

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

Complaint no.: 3812 of 2024  
Order reserved on: 04.07.2025  
Pronouncement of order: 01.08.2025

1. Anita Chhikara w/o Virender Chhikara
2. Vivek Chhikara s/o Virender Chhikara

**Both Resident** of H-968, 2<sup>nd</sup> floor, Palam extension  
Sector-7 Dwarka Delhi

**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:**

Complainant in person  
Ms. Ada Khursheed (Advocate)

Complainants  
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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Mindspace, sector-62, Gurugram
2.	Nature of the project	IT Park/cyber park
3.	Project area	8.36 acres
4.	DTCP license no.	86 of 2010 dated 23.10.2010 valid upto 22.10.220
5.	Name of licensee	Baakir Real Estate Pvt Ltd and 2 others
6.	RERA Registered/ not registered	240 of 2017 dated 25.09.2017 for 2.2 acres
7.	Apartment no.	321, 3 <sup>rd</sup> floor
8.	Unit area admeasuring	1000 sq. ft.
9.	Date of booking	28.05.2012
10.	Date of MOU executed between the parties	18.06.2012 [page 31 of the complaint]
11.	Assured return clause	4. That the <b>developer will pay Rs.60/- per sq. ft. per month on 1000 sq. ft. as an assured return to the Allottees (s) from 06.06.2012 till offer for possession of the space.</b> The Developer has represented to the Allottees that the possession of the Said unit shall be handed over by the Developer to the Allottees (s) within a maximum period of 2 years after

		<i>approval of building plans of the said project from competent authorities of the said project to force majeure. ...</i>
12.	Date of building plans	04.12.2015 [as stated by the respondent]
13.	Due date of possession	04.12.2017 [calculated from the date of building plans]
14.	Sale consideration	Basic sale consideration Rs. 28,50,000/- Total sale consideration Rs. 36,58,140/- [As per applicant file page 34 of the reply]
15.	Amount paid by the complainant	Rs. 36,93,540/- [As per applicant file page 34 of the reply]
16.	Occupation certificate	02.06.2020 for tower-C [page 36 of the reply]
17.	Offer of possession	22.06.2020 [page 37 of the reply]

### B. Facts of the complaint:

3. The complainants have made the following submissions:

- i. That the complaint has been instituted by the complainant under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") alleging deficiency in service, non-delivery of possession, unauthorized change in unit details, and lack of redressal by the respondent/promoter, in



connection with a commercial property booked in the respondent's real estate project located at Sector 62, Gurugram, Haryana.

- ii. That the complainant entered into a Memorandum of Understanding (MOU) dated 18/06/2012 with the respondent for the purchase of a commercial unit bearing Unit No. 321, measuring 1000 sq. ft. on the 3rd Floor in the project then known as "Imperia Vavron", situated at Sector 62, Gurugram. That the said unit was clearly indicated to be a "lockable office space", as per the terms agreed upon in the MOU and subsequent communications, and the complainant was promised delivery upon completion.
- iii. That the complainant diligently made all payments as demanded from time to time and paid the full and final amount towards the said unit in July 2019, expecting timely delivery of the property in accordance with the MOU. That after a passage of time, the complainant came to know that the respondent had unilaterally changed the project name from "Imperia Vavron" to "Mindspace Imperia", and had also changed the unit number from 321 to B-0247, without giving any notice or obtaining consent from the complainant.
- iv. That most significantly, the complainant discovered that the nature of the unit had been altered from a lockable office space to a "virtual space", which is not what was originally agreed to or paid for. Such a unilateral change amounts to a breach of contract, misrepresentation, and deficiency in service under the Act. That despite the full payment being made in July 2019, the complainant has not been handed over possession, nor has any Registered Offer of Allotment (ROA) or Agreement for Sale been executed with the complainant, in contravention of the Act.

- v. That since 2019, the complainant has made repeated attempts to contact the respondent through email and personal visits to the site and their office, but no substantive response has been received. The complainant made extensive efforts, including:
- Sending multiple emails from 2019 to 2022
  - Personally visiting the project site and offices,
  - Making phone calls and raising queries through official channels.
- vi. That the complainant was informed vaguely in 2021 and 2022 by the customer support team to remain patient due to "unforeseen circumstances," and that matters would improve in the following financial year, but no improvement or clarity followed thereafter.
- vii. That in November 2023, the complainant received an email from Mr. Gaurav Katiyar, Interim Resolution Professional (IRP), regarding maintenance charges, and it was through this communication that the complainant came to know that the respondent had been admitted into Corporate Insolvency Resolution Process (CIRP) under the National Company Law Tribunal (NCLT).
- viii. That the complainant promptly responded to the IRP but has not received any further communication, and despite personally visiting the project in 2024 and sending further emails, there has been complete silence from both the respondent and the IRP.

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

4. The complainants have sought following relief(s):
- a) **Direct the respondent to pay delay possession charges along with physical possession of the unit.**

**D. Reply by the respondent**

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



- i. That the Complainants have not approached this Authority with clean hands. Their intention is to exploit the legal process to claim benefits they are neither entitled to in law nor in equity.
- ii. The Complainants voluntarily booked an office lockable unit admeasuring 1000 sq. ft. in the Respondent's project titled "Imperia Byron", later renamed "Imperia Mindspace", at Sector 62, Gurugram, on 05.06.2012, for a total sale consideration of Rs. 36,58,140/- including applicable taxes and charges. A Down Payment Plan was opted and a Memorandum of Understanding (MoU) was duly executed. Against this investment, the Complainants have already received Assured Returns amounting to Rs. 48,44,000/- from June 2012 to July 2019, which significantly exceeds their principal investment.
- iii. The construction was completed in 2019, and an Offer of Possession for Fit-Out was issued in anticipation of the Occupancy Certificate, which was eventually granted on 02.06.2020. The Complainants' claims of delay or non-disclosure are misleading and contrary to facts. Upon approval of revised building plans, the name of the project was changed from Imperia Byron to Imperia Mindspace, and all stakeholders, including the Complainants, were duly informed.
- iv. The Complainants, being investors and not consumers in the traditional sense, were made aware of the nature of the asset, the risks involved, and the terms and conditions, including that all miscellaneous charges were to be paid at the time of possession.
- v. Despite being in default of timely payments, the Respondent, in good faith, reinstated the Complainants' allotment and continued to extend communication and possession offers. Post-COVID-19, the real estate sector has undergone structural disruptions, particularly



due to shifts in work-from-home trends — a fact well known to the Complainants. The Complaint is based on concocted narratives and misconceived assertions, made despite the Complainants' full awareness of the status and timeline of the project.

- vi. The Complainants were always aware that external unforeseeable factors may impact project timelines. The construction delays were caused by legitimate force majeure events. Specifically, due to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court imposed a construction ban from 04.11.2019 to 14.02.2020, thereby directly impacting all real estate development in the region.
- vii. As per Clause 20 of the MoU, all disputes arising from the agreement are subject to Arbitration, with proceedings to be conducted by a Sole Arbitrator appointed by the CMD of the Developer, with seat at New Delhi. This Hon'ble Authority, therefore, lacks jurisdiction to entertain this matter, which is arbitrable in nature.
- viii. The Complaint is a tactic to harass the Respondent Company, despite the Complainants being duly informed of project status and financial obligations from time to time. The Respondent issued a letter dated 28.10.2022, calling upon the Complainants to execute the Conveyance Deed, which the Complainants failed to do without justification.
- ix. The Complainants are in default of maintenance charges and service charges, which are contractually payable post-offer of possession. The Respondent is entitled to recover:
  - Maintenance charges at Rs. 10/- per sq. ft. per month + GST



- Holding charges at Rs. 20/- per sq. ft. per month + GST from the date of offer of possession until the date of compliance. These dues were communicated via letter dated 12.12.2022.
- x. The Respondent Company has fulfilled all contractual obligations. However, the Complainants, rather than complying with their part of the agreement, are misusing legal proceedings to extract unwarranted benefits. Moreover, the Respondent Company could not earlier file a reply due to the moratorium imposed under IBC, as CIRP proceedings were initiated against it via Order dated 31.08.2023 by the Hon'ble NCLT, New Delhi in IB-525/PB/2022.
  - **Written Submissions made by the respondent:**
- xi. That the Complainants were duly informed vide letter dated 15.03.2016 about the change in the name of the project from "Byron" to "Mindspace." Further, the Complainants were personally informed during office visits and also through a letter dated 26.03.2016, regarding the change in the unit type from Lockable Space to Virtual Space (admeasuring 1000 sq. ft.). The denial of such communication by the Complainants is false, misleading, and devoid of any merit.
- xii. An Offer of Possession for Fit-Out was issued on 10.08.2019, in anticipation of the Occupancy Certificate (OC), following standard industry practice aimed at minimizing delays after OC issuance. The OC was granted on 02.06.2020, after delays caused exclusively by the COVID-19 pandemic, a globally recognized force majeure event that severely impacted construction and statutory approvals. Following the grant of the OC, a formal Offer of Possession was





issued to the Complainants on 22.06.2020, confirming completion of the project.

- xiii. At every relevant stage, the Complainants were duly informed about the project status. Their allegation of non-disclosure is, therefore, factually incorrect and contrary to the record. As per Clause 4 of the MoU, the obligation to pay Assured Returns ceased upon grant of OC (i.e., 02.06.2020). Nevertheless, the Respondent continued payments until March 2021, amounting to Rs. 48,44,000/-, against a principal investment of Rs. 36,95,540/-, resulting in a substantial surplus in favour of the Complainants. Their current claim is thus legally and equitably untenable.
- xiv. The basis of all charges, including maintenance and holding charges, has been clearly set out in communications addressed to the Complainants. Their plea of ignorance is false and an attempt to evade lawful obligations. The Complainants have been afforded repeated opportunities to comply with contractual requirements, including execution of the Conveyance Deed and clearing dues. Instead, they have opted to initiate the present proceedings with the sole intent to delay and obstruct compliance. It is reiterated that no breach can be attributed to the Respondent when delays arose solely from a legally recognized force majeure event, i.e., the COVID-19 pandemic, as per Clause 5 of the MoU.
- xv. The conduct of the Complainants reflects a mala fide intent to misuse statutory remedies under the RERA Act for ulterior motives, and not for bona fide redressal. The complaint is based on suppression, misrepresentation, and falsehoods, and accordingly, deserves to be dismissed with exemplary costs.



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:**

**FI. Objections regarding force majeure**

11. 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. Findings on the relief sought by the complainants:**

- i. **Direct the respondent to pay delay possession charges along with physical possession of the unit.**
12. The Counsel for the complainants submits that the complainants have complied with all payment obligations under the MOU and made the full and final payment towards the allotted unit in July 2019, relying on the respondent's commitment for timely possession.
13. Subsequently, it came to the complainant's notice that the respondent unilaterally altered the project name from '*Imperia Vavron*' to '*Mindspace Imperia*' and changed the unit number from 321 to B-0247, without any intimation or consent from the complainant, thereby breaching the terms of the agreement and violating the complainant's rights.

14. The complainants, therefore, seeks appropriate reliefs including specific performance, directions for possession and delay possession charges.
15. The Counsel for the respondent submits that the complainants were duly informed through a letter dated 15.03.2016 regarding the change of the project name from 'Byron' to 'Mindspace'. Further, the complainants were personally apprised during their office visits and also formally notified via a letter dated 26.03.2016 concerning the change in the unit type from 'Lockable Space' to 'Virtual Space' (admeasuring 1000 sq. ft.). The complainants' denial of receiving such communications is false, misleading, and without any basis.
16. At every material stage, the complainants were kept informed about the project status. Their allegation of non-disclosure is therefore factually incorrect and contrary to the documentary record.
17. As per Clause 4 of the Memorandum of Understanding (MoU), the obligation to pay assured returns ceased upon the grant of the Occupancy Certificate (OC) dated 02.06.2020. Nonetheless, the respondent continued to pay assured returns until March 2021, totalling Rs. 48,44,000/-, against a principal investment of Rs. 36,95,540/-, thereby resulting in a substantial surplus in favour of the complainants. In view of the above, the complainant's current claim lacks both legal and equitable merit and is accordingly untenable.
18. The Authority has perused the records and submissions of both parties. It is an admitted fact that the respondent-promoter has paid the assured returns to the complainants in accordance with the terms of the MOU, including for a period extending beyond the date of offer of possession.
19. As per Clause 4 of the MOU dated 18.06.2012 the developer was obligated to hand over possession of the unit(s) to the allottee(s) within a maximum period of two years from the date of approval of the building plans of the



period of two years from the date of approval of the building plans of the project. The building plan was sanctioned on 04.12.2015. Accordingly, the due date for possession comes out to be 04.12.2017. The record reflects that the offer of possession was made on 22.06.2020 and the Occupancy Certificate (OC) was obtained by the promoter on 02.06.2020.


20. In light of the above facts, and guided by the judgment of the Hon'ble National Consumer Disputes Redressal Commission in ***DLF Homes Panchkula Pvt. Ltd. v. Dinesh Sharma*** as well as the relevant provisions of the Real Estate (Regulation and Development) Act, 2016, the Authority is of the considered view that where assured returns have been paid by the promoter beyond the due possession date and possession has been offered thereafter, no further delay charges are payable under Section 18(1) of the Act. The law does not permit a double benefit in the form of both assured returns and delay interest.
21. The respondent is, therefore, directed to hand over possession of the allotted unit(s) to the complainant(s) strictly in accordance with the terms of the Builder-Buyer Agreement and the provisions of the Act.
22. Accordingly, the claim for delay possession charges stands declined. However, the respondent is directed to complete all remaining formalities, including execution of the conveyance deed in favour of the complainant(s), in compliance with Section 17 of the Act read with Rule 16 of the Haryana Real Estate (Regulation and Development) Rules, 2017, within a period of 30 days from the date of this order.

**H. Directions issued by the Authority:**

23. 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. No case of delay possession charges (DPC) is made out against the respondent.
  - ii. The respondent/promoter shall hand over the physical possession of the allotted unit to the Complainants within 30 days from the date of this order and shall also execute the conveyance deed in their favour in accordance with Section 17(1) of the Act, 2016, upon payment of applicable stamp duty and registration charges by the Complainants. The complainants shall also comply with the obligations laid down under Section 19(10)&(11) of the Real Estate (Regulation and Development) Act, 2016.
  - iii. The respondent is also directed to levy maintenance charges upon the complainants/allottees strictly in accordance with the terms of the Builder-Buyer Agreement.
  - iv. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.
24. Complaint stands disposed of.
25. File be consigned to registry.

Dated: 01.08.2025



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