

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

**Complaint No:** 4866 of 2023  
**Date of complaint:** 30.10.2023  
**Date of order:** 09.12.2025

Colonel Ashok Kumar Tiwari

**Complainant**

**R/o:** A-245, Lower Ground Floor, A-Block,  
Shivalik, New Delhi-110017.

**Versus**

Imperia Structures Limited

**Respondent**

**Registered office at:** A-25, Mohan Cooperative  
Industrial Estate, Mathura Road, New Delhi-  
110044

**Corporate office at:** Plot No. 14, Ground Floor,  
Sector- 44, Institutional Area, Gurugram-  
122003

**CORAM:**

Shri Arun Kumar

**Chairman**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri Nilotpall Shyam and Ms. Shivali (Advocates)

**Complainant**

Shri Shubham Mishra (Advocate)

**Respondent**

**ORDER**

1. The present complaint 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Project name and location	"The Esfera" 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.	Welcome letter	26.12.2012 (As per page no. 18 of the complaint)
9.	Date of execution of builder buyer's agreement	Annexed but not executed
10.	Unit No.	1204, 12 <sup>th</sup> Floor, Block-E (As per page no. 27 of the complaint)
11.	Unit area admeasuring	1435 sq. ft. (super area) (As per page no. 27 of the complaint)
12.	Possession clause	<b>10.1 Schedule for possession of the said apartment</b> <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 <b>within a period of three and half years from</b></i>

		<p><i>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. 44 of the complaint)</p>
13.	Due date of delivery of possession	Cannot be ascertained
14.	Total consideration	Rs.80,67,821/- (As per SOA on page no. 7 of the reply)
15.	Total amount paid by the complainant	Rs.22,18,885/- (As per SOA on page no. 7 of the reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Demand letter	10.10.2013 & 06.11.2013 (As per page no. 10 & 11 of the reply)
19.	Reminder letter	02.04.2014 & 21.02.2014 (As per page no. 17 & 72 of the reply)
20.	Cancellation letter	18.12.2014 (As per page no. 93 of the complaint)
21.	Legal notice for refund of the paid-up amount	31.05.2017 (As per page no. 96 of the complaint)

### B. Facts of the complaint:

3. The complainant has made the following submissions:
  - I. That the complainant is respected citizen of India and the respondent through their representative had approached the complainant and

represented that the respondent's residential project namely "The Esfera" situated at Sector-37C, Gurgaon, Haryana will effectively serve the residential purpose of complainant and their family and has the best of the amenities.

- II. That based on the aforementioned representation and enquiries made, the complainant applied for allotment of unit in the project. Accordingly, allotment was done vide welcome letter dated 26.12.2012. Pursuant to which, a BBA was sent for the transfer of flat no. E-1204 in the impugned project wherein total consideration was Rs.75,33,815/-. The said BBA was never executed by the respondent company, however, the respondent company received money as the BBA. Thus, the date 26.12.2012 is deemed date of execution of BBA for all practical purposes.
- III. That as per BBA, the respondents agreed to sell/ convey/ transfer the impugned unit with the right to exclusive use of parking space for an amount of Rs.75,33,815/- which includes Basic Sale Price and Car Parking Charges, External Development Charges and Infrastructure Development Charges, Preferential Location Charges plus applicable taxes. The Complainants have already paid a sum of Rs22,18,885/- towards the sale consideration in respect of the impugned unit.
- IV. That as per clause 10.1 of the BBA, the possession date for the impugned unit was agreed to be delivered within three and half years from the date of execution of the BBA. However, as there was complete lack of tangible development in the completion of the impugned project, the complainant stopped making payments subsequently and in due course. However, rather than taking efforts towards completion of the project and seek demand from the complainant, the respondent company illegally sent letter dated 25.11.2024 final notice requesting the complainant to make the balance payment as per one sided BBA without committing anything on the date of

handing over of possession of the impugned unit.

- V. That pursuant to letter dated 25.11.2014, the respondent company illegally sent the cancellation letter dated 18.12.2024 with regard to the impugned unit. The said letter was set without appreciating the legal and factual situation with regard to issue in hand. Once, it has been factually admitted position that the impugned project is delayed, the respondent company was not justified in issuing cancellation letter once it is unable to complete the impugned project in time. Thus, the cancellation is illegal and liable to be set aside being bad in law.
- VI. That the BBA sent by the respondent company is ex facie discriminatory, one sided and arbitrary and amounts to unfair trade practices in view of catena of judgements of Hon'ble Supreme Court. It is noteworthy that said clause of BBA is part of standard form of agreement which is biased, one sided, amounting to unfair trade practice as the complainant was compelled to sign on dotted lines in view of one-sided standard form of agreement i.e., BBA.
- VII. That the respondent with malafide intent gave false assurances to the complainant regarding the new dates of handing over the possession without assigning any reason whatsoever for such a prolonged delay. That after coming into force of Act of 2016 and applicable rules, the respondent company applied for registration of the impugned project before Hon'ble Authority in accordance with law. The Hon'ble Authority while discharging its regulatory/administrative functions granted the registration to the impugned real estate project on terms and condition as enumerated in the said registration certificate. The clause(x) of the said registration certificate clearly provides that the respondent company is under an obligation to refund the money paid along with interest at the prescribed rate if the promoter fails to deliver the possession of the impugned flat in accordance

with BBA or else the respondent company shall pay delayed interest for every month of delay in handing over the possession as per BBA till the actual handing over of the possession if the allottee wishes to continue with the project.

- VIII. That the respondent company failed to handover the possession to the complainant on the agreed date as provided under BBA. The reason for the delay in handing over the possession despite payment of 95% of the total consideration is only best known to the respondent company as they have never bothered to intimate any rhymes and reasoning for the delay to the complainant. Therefore, the respondent company has breached the sanctity of the BBA. The respondent company deliberately maintained silence and never bothered to abreast the complainant of the latest development of the project and any rhymes and reason for such a gross and inordinate delay. Henceforth, the respondent company is liable to refund the amount paid by the complainant along with interest from each date of payment till the actual transfer of the amount in accordance with Section 18 of the Act of 2016.
- IX. That the respondent is continuous and recurring defaulter and no respite is available against such a recurring either on justiciable or equitable ground. Any further extension to them will amount to travesty of justice as respondent's actions seems to be taken in bad faith and with ill motive to misappropriate complainant hard-earned money.

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

4. The complainant has sought following relief:
- i. Direct the respondent to refund of Rs.77,70,287/- to the complainant along with interest at prescribed rate compounded quarterly from the date of payment of each installment.

- ii. Direct the respondent to pay a cost of Rs.1,00,000/- towards the cost of the litigation.
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.
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 parties.

**D. Reply by the respondent:**

7. The respondent has contested the complaint on the following grounds:
  - I. That the complaint is *prima facie* not maintainable and must be dismissed for being vexatious to law. The complainant has approached the Hon'ble Authority with unclean hands and has tried to mislead this Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts.
  - II. That the complainant is guilty of *suppressio very suggestio falsi*. The complainant has suppressed and mis-stated the facts and, as such, the complaint apart from being wholly misconceived, is rather the abuse of the process of law. The complaint is liable to be dismissed on pretext of this ground itself.
  - III. That the complainant, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent company for booking of a residential unit in respondent's project 'The Esfera' located in Sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. E 1204 in favor of the complainant for a total consideration amount of Rs.80,67,821/- including

applicable tax and additional miscellaneous charges vide booking dated 19.12.2012 and terms and conditions mutually agreed by the complainant and the respondent company.

- IV. That consequently, the respondent company sent a builder buyer's agreement on 27.07.2013 with the complainant in interest of the booked unit. The BBA duly covers all the liabilities and rights pertaining to both the parties involved.
- V. That the said unit has been cancelled by the respondent company due to the complainant's continuous default in making payment for which the reminder has been sent to the complainant on 10.10.2013 and 06.11.2023. Hence the cancellation letter was sent to the complainant on 28.11.2013. However, with the request from complainant the said cancellation letter was temporarily halted by the respondent company in good faith. Following the payment of Rs.3,00,000/- on 24.02.2014. For further payment, the demand letter has been sent to the complainant, however, he has been continuously defaulted. The reminder letter has also been sent on 02.04.2014 for the same.
- VI. That the BBA has been dispatched to the complainant on 27.07.2013 for his confirmation and signature. However, the complainant has not returned the signed copies of the agreement. For the same the reminder has been sent to complainant on 21.02.2014. Despite reminder and request for signed copies of the BBA, the complainant failed to comply. Continuous default led to the final cancellation on 18.12.2014.
- VII. That pursuant to the term of the application form, the respondent is entitled to retain 15% of the total consideration amount upon cancellation.

- VIII. That the respondent is ready to refund the payment, subject to the condition that a deduction of 15% from the total consideration is made, as per the terms outlined in the application form.

**E. Jurisdiction of the Authority**

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

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 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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

9. 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. Maintainability of the complaint.**

10. The complainant booked a unit in the project of the respondent namely, "The Esfera", situated at Sector-37C, Gurugram. The complainant has annexed a copy of welcome letter of the unit of the complaint (annexed on page no. 18 of the complaint) and the complainant in furtherance of the said welcome letter paid an amount of Rs.22,18,885/- to the respondent.
11. The respondent in its reply dated 07.03.2024 mentioned that a copy of builder buyer's agreement was sent to the complainant on 26.07.2013 but the complainant never returned the signed copy of the same.
12. On perusal of the documents placed on record and facts stated above, the Authority observed that the transaction between the parties never progressed beyond the stage of an application form and did not culminate into allotment of any plot, apartment or building.
13. The counsel for the respondent vide proceedings of the day dated 28.08.2025 stated that the refund cheque was issued after cancellation dated 18.12.2014 and if the same was not encashed it was not due to the fault on the part of the respondent and the complaint is barred by the limitation. However, the counsel for the complainant clarified that the cheque was never received by the complainant.
14. In the present complaint, the complainant has made a payment of Rs.22,18,885/- in furtherance of the welcome letter dated 26.12.2012. Keeping in view all the above-stated facts, the Authority presumes that the respondent has never entered into any agreement with the complainant nor issued any allotment letter to the complainant. And as per the provisions of

the Act of 2016, only an allottee can approach the Authority for his grievances.

Section 2(d) of the Act of 2016 defines an "allottee" as under:

*"...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent."*


15. In the present complaint, neither any allotment has ever been made nor any agreement for sale has been executed. Mere a welcome letter and making the payment of booking amount, in the absence of any proper allotment letter and builder buyer's agreement, does not confer the status of an allottee upon the complainant. Thus, the complainant does not even fall under the definition of allottee as per section 2(d) of The Real Estate (Regulation and Development) Act, 2016 and thus, cannot file the complaint under section 31 of the RERA Act, 2016.
16. This Authority further observes that for a legally enforceable contract to come into existence, there must be consensus *ad-idem* on essential terms such as identification of the unit, consideration, payment schedule, rights and obligations of the parties which are ordinarily crystallized through an allotment letter and a builder buyer agreement. In the absence of such documents, no concluded contract for sale came into existence between the parties.
17. Since no concluded contract was formed and no allotment was made, the dispute raised by the complainant essentially relates to refund of money paid pursuant to an application form, is a matter falling outside the scope and jurisdiction of this Authority under the RERA Act, 2016.
18. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint is not maintainable as the complainant do not fall within the definition of "allottee" as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.

Consequently, the present complaint is not maintainable under the provisions of the Act. Thus, the present complaint is dismissed accordingly.

19. Complaint as well as applications, if any, stand disposed off accordingly.
20. File be consigned to the registry.



**(Phool Singh Saini)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority,  
Gurugram

**Dated: 09.12.2025**

**HARERA**  
GURUGRAM