

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

Date of decision : 10.10.2025

Name of the Builder		M/s Imperia Structures Ltd.	
Project Name		"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2457/2024	Vivek Garg Vs. M/s Imperia Structures Ltd.	Ms. Rashi Jain, Adv. (Complainant) Shri Subham Mishra, Adv. (Respondent)
2.	CR/2459/2024	Manju Gupta Vs. M/s Imperia Structures Ltd.	Ms. Rashi Jain, Adv. (Complainant) Shri Subham Mishra, 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 arising in the present matters are similar in nature. The complainant(s) in the above-referred cases are allottees of the project namely "*The Esfera - Phase II*", situated at Sector-37C, Gurugram,

Haryana, being developed by the respondent-promoter, *Imperia Structure Limited*. The terms and conditions of the Builder Buyer Agreements executed between the parties are also substantially similar. The fulcrum of the dispute in both cases pertains to the failure of the respondent-promoter to deliver possession of the units within the stipulated time, for which the complainant(s) have sought refund of the amounts paid along with interest.

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.	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
Name of licensee	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	N/A
Possession clause as per clause 10.1. of BBA	10.1. SCHEDULE FOR POSSESSION <i>"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there</i>



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 CR/2457/2024 w.r.t	Details CR/2459/2024 w.r.t
1.	Complaint filed on	05.06.2024	05.06.2024
2.	Reply filed on	11.09.2025	11.09.2025
4.	Unit no.	J-202, 2 nd Floor, Tower-J (As per page no. 69 of the complaint)	J-102, 1 st Floor, Tower-J (As per page no. 72 of the complaint)
5.	Unit area	3340 sq. ft. (super area) (As per page no. 69 of the complaint)	3340 sq. ft. (super area) (As per page no. 72 of the complaint)
6.	Builder buyer agreement executed on	30.12.2015 (As per page no. 67 of the complaint)	07.09.2015 (As per page no. 70 of the complaint)
7.	Due date of possession	30.06.2019 (Note: Due date to be calculated three and half years from the date of execution of apartment buyer's agreement i.e., 30.12.2015)	07.03.2019 (Note: Due date to be calculated three and half years from the date of execution of apartment buyer's agreement i.e., 07.03.2015)



8.	Total sale price of the flat	Rs.2,06,31,180/- (As per applicant ledger on page no. 74 of the complaint)	Rs.1,99,13,080/- (As per applicant ledger on page no. 77 of the complaint)
9.	Amount paid by the complainant	Rs.35,50,000/- (As per receipt information on page no. 50 of the complaint)	Rs.25,00,000/- (As per receipt information on page no. 50 of the complaint)
12.	Occupation certificate	N/A	N/A
13.	Offer of possession	N/A	N/A
16.	Relief sought	Refund along with interest.	Refund along with interest.

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 refund along with interest.
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/2457/2024 titled as** Vivek Garg VS Imperia Structures Limited are being taken into consideration for determining the rights of the allottee(s) qua refund along with interest.

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. No.	Particulars	Details
1.	Project name and location	"The Esfera, Phase-II" at sector 37C, Gurgaon, Haryana
2.	Project area	17 acres
3.	Nature of project	Group housing Colony
4.	RERA registered/not registered	352 of 2017 dated 17.11.2017 valid up to 31.12.2020 plus six months covid-19 extension i.e., 30.06.2021
5.	Extension of RERA registration	RC/ REP/HARERA/GGM/ 352 of 2017 /7(3)/2022/04 dated 30.08.2022
6.	Validity of extension	01.07.2021 to 30.06.2024
7.	DTCP license no.	64 of 2011 dated 16.07.2011
	Valid up to	15.07.2024
	Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and 4 others
8.	Date of execution of apartment buyer's agreement	30.12.2015 (As per page no. 67 of the complaint)
9.	Unit No.	J-202, 2 nd Floor, Tower-J

		(As per page no. 69 of the complaint)
10.	Unit area admeasuring	3340 sq. ft. (super area) (As per page no. 69 of the complaint)
11.	Possession clause	<p>10.1 Schedule for possession of the said apartment</p> <p><i>The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses 11.1, 11.2, 11.3 and clause 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the developer/company from time to time or any failure on the part of the intending allottee(s) to abide by all or any of the terms or conditions of this agreement.</i></p> <p>(As per page no. 83 of the complaint)</p>
12.	Due date of delivery of possession	<p>30.06.2019</p> <p>(Note: Due date to be calculated three and half years from the date of execution of apartment buyer's agreement i.e., 30.12.2015)</p>

13.	Total consideration	Rs.2,06,31,180/- (As per applicant ledger on page no. 74 of the complaint)
14.	Total amount paid by the complainant	Rs.35,50,000/- (As per receipt information on page no. 50 of the complaint)
15.	Occupation certificate	N/A
16.	Offer of possession	Not offered

B. Facts of the complaint:

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

- i. That the Complainant is a bona fide and innocent homebuyer who was induced to book Unit No. J-202 in the project "*THE ESFERA*", Sector-37C, Gurugram, vide allotment dated 01.08.2015 (Customer ID: IMP-E-0704), based on false, misleading, and frivolous representations made by the Respondents. Had the true facts regarding the status of the project and the Respondents' ability to deliver possession been disclosed, the Complainant would not have entered into the said transaction or invested his hard-earned money.
- ii. The Respondents are the promoters of the said project, wherein Respondent No.1 is responsible for development and construction, while Respondent No.2 is the land-owning entity. The project is being jointly developed by the Respondents, and therefore they are jointly and severally liable for all obligations towards the Complainant, including refund of amounts received.

- iii. The Complainant has paid a total sum of ₹35,50,000/- towards the said unit, strictly in compliance with the demands raised by the Respondents. The Respondents have violated Section 12 of the Real Estate (Regulation and Development) Act, 2016, by inducing the Complainant to invest in the project on the basis of false advertisements, brochures, and representations, thereby causing wrongful loss to the Complainant.
- iv. As per the representations and the Builder Buyer Agreement, possession was to be delivered by 2019 (within 42 months). However, till date, the project remains incomplete and the Respondents have failed to obtain the Fire NOC and consequently the Occupation Certificate, rendering the project uninhabitable. This constitutes a clear violation of Section 18 of the Act.
- v. The Respondents, through aggressive and misleading advertisements across various media platforms, falsely projected the project as being developed by reputed builders, promised world-class amenities, and assured timely delivery. These representations were knowingly false and intended solely to lure innocent homebuyers such as the Complainant.
- vi. Relying upon such false assurances, the Complainant booked the unit for a total sale consideration of ₹2,06,31,185/- and continued to make payments under the belief that the Respondents would honour their commitments. Despite the passage of nearly nine years since booking, the project remains incomplete. From 2019 onwards, the Complainant repeatedly approached the Respondents seeking possession. Each time, the Respondents admitted that the project was incomplete, lacked statutory

approvals, and required more time. Despite repeated assurances and promises of delay compensation, possession was never offered lawfully.

- vii. Even in 2022, the Respondents failed to procure the Occupation Certificate due to the absence of Fire NOC, yet attempted to coerce the Complainant into accepting illegal possession. Such conduct clearly amounts to deficiency in service and unfair trade practice. Having lost faith in the Respondents and faced with indefinite delay, the Complainant exercised his statutory right under Section 18 of the Act to withdraw from the project and sought refund of the entire amount paid along with interest. However, the Respondents unlawfully refused refund and threatened forfeiture, leaving the Complainant with no alternative but to approach this Authority.
- viii. The continued failure of the Respondents to complete the project, obtain mandatory approvals, or refund the Complainant's money establishes gross violation of statutory obligations under the RERA Act and entitles the Complainant to refund of the entire amount paid along with interest @ SBI MCLR + 2% till actual realization.

C. Relief sought by the complainant:

- 9. The complainant has sought following relief(s):
 - (i) Direct the Respondent to refund the entire paid-up amount received from the Complainant, along with interest.

D. Reply by respondent:

- 10. The respondent by way of written reply made following submissions:
 - i. At the outset, it is respectfully submitted that the present complaint is misconceived, devoid of merit, and liable to be

dismissed in limine. The Complainant has approached this Hon'ble Authority seeking refund along with interest despite being in breach of the contractual obligations under the Apartment Buyer Agreement.

- ii. It is submitted that the Complainant, of his own free will and volition, booked a residential unit on 01.08.2015 with Respondent No. 1 in the project namely "The Esfera", situated at Sector-37C, Gurugram (hereinafter referred to as "the said Project"), for a total sale consideration of ₹2,21,59,516/- (Rupees Two Crore Twenty-One Lakh Fifty-Nine Thousand Five Hundred Sixteen Only), inclusive of applicable taxes and miscellaneous charges.
- iii. The Complainant has filed the present complaint seeking refund of the amount allegedly paid by him along with interest, which relief is wholly unjustified and contrary to the facts and terms of the Apartment Buyer Agreement.
- iv. It is submitted that the Complainant opted for the Possession Linked Payment Plan. As per the said plan, the Complainant was required to pay 20% of the Basic Sale Price within 90 days of booking, i.e., an amount of ₹36,90,116/- on or before 30.10.2015. However, the Complainant paid only ₹17,39,558/- and thereafter failed to make further payments despite issuance of several demand letters and reminders by Respondent No. 1. Owing to the Complainant's continuous and wilful default, the allotment of the unit was cancelled strictly in accordance with the terms and conditions of the Apartment Buyer Agreement.
- v. The allegation of the Complainant that illegal demands were raised by the Respondent is false, vague, and unsupported by any

documentary evidence. It is submitted that all demands raised by Respondent No. 1 were strictly in accordance with the payment schedule and terms of the Apartment Buyer Agreement executed between the parties.

- vi. In view of the foregoing facts and circumstances, it is respectfully submitted that the Complainant, having himself committed breach of the terms of the Apartment Buyer Agreement, is not entitled to the relief of refund or interest. The present complaint is therefore liable to be dismissed.

11. 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:

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

E. I Territorial jurisdiction

13. 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

14. 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.

15. 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 refund the entire paid-up amount received from the Complainant, along with interest.

16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

17. That the complainant states he is a bona fide and innocent homebuyer who was book Unit No. J-202 in the project "The Esfera", Sector-37C, Gurugram, vide allotment dated 01.08.2015, on the basis of false, misleading, and frivolous assurances made by the Respondents regarding timely completion and delivery of possession.
18. The Complainant has paid a total amount of ₹35,50,000/- towards the said unit in accordance with the demands raised by the Respondents. The Respondents have violated Section 12 of the Real Estate (Regulation and Development) Act, 2016 by inducing the Complainant to invest through false advertisements, brochures, and representations, thereby causing wrongful loss.
19. As per the representations and the Builder Buyer Agreement, possession was required to be delivered by the year 2019. However, even after lapse of several years, the Respondents failed to complete the project and did not obtain the mandatory Fire NOC and Occupation

Certificate, rendering the project unfit for lawful possession, in violation of Section 18 of the Act.

20. The Respondents, through aggressive and misleading advertisements, falsely projected the project as being developed by reputed builders with world-class amenities and assured timely delivery. These representations were knowingly false and intended to lure innocent homebuyers.
21. Despite repeated approaches by the Complainant from 2019 onwards, the Respondents consistently admitted delays, lack of statutory approvals, and sought further time, while failing to deliver possession. Even in 2022, in the absence of an Occupation Certificate, the Respondents attempted to coerce the Complainant into accepting illegal possession, amounting to deficiency in service and unfair trade practice.
22. Having lost faith due to prolonged and indefinite delay, the Complainant exercised his statutory right under Section 18 of the Act to withdraw from the project and sought refund of the entire amount paid along with interest. The Respondents' refusal to refund and threats of forfeiture compelled the Complainant to approach this Hon'ble Authority.
23. The continued failure of the Respondents to complete the project, obtain mandatory approvals, or refund the Complainant's money constitutes gross violation of statutory obligations under the RERA Act, entitling the Complainant to refund of the entire amount paid along with interest at the prescribed rate till actual realization.
24. The Respondent has raised a preliminary objection regarding the maintainability of the present complaint, contending that the same is misconceived and liable to be dismissed on the ground that the

Complainant is in breach of the terms of the Apartment Buyer Agreement and is therefore not entitled to seek refund along with interest.

25. It has been contended by the Respondent that the Complainant voluntarily booked the residential unit on 01.08.2015 in the project "*The Esfera*", Sector-37C, Gurugram, for a total sale consideration of ₹2,21,59,516/-, inclusive of taxes and other charges, and thereafter filed the present complaint seeking refund contrary to the contractual stipulations.
26. The Respondent has further submitted that the Complainant opted for a Possession Linked Payment Plan and was required to pay 20% of the Basic Sale Price within 90 days of booking, amounting to ₹36,90,116/-, whereas the Complainant allegedly paid only ₹17,39,558/- and failed to honour subsequent payment obligations despite issuance of demand letters and reminders. On account of the alleged continuous default, the Respondent claims to have cancelled the allotment strictly in accordance with the terms of the Apartment Buyer Agreement.
27. The Respondent has denied the allegations of raising illegal demands and has submitted that all demands raised upon the Complainant were strictly in accordance with the payment schedule and terms of the Apartment Buyer Agreement. It has been contended that the Complainant has failed to place any documentary evidence on record to substantiate the allegations of illegal or arbitrary demands.
28. On the basis of the aforesaid submissions, the Respondent has contended that the Complainant, having himself committed breach of the contractual terms by defaulting in payments, is not entitled to seek refund or interest under the provisions of the Real Estate (Regulation

and Development) Act, 2016, and that the present complaint deserves dismissal.

29. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration. As observed by **Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021**

"..... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

20. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. it was observed that:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest

for the period of delay till handing over possession at the rate prescribed

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
31. The Authority hereby directs the promoter to return the amount received by it i.e., Rs.35,50,000/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

II. Directions of the Authority:

32. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.
- i. The respondent- promoter is directed to refund the entire amount of Rs.35,50,000/- paid by the complainant with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending

rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the date of actual realization.

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

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

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

35. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.10.2025