

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

Complaint no. : 3026 of 2024
First date of hearing: 25.10.2024
Date of decision : 31.10.2025

P Srinivas,
R/O: -House No.606, Towercs-04,
Supertech Capetown, Sector 74,
Noida, Up - 201301

Complainant

Versus

M/s Imperia structures Limited
Regd. Office at: Unit. No. A-25,
Mohan Cooperative Industrial;
Estate, Mathura Road, New Delhi-110044

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Varun Kumar (Advocate)
Sh. Rishi Kapoor (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 26.07.2024 has been filed by the complainant/allottee 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 provisions of the

Act or the Rules and regulations made there under 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. N.	Particulars	Details
1	Name of the project	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana
2	Nature of the project	Group Housing Complex
3	DTCP license no.	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
4	Name of licensee	M/s Phonix Datatech Services Pvt Ltd and 4 others
5	RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
6	Unit no.	1102, 11 th floor, Tower-C
7	Unit area	1435 sq. ft.
8	Date of Agreement to sell	10.07.2013
9	Possession clause	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 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)</i>

		<i>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."</i>
10	Due date of possession	10.01.2017 [date of execution of Agreement to sell +three and half years]
11	Total sale consideration	Rs. 72,30,357/- [on page 85 of complaint as per BBA]
12	Amount paid by the complainant	Rs. 65,53,700/- [as per SOA on page 61 of complaint]
13	OC received on	13.03.2024 [on page 67 of reply]
14	Offer of possession	15.03.2024 - demand of Rs. 17,29,993/- was raised by the respondent. [on page 69 of reply]
15	Reminders dated	17.07.2024, 17.08.2024 [on page 74,75 of reply]
16	Pre cancellation letter dated	28.08.2024 [on page 76 of reply]
17	Cancellation letter dated	28.10.2024 [on page 77 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -
 1. The complainant is innocent homebuyers who has been entrapped into booking unit bearing no. 1102, tower c having Customer-ID as IMP-E-0566 in the project namely "THE ESFERA" located at Sector 37-C, Gurgaon, based upon false and frivolous assurances given by

- the respondent. Relevantly had the complainant been aware of the frivolous assurances, he would not have booked the unit and delivered his hard earned money in the project.
- II. That the respondent is the promoter of the project namely "THE ESFERA" located at Sector 37-C, gurgaon, who is liable to provide possession of the unit and pay delay interest to the complainant.
 - III. That the complainant till date has paid sum of Rs.65,53,700/- to the respondent towards the unit no. Tower C 1102.
 - IV. That upon hearing the frivolous and moonshine assurances as made by the Respondent and believing them to be true, the complainant got trapped into the web of lies as spun by the respondent and based upon the malicious advertisement done by the respondent, agreed to put his hard earned money into the project of the respondent and accordingly booked the unit bearing No. 1102, Tower C in the project of the respondent for total sum consideration of Rs.73,30,375/-.
 - V. That relevantly the complainant being common middle class persons did not have the sufficient means and thus based upon the assurance of the respondent of timely possession, the complainant had availed loan facility.
 - VI. That in December, 2016 the complainant approached the respondent under the hope of getting the possession and registry of the unit, however, the complainant's dreams were shattered into bits and pieces upon hearing from the respondent that the project was still under construction and it will take more time to deliver the possession of the unit. Relevantly the respondent in order to evade its responsibility stated that the company had been trying its best to

deliver the project as early as possible and to keep the trust on the respondent. Furthermore in order to keep the complainant lured and trapped in the scheme even made representation that, they would pay the delay penalty interest to the complainant.

- VII. That in 2020 the complainant again approached the respondent to get the possession of the unit, however once again was met with the same fate as the project of the respondent was not in habitable position nor the respondent had the requisite noc and completion of the project and thereby the respondent is not in position to provide the possession and registry of the unit.
- VIII. That in 2022, the complainant again approached the respondent under the hope and impression that he will get the possession of the unit along with the copy of the occupancy certificate. However, the complainant was met with the same fate. Thus the complainant had no option but to wait for the possession of the unit as he had already paid a huge amount of money.
- IX. That in December, 2022 the complainant received a letter from the respondent, which brought a hope of ray in the life of the complainant. However the perusal of the letter once again shattered the hopes of the complainant as the project was not complete by then and the letter was just a way to keep the complainant trapped in the project. Moreover the said letter brought before the complainant, another atrocity of the respondent as the Respondent had unilaterally increased the area of the unit to 1578 sq ft. from 1435 sq. ft.
- X. That on 15.03.2024, the complainant for the first time has received final demand/ offer of possession from the respondent which

brought a ray of hope and happiness in the life of the complainant under the impression that finally his exile has ended and he will be in position to live in his dream home. However the perusal of the said letter completely shattered the dreams and the hopes of the complainant as the respondent had firstly, not provided and taken into account the delay penalty which is payable to the complainant on account of delay on the part of the respondent in giving possession in accordance with the mandate of the rera law. Secondly, the respondent has levied arbitrary, unlawful and wrong charges upon the complainant contrary to the mandate of law. Thirdly, the respondent has unilaterally increased the area of the unit, without giving any justification and explanation for the same.

C. Relief sought by the complainant

4. The complainant has sought following relief(s).
 - a) Direct the respondent to recall the offer of possession dated 15.03.2024 and provide valid & just offer of possession by paying the delay interest charges to the complainant at the rate of @ sbi mclr + 2% as the respondent is liable for violation of section 18 r/w 12 of rera act, 2016.
 - b) Direct the respondent to recall the offer of possession dated 15.03.2024 and letter dated 07.12.2022 and provide valid & just offer of possession by removing the charges demanded on the pretext of increase in area.
 - c) Direct the respondent to undertake the lease deed of the unit in favour of the complainant.
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 has contested the complaint vide its reply dated 25.11.2024 on following grounds: -
 - i. That the present complaint, filed by the complainant, is bundle of lies and hence is liable to be dismissed. Further the complaint is also not maintainable as it doesn't disclose any cause of action for filing the complaint against the respondent.
 - ii. That the complainant has not approached this Authority with clean hands. It is submitted that the complainants are attempting to raise absurd and illegitimate grounds in order to acquire benefits, for which the Complainants are not entitled in the least.
 - iii. That the complainant at his own free will, booked a unit bearing no. c-1102 in the project namely 'The Esfera', located at Sector 37-C, Gurugram on 02.07.2012, for a total sale consideration of Rs.75,40,977/- including applicable tax and additional miscellaneous charges. A Builder Agreement to sell was also signed on 10.07.2013.
 - iv. That the construction of the said project was completed way back and the occupancy certificate was applied by the respondent company. The occupancy certificate pertaining to the said project where the unit of the complainant is situated has been received on 13.03.2024.
 - v. It is submitted that after obtaining oc, an offer of possession was issued by the respondent company to the complainant on 15.03.2024. However, the complainant has not come forward to

take the possession of the unit in question and has instead filed the present complaint for ulterior motives. Further, the complainant has alleged and prayed that the offer of possession sent on 15.03.2024 is a sham and the same is invalid, however, it is submitted that the offer of possession has been sent after obtaining the duly valid OC from competent authorities. Hence, the contentions of the complainant are liable to be rejected.

- vi. It is humbly submitted that the demand raised in the possession letter is strictly based on the BBA signed between the complainant and respondent company. The delay possession charges were also deducted in the possession letter in accordance with the BBA. The respondent company has strictly adhered to the terms and conditions of the BBA and the delay in possession was due to unforeseen circumstances. Despite deducting the DPC, the complainant remains liable to pay an outstanding amount of Rs. 17,29,993/- as per the terms of the BBA. The respondent company sent the offer of possession on 15.03.2024. However, the complainant has failed to clear the outstanding dues and take possession of the unit.
- vii. Consequently, the respondent company issued reminder letters dated 17.07.2024 and 17.08.2024 to the complainant.. Despite repeated reminders, the complainant did not respond. As a result, the respondent company had no option but to initiate the pre-cancellation process and sent a pre-cancellation notice dated 28.08.2024. Instead of responding to the pre-cancellation notice, the complainant has chosen to file this complaint seeking possession

and DPC, which appears to be an attempt to harass the respondent company.

- viii. Considering all the facts presented herein, the Respondent Company had no alternative but to proceed with the cancellation of the Complainant's unit vide letter dated 28.10.2024. This action was necessitated due to the complainant's failure to clear the outstanding dues despite repeated reminders.
- ix. 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 and started the milestone construction of the present project.
- x. 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.
- xi. 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 them 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.
- xii. 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 dated 13.03.2024, which exhibits the bona fide intention of the respondent company to complete the project.
- xiii. 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.
- xiv. 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.
- xv. 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.

- xvi. That the builder Agreement to sell states that if the dispute or difference shall arise between the parties, the same shall be referred for arbitration proceedings.
 - xvii. 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.
 - xviii. 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.
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) The promoter shall-

(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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to recall the offer of possession dated 15.03.2024 and provide valid & just offer of possession by paying the delay interest charges to the complainant at the rate of @ sbi mclr + 2% as the respondent is liable for violation of section 18 r/w 12 of rera act, 2016.

F.II Direct the respondent to recall the offer of possession dated 15.03.2024 and letter dated 07.12.2022 and provide valid & just offer of possession by removing the charges demanded on the pretext of increase in area.

F.III Direct the respondent to undertake the lease deed of the unit in favour of the complainant.

12. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.
13. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

14. The counsel for the complainant during the course of proceedings submitted that the complainant was allotted unit no. 1102, 11th Floor, Tower-C in the project "The Esfera" Phase II vide Agreement to sell dated 10.07.2013 for a total sale consideration of Rs.72,30,357/-. As per clause 10.1 of the agreement, possession was to be handed over within three and half years from the date of execution of agreement i.e., by 10.01.2017. It is submitted that the complainant has already paid an amount of Rs.65,53,700/- against the total sale consideration. The counsel further submitted that the occupation certificate was obtained by the respondent only on 13.03.2024 and thereafter an offer of possession was issued on 15.03.2024 raising a demand of Rs.17,29,993/- which included inflated and arbitrary charges not forming part of the agreed terms of the Agreement to sell. It is submitted

that despite raising objections to the excessive demand, the respondent issued reminders dated 17.07.2024 and 17.08.2024 followed by pre-cancellation letter dated 28.08.2024 and finally cancelled the unit vide letter dated 28.10.2024.

15. The counsel for the respondent on the other hand submitted that the occupation certificate of the project was received on 13.03.2024 and the offer of possession was duly made on 15.03.2024. It is submitted that the complainant failed to clear the outstanding dues despite repeated reminders and therefore the respondent was constrained to issue pre-cancellation notice dated 28.08.2024 and thereafter cancel the unit on 28.10.2024 in terms of the agreement. It is contended that the cancellation was in accordance with the contractual terms and the complainant cannot avoid payment of lawful dues.
16. The Authority has carefully examined the submissions of both the parties and perused the record. It is not in dispute that possession was contractually due on 10.01.2017 whereas the occupation certificate was obtained on 13.03.2024. Thus, there has been substantial delay in completion of the project. It is further not in dispute that the complainant has already paid Rs.65,53,700/- against the total sale consideration of Rs.72,30,357/-. The crux of the matter revolves around the demand raised at the time of offer of possession dated 15.03.2024 wherein an amount of Rs.17,29,993/- was demanded from the complainant.
17. The Authority observes that though the respondent is entitled to recover the balance sale consideration and other charges strictly in accordance with the terms of the Agreement to sell, however, any demand raised beyond the contractual stipulations cannot be sustained.

The material placed on record reflects that the demand raised at the time of offer of possession included charges which were not strictly in consonance with the agreed terms and appear to be inflated. At the stage of offer of possession, the promoter is obligated to raise only legitimate and contractually permissible dues.

18. The respondent thereafter proceeded to issue reminders dated 17.07.2024 and 17.08.2024 and pre-cancellation letter dated 28.08.2024 and ultimately cancelled the unit on 28.10.2024 on account of non-payment of the said demand. The foremost question which arises before the Authority is whether non-payment of an inflated and disputed demand can be construed as wilful default on the part of the complainant so as to justify cancellation.
19. The Authority is of the considered view that when the very foundation of the demand is not strictly as per the Agreement to sell, the respondent cannot treat non-payment thereof as default. A promoter cannot raise arbitrary charges at the stage of offer of possession and thereafter cancel the allotment on account of non-payment of such disputed amount. Such action defeats the objective of the Act, 2016 which mandates transparency and fairness in dealings between promoter and allottee. Therefore, the cancellation of the unit vide letter dated 28.10.2024, being founded on a demand not strictly in accordance with the contractual terms, hence, stands set aside.
20. Although the occupation certificate was obtained on 13.03.2024 and offer of possession was made on 15.03.2024, however, the demand accompanying the offer of possession. The complainant cannot be compelled to make payment of amounts which are not strictly payable under the agreement. Thus, the respondent is directed to revoke the

cancellation of unit no. 1102, Tower-C within a period of 30 days from the date of this order and issue a fresh statement of account strictly in accordance with the Agreement to sell dated 10.07.2013 reflecting only legitimate and contractually agreed dues.

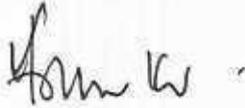
21. **Due date of handing over of possession:** The due date of possession is being calculated as per the possession clause 10.1 of the Agreement to sell dated 10.07.2013. Therefore, the due date of possession comes out to be which shall be 10.01.2017 (date of agreement to sell + three and half years).
22. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as

- on date i.e., 31.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default
26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 10.01.2017 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G. Directions of the authority

28. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The cancellation of the unit is not valid in the eyes of law, hence the said cancellation letter is hereby set aside.
 - ii. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of

- 10.85% p.a. for every month of delay from the due date of possession i.e., 10.01.2017 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from 10.01.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
29. Complaint as well as applications, if any, stand disposed off accordingly.
30. Files be consigned to registry.



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025