BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: **3585 of 2023**
Order reserved on: **11.07.2025**
Pronouncement of order: **01.08.2025**

1. Divya Bajaj W/o Gaurav Bajaj
2. Tanima Bajaj W/o Deepak Bajaj

Both Resident of Villa no. 37, Tulip Ivory, Sector 70, Gurugram — **Complainants**

Versus

M/s Imperia Structures Limited,
Registered office at: - A-25, MCIE, Mathura Road, New Delhi-110044 through its Director, Harjeet Singh Batra — **Respondent**

CORAM:
Shri Arun Kumar — **Chairman**

APPEARANCE:
Ms. Krishna Saroff (Advocate) — Complainants
Sh. Subham Mishra (Advocate) — Respondent

ORDER

1. This 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 thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1	Name of the project	Mind Space, Sector- 62
2	Project area	8.356 acres
3	Nature of the project	Commercial
4	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid upto 22.10.2014
5	RERA registered/ not registered	Registered 240 of 2017 dated 25.09.2017 valid upto 31.12.2020
	Unit no.	IMP-B-0256
6	Area admeasuring	500 sq. ft.
7	Date of execution of MOU on	16.08.2014
8	Assured return clause 4.	*That the Developer will pay 60/- (Rupees Sixty Only) per sq. ft. per month on 500 sq. ft. as an Assured Return to the Allottee from 15.08.2014 till offer for possession of the Space. Thereafter the Developer shall pay 50/- (Rupees Fifty Only) per sq. ft. per month on 500 sq. ft. as assured rental till the Offered Space is Leased out to intended Lessee. The Developer has represented to the Allottee that the possession of the Said Unit shall be handed over by the Developer to the Allottee but in the event of Virtual Space the Space will be registered in favour of Allotee and handed over to the Lessee within a*

		maximum period of 2 (two years after approval of Building Plans of the Said Project from competent authorities of the Said Project subject to force majeure. That the Allottee hereby agrees accepts and confirms the authority and power of the Developer for any variation or change in the location or area of the Said Unit allotted to him and that the allotment is provisional.
9	Total sale consideration	Rs. 20,00,000/-
10	Amount paid by the complainant	Rs. 20,00,000/-
11	Offer of possession for fit out	15.07.2019
12	Occupation certificate /Completion certificate	02.06.2020 for Tower-C
13	Offer of possession dated	22.06.2020

B. Facts of the complaint:

3. The complainants have made the following submissions:

   i. That the project which forms the subject matter of the present complaint is located at Sector-62, Gurugram. Accordingly, this Authority has jurisdiction to entertain, try, and decide the present complaint. The present complaint concerns the possession of Unit No. IMP-B-0256, measuring 500 sq. ft. (Virtual Office Space), in the said project, along with a claim for Delayed Possession Charges. Therefore, this complaint falls within the purview of the Real Estate

(Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

ii. That the Respondent assured customers that they had obtained all the necessary sanctions and approvals from the competent authorities for the construction and completion of the real estate project. That the Respondent was well aware that several builders in the NCR region commonly fail to deliver projects within stipulated timelines. Nonetheless, they exploited the emotional trust of gullible buyers, including the Complainants, and made false assurances of timely delivery.

iii. That in or around August 2014, the Respondent, through its marketing executives and various advertisements, approached the Complainants with an offer to sell Virtual Office Space in the said project. Induced by the representations made by the Respondent's executives, the Complainants agreed to purchase a unit.

iv. That pursuant to the said offer, the Complainants paid a total amount of ₹20,00,000/- on 11.08.2014 through Cheque Nos. 000004 and 552156 of ₹10,00,000/- each. Additionally, the Complainants paid ₹74,160/- towards Service Tax. Thereafter, Unit No. IMP-B-0256 measuring 500 sq. ft. in the project "Imperia Byron" at Sector-62, Golf Course Extension Road, Gurugram, was allotted to them (hereinafter referred to as "the said unit"). That on 16.08.2014, a Memorandum of Understanding (MOU) was executed between the Respondent company and the Complainants. The key clauses of the MOU are as follows:

a) The Developer shall pay ₹60 per sq. ft. per month (i.e., ₹30,000/- per month for 500 sq. ft.) as assured returns to the Allottee from 15.08.2014 until the offer of possession. After that, the

Developer shall pay ₹50 per sq. ft. per month as assured rent until the unit is leased to an intended lessee. The Developer committed to delivering possession of the said unit or registering the virtual space in the Allottee's name and handing it over to a lessee within two years from the approval of building plans, subject to force majeure. The Allottee agreed that the allotment is provisional and subject to changes in area or location at the Developer's discretion.

b) The Developer undertakes to lease out the said unit and is authorized to finalize lease agreements with suitable tenants. The lease shall be for a minimum of ₹50 per sq. ft. per month.

c) The initial lease period shall be three years, extendable for two additional terms of three years each with an appropriate increase in rent.

v. That by a letter dated 15.03.2016, the Respondent informed the Complainants that the name of the project had been changed from "Byron" to "Mind Space," and future correspondence would reflect this change. That under Clause 4 of the MOU, the Respondent was liable to pay ₹30,000/- per month as assured return. The Complainants received ₹27,000/- per month (after TDS deduction) until 07.08.2018. No payments were made thereafter.

vi. That on 15.07.2019, the Respondent issued a letter offering possession and demanded ₹6,82,700/- as outstanding dues. They further stated that the lease rent of ₹25,000/- would be paid only after receipt of this amount. However, no details were provided regarding the date of receiving the Occupation Certificate.

vii. That as per Clause 2 of the MOU, the Complainants were to pay the balance charges at the time of possession based on mutually agreed

terms. The Respondent, however, raised an arbitrary demand for "sale consideration/dues" without detailing the heads of the charges and without accounting for the unpaid assured returns since August 2018.

viii. That upon requesting adjustment of assured returns, the Respondent agreed to deduct ₹2,70,000/- and demanded the remaining ₹4,12,700/- again without clarifying the heads of the charges. That after prolonged discussions, the Complainants were compelled to pay ₹1,83,600/-, following which the Respondent issued a No Dues Certificate dated 02.12.2019. That despite offering possession in July 2019, the Respondent failed to hand over physical possession and did not commence lease payments of ₹25,000/- per month as agreed in Clause 8 of the MOU.

ix. That a site visit in early 2020 revealed that the unit was incomplete. The Respondent had falsely offered possession in July 2019 only to reduce its liability from ₹30,000/- to ₹25,000/-. That despite several attempts, including communication with Mr. Vipin Gupta (Respondent's employee), the Complainants received no satisfactory response regarding lease payments or physical possession. That on 21.10.2022, the Respondent asked the Complainants to pay stamp duty, registration fees, and other charges for executing the conveyance deed, citing possible changes in circle rates.

x. That on 23.01.2023, the Complainants requested adjustment of the conveyance deed charges against the pending lease rentals. That the Respondent neither responded nor complied. Instead, they raised maintenance bills on 09.02.2023 for January and February 2023, adding arrears for non-payment of January. That the

Complainants protested against the maintenance bills since physical possession had not been handed over. They reiterated the request for possession and pending dues. That since 2014, despite repeated assurances, the Respondent failed to fulfil its obligations, causing immense hardship to the Complainants. That upon inquiry, the Complainants learned that the building plan was approved on 04.12.2015. As per the MOU, possession was due by 04.12.2017. This constitutes the deemed date of possession.

xi. That the Respondent offered possession only on 15.07.2019 without disclosing the date of Occupation Certificate. Even then, physical possession was not handed over. As of the date of this complaint, possession has been delayed by approximately 5 years and 8 months.

xii. That the Respondent was liable to pay ₹30,000/- per month until possession and ₹25,000/- thereafter until the unit was leased. However, no such payments were made post-August 2018. That the Respondent has resorted to deceptive practices, withholding the Complainants' funds without interest, and indulging in fraudulent conduct and unfair trade practices. That the MOU is inherently one-sided and drafted to favor the Respondent entirely, with all major clauses tailored to protect their interests while offering no relief or remedy to the Complainants. That the Respondent never intended to deliver the project on time. Their only motive was to extract money from buyers based on false promises, knowing the project would be delayed. They have earned undue profits at the expense of the Complainants.

xiii. That the Respondent misrepresented possession dates and other material facts. These false promises were intended solely to lure

the Complainants into buying the unit, which amounts to unfair trade practice. That the Respondent has committed serious deficiencies in service by failing to deliver possession, making misleading representations, and misappropriating funds, which is both unethical and illegal. That the Respondent's failure caused irreparable harm to the Complainants, both financially and emotionally. Their personal financial planning was based on possession timelines, which were never honoured.

xiv. That the Respondent acted in a wholly negligent, fraudulent, and unjustified manner by not delivering possession, imposing baseless charges, and demanding payments for unclear items such as enhanced area. That by intentionally misleading and inducing the Complainants through false representations, the Respondent is fully liable to compensate for the delay in possession, along with interest and damages as claimed.

xv. That the cause of action first arose on 04.12.2017 (when possession became due but was not given) and again on 09.02.2023 (when maintenance charges were demanded without handing over the unit). That the Complainants affirm that no case on the same subject matter is pending before any other court, authority, or tribunal.

C. Relief sought by the complainants:

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

a) Directed the respondent to clear all dues of assured return with interest.

b) Direct the respondent to handover the physical possession of the said unit to the complainants within a given period of time

c) Direct the respondent to pay the Delayed Possession Charges calculated from the due date of possession 04/12/2017 till the actual delivery of possession of the unit to the complainants.

d) Direct the respondent to pay the differential amount of circle rate applicable in 2017 and the amount to be paid at the time of execution of the sale deed to the complainants.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:

i. That the Complainant has not approached this Authority with clean hands. It is submitted that the Complainants is attempting to raise absurd and illegitimate grounds in order to acquire benefits, for which the Complainants is not entitled in the least.

ii. That the Complainant at his own free will, booked a virtual space unit admeasuring 500 sq. ft on 31.08.2011, in our Project 'Imperia Byron', which was subsequently renamed as "Mindspace", located at sector 62, Gurugram (hereinafter referred to as the 'said Project'), for a total sale consideration of 25,26,762/- including applicable tax and additional miscellaneous charges. The Complainant was allotted Virtual Office Space, 13th Floor for a Down Payment Plan.

iii. That the construction of the said Project was completed way back in 2019 and the occupancy certificate was applied for. The Occupancy Certificate has been received on 02.06.2020 by the Respondent Company. That the Complainant is misleading this Authority and hiding the fact that the Respondent Company has time and again issued offers of possession and demand notices to the Complainant. It is submitted that an Offer of Possession for Fit-

out was issued by the Respondent Company to the Complainants at the time of anticipation of the Occupancy Certificate issued reminder offer of possession.

iv. That the State Government had acquired the land which comprises the said Project land and transferred the same to the Respondent Company, for development of the said Project in accordance with its Master Plan and then it had carved out various Sectors and Plots therein. In pursuance to this, the Respondent Company started construction over the said project land, after obtaining all necessary sanctions/approvals/ clearances from different state/central agencies/authorities. It is pertinent to mention that the Respondent Company received initial approval of building plans on 4th of December, 2015, and started the milestone Construction of the present Project.

v. That subsequent to receiving the Building Plans, as mentioned above, the Respondent Company started the construction and also began allotting units to the concerned allottees. Furthermore, the Respondent Company on certain recommendation changed the name of the project from the *'Imperia Byron'* to *'Imperia Mindspace'*.

vi. It is submitted that the Complainant is an investor, who has made investment in the Esteemed Project namely "Imperia Byron", now "Imperia Mindspace", located at Sector 62 Gurgaon Haryana. Accordingly, all parties had executed Memorandum of Understanding. The Complainant had purchased the said unit for a total sale consideration of 25,26,762/- including applicable tax and additional miscellaneous charges shall be paid by the Complainant at the time of handing over possession of unit.

vii. That the Complainant has not revealed this fact that he had delayed and defaulted in making payment towards the unit, time and again. However, despite the inordinate delays and defaults on behalf of the Respondent Company, the Respondent Company reinstate the allotment of Complainant and issued him Offer of Possession for fit-out. It must be further noted that after pandemic, the working protocols of the IT sector has transformed into work-from-home, due to which the real estate has immensely suffered and despite of which, the Respondent Company is adhering to the promises.

viii. That it is a matter of fact that the Respondent Company directs all the payments received from the allottees, towards the construction of the undertaken project and thus, default in depositing the payment by the allottees disrupts the construction speed and hinders the completion of the committed project, which eventually affects the delivery of the project to allottees. It is also necessary to bring in notice that despite of several hindrances and certain *force majeure*, such as recent COVID-19 pandemic, the Respondent Company has successfully procured the Occupancy Certificate dated02.06.2020, which exhibits the *Bonafide* intention of the Respondent Company to complete the project.

ix. That despite being fully aware of the status of the project and the reasons for delay, which were absolutely unforeseeable and beyond the control of the Respondent Company, the Complainant herein filed the present Complaint and the same is based on concocted and misconceived statements.

x. The Complainant was well aware that there might be unforeseen and untoward incidents or circumstances, being beyond the control

of the Respondent Company, which will cause hindrances in the timely completion of construction of the project.

xi. That owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court issued a ban on construction activities in the region from November 4, 2019, onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. In pursuance to the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on December 9, 2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m., and the complete ban was lifted by the Hon'ble Supreme Court on 14th February, 2020.

xii. That Clause 26 of the said MOU states that if the dispute or difference shall arise between the parties, the same shall be referred for Arbitration Proceedings. The said Clause 26 has been reproduced below for this Hon'ble Authority's perusal-

"That in case of any dispute or difference between the parties in respect of this MOU, the same shall be referred for arbitration to be conducted by the Sole Arbitrator to be appointed by the Chairman cum Managing Director of the Developer in accordance with the Arbitration and Conciliation Act, 1996. The seat of arbitral proceedings shall be New Delhi".

xiii. That the complaint filed by the Complainant is merely a tactic to harass the Respondent as the Complainant was duly informed from time to time regarding the status of the project.

xiv. That it is pertinent to the Respondent company have sent mail on 26.10.2022 for the execution of Conveyance Deed. That the

Complainant has misled this Hon'ble Authority and have concealed the fact that they were at default in paying the maintenance cost and services charges, among other incidental charges, for the period of Lease to the Developer or to any other Maintenance Agency appointed by the Developer, and the same remains unpaid by the Complainant. In addition to this, as the offer of possession has already been issued to the Complainant, the Respondent Company is also liable to recover maintenance charges from the Complainant to the tune of Rs. 10/- per sq. ft. per Monthplus GSTand also liable to recover holding charges of Rs. 20/-per sq. ft. per Month plus GST, calculated from the date of offer of possession to the date of realization of this present Complaint, along with maintenance charges and the same has been sent to complaint vide letter on 07.08.2023.

xv. That the Respondent Company has duly honored its part of the obligations without any delay, however, the Complainant attempting to extort the Respondent Company to earn unreasonable profit and commercial gain at the cost of the Respondent Company. No cause of action has arisen in favour of the Complainant to file this present Complaint.

xvi. It is worthwhile to mention herein, that the Respondent company was not able to file Reply as the Respondent Company was under moratorium, as CIRP proceedings were initiated against the Respondent Company i.e. Imperia Structures Ltd. vide order dated 31.08.2023 passed by the Hon'ble NCLT in IB-525/PB/2022.

Written submission filed by respondent

i. The Complainants applied for allotment of a unit in the Respondent's project originally titled 'Imperia Byron', later renamed 'Mindspace', located at Sector-62, Gurugram (hereinafter referred to as the "Project"), on 11.08.2014. Pursuant thereto, a Memorandum of Understanding (MoU) was executed between the parties on 16.08.2014, by which a virtual space admeasuring 500 sq. ft. was allotted to the Complainants.

ii. It is highly pertinent to submit that an Offer of Possession for Fit-Out was issued to the Complainants on 15.07.2019, in anticipation of the grant of the Occupancy Certificate (OC). It is a standard industry practice to permit fit-out works prior to formal issuance of OC to ensure minimal post-OC delays.

iii. That the OC for the project was granted on 02.06.2020. The timeline for obtaining the same was impacted solely due to the outbreak of the COVID-19 pandemic, a recognized force majeure event that disrupted all statutory and construction activities.

iv. Upon receipt of the OC, an Offer of Possession was issued to the Complainants on 22.06.2020, duly informing them of the completion of the unit and procedure to take possession.

v. Further, it is submitted that the Respondent kept the Complainants duly informed, both at the stage of anticipated OC and after receipt thereof. The Complainants' allegation of non-disclosure is, therefore, entirely baseless and contrary to the record.

vi. The Complainants' allegation of non-payment of Assured Returns is wholly misleading. The Respondent, in compliance with the MoU dated 16.08.2014, disbursed a total of Rs. 17,54,785/- (Rupees

Seventeen Lakhs Fifty-Four Thousand Seven Hundred Eighty-Five only) towards Assured Returns from August 2014 to February 2020.

vii. As per Clause 4 of the MoU, the performance of obligations was subject to *force majeure* events, including pandemics and lockdowns. The disruption caused by COVID-19 was unprecedented, and the resulting suspension of commercial activity directly impacted the continuance of Assured Returns beyond February 2020. No breach or default can be attributed to the Respondent in such circumstances.

viii. The Respondent issued repeated communications, including a letter dated 12.12.2022 and email dated 26.10.2022, requesting the Complainants to come forward for execution of the Conveyance Deed. However, the Complainants willfully failed to comply.

ix. Accordingly, holding charges were levied as the Complainants continued to withhold execution of the Conveyance Deed. The same was duly communicated to the Complainants through a letter dated 07.08.2023, calling upon them to pay ₹2,18,300/- towards maintenance and GST, and ₹4,36,500/- towards holding charges, amounting to a total of ₹6,54,800/-. The basis and heads of these charges were clearly set out in the communication. The Complainants' plea of ignorance is a deliberate falsehood intended to avoid their lawful contractual obligations. Despite being given ample opportunity, the Complainants failed to execute the Conveyance Deed or pay the outstanding dues. Instead, they have chosen to file the present proceedings solely with an intent to delay, obfuscate, and evade compliance.

6. 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 submissions made by the complainant.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

8. 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

9. 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.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to

be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding complainants are in breach of agreement for non-invocation of arbitration.

11. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

> *"**26.** "That in case of any dispute or difference between the parties in respect of this MOU, the same shall be referred for arbitration to be conducted by the Sole Arbitrator to be appointed by the Chairman cum Managing Director of the Developer in accordance with the Arbitration and Conciliation Act, 1996. The seat of arbitral proceedings shall be New Delhi".*

12. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority

would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

13. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors.,*** Consumer ***case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-*
>
> > *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
>
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*
>
> *...*
>
> *56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

14. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause

in the builder buyer agreement, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.**2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

15. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

F.II Objections regarding force majeure

16. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction during the years 2015-2016-2017-2018. The plea of the respondent regarding various orders of the NGT and covid-19 advanced in this regard is devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. That on 05.05.2025, the Authority appointed the Local Commissioner (LC) to visit the project site to verify the status of the Occupation Certificate for the tower in which the Complainants' unit is located and to submit a report accordingly.

- **Conclusion of the Report**

17. The site of the project namely "Imperia Mindspace" in Sector-62, Gurugram being developed by M/s Imperia Structures Limited has been inspected on 08.07.2025 and it is submitted that:

I. None on behalf of allottee complainant and respondent promoter appeared on the project site during site inspection.

II. The promoter M/s Imperia Structures Limited has allotted the commercial space to the allottee/complainant in the project "Imperia Mindspace".

III. M/s Imperia Structures Limited has developed tower - C (part of the entire project approved by DTCP Haryana under license no. 86 of 2010) based on development agreement and named the tower/project as "Imperia Mindspace". The same part project is registered with the Authority vide RC no. 240 of 2017.

IV. The Occupation certificate dated 02.06.2020 for tower - C as per approved plans has been issued by DTCP Haryana in favour of licensee.

H. Findings on the relief sought by the complainants:

i. Directed the respondent to clear all dues of assured return with interest.

II. Direct the respondent to handover the physical possession of the said unit to the complainants within a given period of time

ii. Direct the respondent to pay the Delayed Possession Charges calculated from the due date of possession 04/12/2017 till the actual delivery of possession of the unit to the complainants.

iv. Direct the respondent to pay the differential amount of circle rate applicable in 2017 and the amount to be paid at the time of execution of the sale deed to the complainants.

H.I Directed the respondent to clear all dues of assured return with interest.

18. The Complainants in the present complaint are seeking unpaid assured returns on a monthly basis from the Respondent, as per the agreed terms. It is pleaded that the Respondent has failed to comply with the terms and conditions of the agreement. Although the assured returns were paid for some time, the Respondent later refused to continue the payments. However, the Respondent has taken a different stand, contending that

although the assured returns were paid up to February 2020, no further payments were made after the coming into force of the Act of 2019, as such payments were declared illegal, and also due to the impact of the COVID-19 pandemic.

19. In **Gaurav Kaushik and Anr. vs. Vatika Ltd.,** the Authority held that when the payment of assured returns forms an integral part of the Memorandum of Understanding or Buyer's Agreement—whether through a specific clause in the document, by way of an addendum, or as part of the terms and conditions of unit allotment—the promoter is liable to pay the assured amount as agreed.

20. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale/MOU only and between the same contracting parties to agreement for sale/MOU. Then after coming into force the Act of 2016 w.e.f. 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the **Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

21. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

22. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such as ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited (RERA-PKL-2068-2019)*** where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard. That this Authority has also deliberated the issue of assured return in number of cases including ***Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)*** as well as cases numbered as 518 of 2021, 622

of 2021 and 633 of 2021, and similar view has been taken in present case.

23. Upon consideration of the documents available on record and the submissions made by the Complainants and the Respondent, the Authority is satisfied that the Respondent is in contravention of the provisions of the Act. A Memorandum of Understanding (MoU) was executed between the parties on 16.08.2014.

24. It is pertinent to note that the assured return is payable to the Allottees pursuant to the provisions of the said MoU. As per the MoU, the promoter committed to paying assured returns at the rate of Rs. 60/- per sq. ft. per month on 500 sq. ft. to the Allottee from 15.08.2014 until the offer for possession of the space. Thereafter, the Developer shall pay Rs. 50/- (Rupees Fifty Only) per sq. ft. per month on 500 sq. ft. as assured rental until the offered space is leased out to the intended lessee.

25. Upon further consideration of the documents on record and the submissions made by both parties, it is evident that the Complainants have sought the unpaid amount of assured returns along with interest thereon, as per the terms of the MoU. As per the MoU dated 16.08.2014, the promoter had agreed to pay the Complainants–Allottees Rs. 60/- per sq. ft. per month from 15.08.2014 till the offer for possession. Thereafter, Rs. 50/- per sq. ft. per month was to be paid on 500 sq. ft. as assured rental until the space was leased out to an intended lessee.

26. It is a matter of record that the assured returns were paid by the Respondent–promoter up to February 2020, however, the Respondent subsequently refused to continue the said payments.

27. That the Occupation Certificate (OC) for the block in which the Complainants' unit is situated was obtained by the Respondent–

promoter on 02.06.2020. The Authority is of the view that the construction of the said project is deemed to be complete upon receipt of the Occupation Certificate from the competent authority.

28. Therefore, considering the facts and circumstances of the present case, the Respondent is directed to pay the assured return at the agreed rate of Rs. 60/- per sq. ft. per month from February 2020 (i.e., the date from which the assured return has not been paid) until the date of offer of possession, i.e., 22.06.2020, subsequent to obtaining the Occupation Certificate on 02.06.2020. Thereafter, the Respondent shall pay assured rental at the rate of Rs. 50/- per sq. ft. per month from 22.06.2020 onwards, until the offered space is leased out to the intended lessee, in accordance with the terms of the Memorandum of Understanding (MoU) dated 16.08.2014.

29. The Respondent is further directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order, after adjustment of any outstanding dues, if any, from the Complainants. Failing such payment within the stipulated period, the outstanding amount shall carry interest at the rate of 8.90% per annum until the date of actual realization.

H.II Direct the respondent to handover the physical possession of the unit.

H.III Direct the respondent to pay the Delayed Possession Charges calculated from the due date of possession 04/12/2017 till the actual delivery of possession of the unit to the complainants.

30. The reliefs sought by the Complainants is considered collectively, as they are inter-connected and arise from the same cause of action.

31. The Authority further observes that the proposition now before it is whether an allottee who is entitled to receive assured returns even after

the expiry of the due date of possession is simultaneously entitled to both assured returns and delayed possession charges?

32. In order to address the above proposition, it is pertinent to consider that the assured return is payable to the Allottee by virtue of a provision in the Memorandum of Understanding (MoU)/Builder Buyer Agreement (BBA), or through an addendum to the MoU/BBA or the Allotment Letter. In the present case, the assured return is payable from 15.08.2014 until the offer of possession of the space. A comparison of the assured return, which is Rs. 30,000/- per month, with the delayed possession charges—approximately Rs. 18,000/- per month as per the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016—clearly reflects that the assured return is significantly higher.

33. Accordingly, the Authority holds that in cases where the assured return is reasonable and comparable to the delayed possession charges under Section 18 of the Act, and is contractually payable even after the due date of possession until the offer of possession is made, the Allottee shall be entitled to receive either the assured return or the delayed possession charges, whichever is higher, without prejudice to any other remedies available, including compensation. In the present case, the assured return was contractually payable until the offer of possession was made to the Complainants. The project is deemed habitable or fit for occupation only upon the grant of the Occupation Certificate by the competent authority.

34. Hence, the Authority directs the Respondent to pay the assured return at the agreed rate of Rs. 60/- per sq. ft. per month from February 2020 (the date from which the assured return has not been paid) until the

date of offer of possession, i.e., 22.06.2020, subsequent to the issuance of the Occupation Certificate on 02.06.2020 by the competent authority.

35. Considering that the subject matter of the allotment pertains to virtual space, the relief sought by the Complainant for physical possession is hereby declined.

I. Directions issued by the Authority:

36. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The respondent is directed to pay the assured return at the agreed rate of Rs. 60/- per sq. ft. per month from February 2020 (the date from which the assured return has not been paid) until the date of offer of possession, i.e., 22.06.2020, after obtaining the Occupation Certificate (OC) on 02.06.2020 from the competent authority.

ii. Thereafter, the Respondent shall pay assured rental at the rate of Rs.50/- per sq. ft. per month from 22.06.2020 onwards, until the offered space is leased out to the intended lessee, in accordance with the terms of the Memorandum of Understanding (MOU) dated 16.08.2014.

iii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.90% p.a. till the date of actual realization.

iv. The Respondent is also directed to execute the Conveyance Deed in respect of the allotted virtual space in favor of the Complainant within 30 days from the date of this order. The Complainant is also

directed to comply with the obligations laid down under Section 19(10) of the Real Estate (Regulation and Development) Act, 2016.

v. That the subject matter of the allotment pertains to virtual space, the said relief sought by the Complainant for physical possession is hereby declined.

vi. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

37. Complaint stands disposed of.

38. File be consigned to registry.

Dated: 01.08.2025

(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram