respondent issued a fit-out offer letter dated 16.08.2021 to the complainants without first obtaining the Occupation Certificate (OC) from the competent authority, and accompanied it with unauthorized demands.

22. Vide order dated 11.07.2022, the Authority had restrained the respondent from cancelling the unit or raising any demand on the pretext of offering possession for fit-outs without obtaining the Occupation Certificate. Thereafter, vide order dated 20.12.2024, the Authority further held that the cancellation letter dated 18.10.2024

issued by the respondent was not legally sustainable and accordingly set it aside.

23. In view of the foregoing, the Authority is of view that the cancellation letter dated 18.10.2024 is void ab initio, being contrary to law and principles of natural justice, and is therefore hereby set aside. The respondent is directed to reinstate the unit originally allotted to the complainants under the BBA. In the event the originally allotted unit is not available, the respondent shall offer an alternate unit of the same size, in a similar location, and at the same price as originally booked by the complainants under the Builder Buyer Agreement dated 15.04.2015, within a period of 60 (sixty) days from the date of this order.

24. 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."*

25. 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."

26. **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.*

27. 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.

28. 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., 04.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.

29. 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;"*

30. 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 complainants in case of delay possession charges.

31. 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 15.04.2015, 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 15.10.2018. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the

buyer's agreement dated 15.04.2015 to hand over the possession within the stipulated period.

32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e. 11.10% p.a. w.e.f. 15.10.2018 till the date of valid offer of possession or the date of actual handing over whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules.

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

33. 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. 10,55,000/-but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 15.04.2015 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 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.....

34. It is not disputed that the due date for completion of the project has already expired on 15.10.2018. The impugned demand against the above-mentioned head was raised vide letters dated 15.03.2024 and the same is as per the above-mentioned provision of the buyer agreement. If the complainants have any objection against the purposed 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.

35. Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 2400 sq. ft. to 2600 sq. ft. vide offer for fit out dated 15.03.2024 with increase in area of 200 sq. ft. i.e. 8.33% without any justification or prior intimation to the complainants.

36. 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.

37. 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 cannot charge any amount from the complainants 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**

38. The complainants 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 Allotlee(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.

39. 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 complainants.

G. Directions of the Authority

40. 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 cancellation letter dated 18.10.2024 issued by the respondent is hereby set aside. The respondent is directed to re-instate the allotted unit of the complainants as per the terms and conditions of the Builder Buyer Agreement (BBA) dated 15.04.2015. In the event that the originally allotted unit is no longer available, the respondent shall offer an alternate unit of the same size, in a similar location, and at the same price as per the original BBA within a period of 60 days from the date of this order.

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., 15.10.2018 till the date of valid

offer of possession 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 15.10.2018 till the date of order by the authority shall be paid by the respondent/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 10th 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.

V. Upon receipt of the revised statement of account, the complainants are directed to remit the outstanding dues, after adjustment of the delay possession charges, within a period of 30 (thirty) days from the date of such receipt.

VI. 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.

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

VIII. Increase in area: - 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 cannot charge any amount from the complainants 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.

IX. Escalation Charges are not justified and shall not be charged from the complainants.

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

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

43. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.07.2025