

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

Complaint no. : 1875 of 2025
Date of filing : 08.04.2025
Date of decision : 09.12.2025

Sunita Saini
R/o: - H. No.- 1254, Bagchi Ram Chander
Paharganj, Swami Ram Tirth Nagar Delhi- 110055

Complainant

Versus

M/s Imperia Structure Limited
Regd. Office at: A-25, Mohan Cooperative Industrial
Estate, Mathura Road, New Delhi – 110044

Respondent

CORAM:

Shri Arun Kumar
Shri P S Saini

Chairman
Member

APPEARANCE:

Sh. Dharmender Sehrawat (Advocate)
Sh. Shubham Mishra (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 08.04.2025 has been filed by the complainant/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 proviso of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	MINDSPACE, Sector-62, Gurgaon
2.	Nature of the project	Commercial Project
3.	RERA Registered/ not registered	240 of 2017 dated 25.09.2017
4.	License no. and validity	LC-1629/DS(R)-2010/9965 dated 10.08.2010 [At page 17 of complaint]
5.	Unit no.	IMP-B-0240 [page 14 of application filed by respondent]
6.	Unit area admeasuring	500 sq. ft. [At page 18 of complaint]
7.	Date of booking/allotment	Not on record
8.	Date of MoU [duly signed by both the parties]	03.04.2012 [Page 15 of complaint]
9.	Assured return clause as per MoU dt. 03.04.2012	1. <i>That the Developer will pay Rs.60/- (Rupees 60 only) per s. ft. per month on 500 sq. f. as an assured return to the Allottee(s) from 01.04.2012 till offer</i>



		<p>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 return till the offered Space is leased out to intended Lessee."</p> <p>[As per MoU at page 19 of complaint]</p>
10.	Lease Rental clause as per MoU dt. 03.04.2012	<p>9. <i>That the Developer undertakes to put the Said Unit on lease and to effectuate the same the Allottee(S) hereby authorize the Developer to negotiate and finalise leasing arrangements with any suitable tenants..."</i></p> <p>a. <i>The Lease shall be for minimum rent of Rs.50/- (Rupees Fifty only) per sq. ft. of super built-up area per month.</i></p> <p>10. <i>That if on account of any reason, the lease rent charges is less than Rs.50/- (Rupees Fifty only) per sq. ft. of super area per month, then the Developer shall return to the Allottee(s), a sum calculated at Rs.120(One Hundred Twenty Only) per sq. ft. of super built area for every one rupee drop in the lease rentals below Rs.50 (Rupees Fifty only)per sq. ft. per month.</i></p> <p>11. <i>That in the case the lease rent charged is more than Rs.50/- (Rupees Fifty only) per sq. ft. of super area per month, then the Allottee(s) shall pay, a sum calculated at Rs.60(Rupees Sixty Only) per sq. ft. of super built area for every One Rupee increase in the lease rentals over and above Rs.50 (Rupees Fifty only)per sq. ft. per month to the Developer. The increased sale consideration would be payable by Allottee(S) to the developer or to reduce the proportionate area for the increased capital.</i></p> <p>[As per MoU at page 20 of complaint]</p>
11.	Possession clause	<p>4. "....The developer has represented to the allottee(s) that the possession of the said unit shall be handed over by the Developer to the allottee(s) but in the event of virtual space the space will be registered in favor of allottee(s) and handed over to the lessee within a maximum period of 2(two) years after approval of building plans of the said</p>

		<i>project from the competent authorities of the said project subject to force majeure..."</i> [At page 19 of complaint]
12.	Due date of possession	03.04.2014 [as per clause 4 of MoU at page 19 of complaint]
13.	Total sale consideration	Rs.20,00,000/- [As per MoU dt. 03.04.2012 at page 18 of complaint]
14.	Amount paid by the complainant	Rs.20,00,000/- [As per MoU dt. 03.04.2012 at page 19 of complaint]
15.	Occupation certificate /Completion certificate	02.06.2020 [page 11 of application]
16.	Offer of possession	10.07.2020 [page 14 of application]
17.	Letter for calling complainants for taking possession	18.10.2022 and 12.12.2023 [page 37 & 38 of application]
18.	Letter for calling complainants for execution of CD	07.08.2023 [page 39 of application]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the respondent is a real estate developer and have been developing various residential as well as commercial projects in and around NCR region. The respondent approached the complainant in the month of August, 2011 and represented that a project named "**Mindspace**" is being developed by respondent for which requisite

license had been obtained under the License No. LC-1629/DS(R)-2010/9965 dated 10.08.2010 from DTCP, Haryana situated at Sector-62 Gurgaon. The respondent planned to develop an office and commercial complex on the land by constructing thereon multi-storied buildings. The project is comprising of Premium offices cum Retail Shops with the basic amenities like car parking space and other utilities.

- b. That representatives of respondent informed and assured the complainant that the construction on the project will commence within a period of 24 Months i.e. maximum by the end of March, 2014 and possession/lease out the virtual property will be handed over within the period of 24 months. Further the representatives of respondent had represented that the respondent will pay the assured return amount of Rs. 60/- per sq. ft per month on 500 sq. ft. after deducting the TDS amount as assured return for the unit till the possession/lease out of the unit on making the complete payment of basic sale price. Thus, believing upon the representations and assurances of the respondent, the complainant made the basic sale price (BSP) of Rs. 20,00,000/- and the same has been confirmed by the respondent in the MOU signed between the parties. Thus, it represents that the amount was acknowledged and accepted by the respondent.
- c. That the complainant asked at the time of booking to provide the allotment letter and to execute the Buyer's Agreement and to sign

the MOU for assured returns, but the respondent gave false excuses and delayed stating one reason or another. Thereafter, the respondent created an undue pressure to give money as per their demands without executing BBA and it is also to state that within that said time period the complainant had already made a payment of substantial amount out of the total consideration. Thus, after several requests the respondent executed the Memorandum of Understanding on 03.04.2012 wherein confirming the receiving of full payment of basic sale price of the unit and respondent assured to pay the assured return amount from 01.04.2012.

- d. That the respondent start paying the assured return amount from 01.04.2012 and assured the complainant that the assured return will be provided till the date of possession/ lease out of the property of the unit. However, the respondent has failed to abide the terms and conditions as per the MOU Signed between the parties.
- e. That the respondent time to time contacted the officials of the respondent to known the status of the construction of the project and the representative of the respondent always assured that the possession/lease out the property will be given on time without any delay and default, further if there is any default then respondent will compensate as per the MOU. Further the respondent assured that assured return will also be given till the date of the possession/lease out of the unit.

- f. That initially respondent paid the assured return amount however from 01.03.2020 to till date no assured return amount was given by the respondent. The respondent has acted in fraudulently manner who only give false assurance of possession/ lease out the property and assured return amount as per MOU.
- g. That thereafter the complainant tried to communicate with the respondent but did not get any satisfactory reply from the respondent. The respondent has failed to give possession/ lease out the property on time and there is delay in possession/lease out of the property of 10 years, further the respondent has failed to pay assured returns till possession/lease out the property as per MOU.
- h. That the complainant bonafidely for his needs and better future purchased the unit in question, further the Respondent failed to give the possession/lease out of the unit in question on time.
- i. That as huge time had been lapsed, the Complainants therefore made several calls to the customer care and marketing departments to seek status of the lease out of property, but the Complainant was never provided with a satisfactory response and the Respondent's officials made false and frivolous statements and gave false assurances that the unit shall be lease out within the agreed time.
- j. That almost a period of 128 months has been lapsed from the date of booking of the unit. Despite passing of huge time the Respondent had deliberately failed to lease out the property/unit to the

Complainant and further failed to make timely payments of the assured return and assured lease amount as per MOU.

- k. That as per section 19(4) of the RERA Act, 2016 the allottee is entitled to claim for compensation with interest in the event that the project is delayed. That the respondent has not bothered to act accordingly and did not comply with the terms and conditions of the MOU and did not handover the possession/lease out the property till date.
- l. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest as per RERA Act in case of any default on his part. They are also liable to pay pendent lite interest and further interest till date of actual payment.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. To direct the respondent to handover the possession/lease out the unit purchased by the complainant.
 - b. To pay the assured return payment @Rs.60/- per sq. ft. per month on 500 sq. ft. till the date of handover the possession/lease out of unit.
 - c. Cost of litigation of Rs.1,00,000/-.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -
 - a. That the present complaint has been filed seeking delayed possession charges in respect of a *virtual space* measuring **500 sq. ft.**, allotted to the complainants in the respondent company's project titled "**Mindspace**", situated at **Sector 62, Gurugram**. It is submitted that the said unit was originally booked by the Complainants in the year **2012**.
 - b. That the is liable to be dismissed at the very threshold on two distinct and independent grounds i.e., Bar of limitation, and Non-applicability of the RERA Act to Virtual Spaces. The complainant was offered possession on 10.07.2020, and the right to initiate proceedings, if any, expired upon completion of three years thereafter. The present complaint, filed in 2025, suffers from an inordinate and unexplained delay of two years.
 - c. That the Authority has consistently held that complaints filed beyond the three-year period under Article 113 of the Limitation Act are not maintainable before HRERA.
 - d. That the unit in question is a virtual space, for which the agreement executed between both the parties expressly stipulates that no physical possession shall be handed over. The Hon'ble UP Real Estate Appellate Tribunal, in **Anchal Garg v. WTC Noida Developmental Company Pvt. Ltd.** (Order dated 21.03.2025), has categorically held that Virtual Spaces/Unlockable Spaces do not fall within the ambit of the RERA Act, thereby rendering such complaints non-maintainable. The complaint is time-barred, devoid

of jurisdiction under RERA, and legally untenable, and thus warrants dismissal forthwith.

- e. That the Complainants have filed the present complaint alleging claims towards **delayed possession charges, compensation for rental loss, litigation costs**, and are seeking relief in the form of **interest and compensation**. However, it is respectfully submitted that the **cause of action**, if any, arose more than **five years** prior to the filing of the present complaint. Accordingly, the complaint has been filed **after an inordinate delay of over three years**, and is therefore **barred by limitation** under the applicable provisions of the **Limitation Act, 1963**.
- f. That the **Occupancy Certificate** for the project was obtained on **02.06.2020**, and possession was duly offered to the complainants vide communication dated **10.07.2020**, whereby they were informed about the receipt of the OC and were requested to clear the outstanding dues and proceed with the execution of the **Conveyance Deed**. However, despite such intimation, the complainants failed to take any steps in this regard.
- g. That the Respondent Company entered the Corporate Insolvency Resolution Process (CIRP) vide order dated 31.08.2023, passed by the Hon'ble National Company Law Tribunal. During the period of the moratorium, which lasted for four months, all operations of the respondent company were suspended. The respondent company was subsequently discharged from the CIRP by the order of the Hon'ble National Company Law Appellate Tribunal dated 01.02.2024.

- h. That in terms of **Section 19(10) of the Real Estate (Regulation and Development) Act, 2016**, it is the statutory obligation of the allottee to take possession of the unit within two months from the date of receipt of the OC. That despite repeated communications and requests made by the respondent for taking possession and executing the conveyance deed, the complainant failed to comply with the same. Therefore, the complainant is in clear breach of their obligations under the Act and is liable to be treated as a defaulter in law.
- i. That the complainant has been fully aware of the fact that the OC has been obtained for the subject unit. Despite this, the Complainant has failed to come for the execution of the conveyance deed. The respondent company has been maintaining the building and the subject unit from its own resources ever since the grant of OC, and continues to incur maintenance expenses on account of the complainant's failure to take possession. That despite repeated communications and reminders, including letters dated **18.10.2022 and 12.12.2023**, the complainant has deliberately withheld herself from taking possession, seemingly in an attempt to unjustly claim delayed possession charges. A letter dated **07.08.2023** was again sent to the complainants, calling upon them to appear for the execution of the conveyance deed, however, the complainants still failed to turn up. Further, a letter dated **09.11.2023** was duly issued and verified by the Interim Resolution Professional appointed during the moratorium period of the respondent company. The said letter sets out a clearly the outstanding amount payable by the complainant and was duly

communicated to the complainant. That the IRP was appointed by the Hon'ble Court, thereby ensuring his neutrality and reliability to the verification process. Such conduct clearly violates the statutory duty imposed under **Section 19(6) of the Real Estate (Regulation and Development) Act, 2016**, which obligates the allottee to make necessary payments, including maintenance charges, in accordance with the terms of the agreement. The continued default and non-cooperation on the part of the complainant, the respondent is constrained to claim holding charges and maintenance dues, which as of date cumulatively amount to **Rs. 9,49,333/-**.

- j. That the complainant, who has been in persistent and willfully defaulting, with the liability now swelling to Rs. 9,49,333/-. Her conduct reflects a complete disregard for the terms of the agreement and the process of law. The present proceedings are nothing but a mala fide attempt to evade their own liabilities and shift the blame onto the respondent. The present complaint, being frivolous, vexatious, and devoid of any merit, is liable to be dismissed with exemplary costs, as the sole default lies squarely with the complainant.
- k. That the Limitation Act, 1963 is applicable to all proceedings under the RERA Act by virtue of **Section 29(2)** of the Limitation Act, unless expressly excluded. The RERA Act does not provide for any independent or overriding limitation framework. Accordingly, proceedings before this Hon'ble Authority are governed by the general principles of limitation, as enshrined in the Limitation Act. That **Section 3** of the Limitation Act mandates that every proceeding filed beyond the prescribed period "shall be

dismissed" and this is a mandatory provision that leaves no scope for discretion. That in the absence of any specific limitation prescribed under the RERA Act for the filing of complaints, **Article 113 of the Schedule to the Limitation Act** applies, which prescribes a period of **three years** from the date on which the right to sue accrues.

- l. That in the present case, the complainants' right, if any, arose in 2020. However, no action was initiated by the complainants until the filing of the present complaint in the year **2025**, i.e., after a **substantial and unexplained delay** of several years. Such prolonged inaction clearly indicates that the complainants have **slept over their alleged rights**, and as such, the complaint is liable to be dismissed at the threshold for being **time-barred and legally untenable**. That this Authority has, in catena of decisions, consistently held that complaints filed after a delay of more than three years from the date of accrual of cause of action are **not maintainable**.
- m. That no cogent explanation, reason, or condonable justification has been presented by the complainant for the inordinate delay in approaching this Authority. The mere fact of filing a complaint under a consumer-friendly statute does not exempt parties from complying with the basic statutory requirements, including limitation.
- n. That the unit in dispute is clearly a virtual space, and the agreement itself unequivocally records that no physical possession shall be delivered. Accordingly, as laid down by the Hon'ble UP REAT, the

present complaint is not maintainable under the provisions of the RERA Act and is liable to be dismissed at the very threshold.

7. 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 parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. 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.

11. 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.

G. Findings on the relief sought by the complainants.

- G.I. To direct the respondent to handover possession/lease out the unit purchased by the complainant.**
- G.II To direct the respondent to pay assured return payment @Rs.60/- per sq. ft. per month on 500 sq. ft. till the date of handover the possession/lease out of unit.**
- G.III Cost of litigation of Rs.1,00,000/-.**

12. On consideration of the circumstances, documents, submissions made by the parties, the Authority observes that the unit in question was allotted to the allottee vide MOU dated 03.04.2012. As per clause 4 of the MOU dated 03.04.2012, the possession of the subject unit was to be offered within 2 years i.e. 03.04.2014. However, Occupancy Certificate was issued by Competent Authority on 02.06.2020 and the possession was offered by the respondent company on 10.07.2020.

13. The respondent submitted that the complaint is barred by limitation as Occupancy Certificate was issued by Competent Authority way back on

02.06.2020 and the possession was offer on 10.07.2020 after obtaining Occupation Certificate, thus the Authority does not have jurisdiction to entertain the present complaint.

14. The complainant remained dormant of their rights for approximately 5 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.
15. One such principle is that delay and latches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the Authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the Authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the Authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
16. Further, as observed in the landmark case i.e., ***B.L. Sreedhar and Ors. Vs. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who

sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.

17. In the light of the above stated facts and applying aforesaid principles Authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed.

G.IV Holding Charges

18. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

19. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under-

“134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.”

20. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainant.

G.V Execute conveyance deed.

21. The Authority observes that the conveyance has been subjected to all kinds of terms and conditions of agreement and the complainants not being in default under any provisions of MoU and compliance with all provisions, formalities and documentation as prescribed by the

promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

"Section 17: - Transfer of title

17(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

22. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The respondent is directed to execute the conveyance deed within one months from the date of this order.

H. Directions of the Authority

23. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed

executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

- ii. Since the Occupation Certificate was obtained from Competent Authority on 02.06.2020, the respondent is directed to get the conveyance deed executed within a period of 30 days from the date of this order.
- iii. It is further directed that no stamp duty charges shall be payable by the complainants in case the same has already been paid to the respondent.
- iv. The respondent shall not charge anything from the complainant which is not part of MOU.
- v. The respondent is directed not to levy any holding charges upon the complainant.

24. Complaint stands disposed of.

25. File be consigned to registry.



(P S Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.12.2025