

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: **7685 of 2022 & Ors.**
Date of decision: **20.01.2026**

NAME OF THE BUILDER		M/s Imperia Structures Limited	
PROJECT NAME		"The Esfera"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7685/2022	H T Media Limited Vs Imperia Structures Limited	Shri Madhur Dhingra & Kunal Rai, Advocates And Shri Shunham Mishra & Kunal Shahi, Advocates
2.	CR/7732/2022	H T Media Limited Vs Imperia Structures Limited	Shri Madhur Dhingra & Kunal Rai, Advocates And Shri Shunham Mishra & Kunal Shahi, Advocates
3.	CR/7688/2022	H T Media Limited Vs Imperia Structures Limited	Shri Madhur Dhingra & Kunal Rai, Advocates And Shri Shunham Mishra & Kunal Shahi, Advocates

CORAM:

Shri Arun Kumar
Shri P S Saini

Chairman
Member

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before the authority 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 emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**The Esfera**" being developed by the same respondent/promoter i.e., M/s Imperia Structures Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking delay possession along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<i>Project Name and Location</i>	<i>"The Esfera" Phase 1, Sector 37-C, Gurugram, Haryana.</i>
----------------------------------	--

"10.1 Schedule for possession of the said apartment :

*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 clause 11.1, 11.2, 11.3 & clause 41....."*

(As per page no. 33 of the compliant)

OC: applied on 16.04.2021

Possession: Not Offered

Sr.	Comp. No.	CR/7685/2022	CR/7732/2022	CR/7688/2022
1.	Date of BBA	11.07.2013 [pg. 25 of complaint]	11.07.2013 [pg. 25 of complaint]	11.07.2013 [pg. 27 of complaint]
2.	Date of supplementary agreement	11.07.2013 [pg. 49 of complaint]	11.07.2013 [pg. 49 of complaint]	11.07.2013 [pg. 74 of complaint]
3.	Unit no. and area	1901, 19 th floor & Block- C 1650 sq. ft. [super Area] [pg. 26 of complaint]	2003, 20 th floor & Block-C 1650 sq. ft. [super Area] [pg. 26 of complaint]	2103, 21 st floor & Block-C 1650 sq. ft. [super Area] [pg. 29 of complaint]
4.	Total sale consideration	Rs.84,11,250/- [pg. 28 of complaint]	Rs.84,11,250/- (as per page 29 of complaint)	Rs.84,11,250/- [pg. 52 of complaint]
5.	Amount paid	Rs. 85,17,673/- [pg. 69-70 of complaint]	Rs.85,17,673/- [pg. no. 69-70 of complaint]	Rs. 85,17,673/- [pg. no. 89 of the complaint]
6.	Due Date of possession	11.01.2017	11.01.2017	11.01.2017
7.	Legal notice for refund	24.05.2019 (As per page no. 76 of the complaint)	24.05.2019 (As per page no. 76 of the complaint)	24.05.2019 (As per page no. 101 of the complaint)

4. It has been decided to treat the aforesaid 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 promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/7685/2022 H T Media Limited Vs Imperia Structures Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

A. Unit and Project related details:

6. The particulars of the project, the details of 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. No.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase 1, Sector 37 C, Gurugram
2.	Nature of the project	Group Housing
3.	Project Area	17 acres
4.	DTCP license no. and validity	64 of 2011 dated 16.07.2011 valid up to 15.07.2024
5.	Name of licensee	Prime IT Solutions Pvt. Ltd. and 4 others
6.	Unit no.	1901, 19 th floor & Block-C (As per page no. 26 of the complaint)
7.	Unit area admeasuring	1650 sq. ft. (Super area) (As per page no. 26 of the complaint)

8.	Date of execution of apartment buyer's agreement	11.07.2013 (As per page no. 25 of the complaint)
9.	Supplementary agreement to ABA dated 11.07.2013	11.07.2013 (As per page no. 49 of the complaint)
10.	Possession clause	<i>10.1 Schedule for possession of the said apartment 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 clause 11.1, 11.2, 11.3 & clause 41.....</i> (As per page no. 33 of the complaint)
11.	Due date of possession	11.01.2017 (Note: Due date to be calculated three and half years from the date of execution of agreement i.e., 11.07.2013)
12.	Total sale consideration	Rs.84,11,250/- (As per page no. 28 of the complaint)
13.	Amount paid by the complainant	Rs.85,17,673/- (As per receipt information on page no. 69-70 of the complaint)
14.	Letter of HT Media Limited for buyback of units	10.07.2018

		(As per page no. 73 of the complaint)
15.	Legal notice for refund	24.05.2019 (As per page no. 76 of the complaint)
16.	Occupation Certificate	Applied on 16.04.2021 (As per page no. 19 of the reply)
17.	Offer of possession	Not offered

B. Facts of the complaint:-

7. The complainants have made the following submissions:-

- That the complainant is a limited company duly registered and incorporated under the Companies Act.
- That the complainant entered into an Apartment Buyer's Agreement (BBA) with the respondent dated 11.07.2013 in the name of "The ESFERA" situated in Sector 37, Gurugram, Haryana. As per the said ABA the complainant was allotted an apartment bearing no. 1901 having an approx. super area admeasuring 153.34 Sq. Mtr. (1650 sq. feet approx.) located at 19th floor in Tower C along with one covered car parking space.
- That a Supplementary Agreement dated 11.07.2013 was executed between the complainant and the respondent. The format of the BBA was shown to the complainant before the execution of the Supplementary Agreement and as the terms and conditions of the format was not acceptable to the complainant in its entirety, the parties agreed and negotiated to the terms and conditions as shall be binding on the parties and were recorded in the Supplementary Agreement. In the supplementary agreement it was confirmed that parties have entered into the BBA dated 11.07.2013 in respect of

apartment no. 1901 having super area 1650 sq. feet situated at 19th floor in tower C for total consideration of Rs. 87,26,894/-.

- d. That as per the terms of the modified agreements, it was agreed and confirmed between the parties that the price of the allotted unit has been fixed and firmed without any scope of escalation or increase due to any reason whatsoever and the total price was fixed Rs. 87,26,894/- and out of which it was confirmed that Rs. 85,17,673/- stands paid by the complainant and the balance of Rs. 2,09,211/- shall be payable by the complainant to the respondent within 180 days of the receipt of the valid notice of possession. It is sufficed to state that no offer of possession has been made by the respondent till date.
- e. That as per supplementary agreement, it was also agreed that in case of any increase or decrease in build-up area of the apartment more than 10%, the complainant will have the right but not an obligation to terminate the agreements and claim refund of the money from the respondent along with 12 % compoundable interest per annum and the respondent would be liable to pay such amount within a period of 30 days from such demand.
- f. That it was also agreed between the parties that the respondent will complete the project and handover the possession of the said booked apartment with a period of 30 month from the date of the agreement (i.e. on or before 10.01.2016). In case the project is not completed due to reason of *force majeure*, then extension of 06 months will be granted to the respondent.
- g. That it was also agreed that in case the possession is not delivered within 30 moths/36 months as the case may be, then the

respondent shall be liable to pay holding charges @ Rs. 05/- per sq. ft. per month of super area from the date of such expiry of period and till the possession is delivered to the complainant.

- h. That it was also agreed between the parties that in case the delivery of possession of the booked apartment is delayed beyond the period of 42 months from the date of the agreements for any reason including *force majeure*, in such circumstances the complainant shall have the right but not obligation for termination of the agreements and the complainant shall be entitled to recover the complete amount paid and also the charges as stipulated in the agreement without any deductions being made by the respondent. It was also agreed that the said amount shall be refunded by the respondent completely within 30 days from the date of such demand being made by the complainant failing which compoundable interest @ 12% per annum shall also be paid by the respondent from the date of payment being made by the complainant till the complete amount is refunded.
- i. That the respondent will be required to offer to buy-back the apartment from the complainant within 24 months from the date of execution of the agreements and if such offer is accepted by the complainant, then the respondent shall pay the complete amount with compoundable interest @ 12% per annum. However, no such offer was made by the respondent.
- j. That such terms were being offered by the respondent as agreed between the parties because the complainant had booked 3 units with the respondent together which was considered to be Bulk Deal on the assurances and promises of the respondent that the project

would not only be completed within the promised period but also the price of the units would escalate in the market once the construction is started in the project.

- k. That as neither the possession was offered to the complainant and nor the offer to buy back was made by the respondent within 24 months of the agreement and so the complainant served the letter dated 10.07.2018 upon the respondent whereby in terms of clause 60 of the Supplementary Agreement the complainant asked the respondent to buy back the said unit allotted to the complainant and refund the entire amount within 30 days from the issuance of the said letter.
- l. That even after the respondent being served the said letter dated 10.07.2018 neither any reply nor any amount was paid by the respondent within 30 days of such letter and every time false promises and assurances were made and after waiting for some more reasonable time the complainant was constrained to issue the legal notice dated 24.05.2019 to the respondent seeking refund of the amount along with compoundable interest in terms of the agreement executed between the parties. The complainant had booked 03 units and so the letter dated 10.07.2018 and legal notice dated 24.05.2019 was being issued for all 03 units combined, however, the complainant is preferring separate complaint in respect of each unit to avoid any legal objection from the respondent. The legal notice dated 24.05.2019 was duly served upon the respondent, however, still neither any reply was received nor any amount was paid by the respondent.

- m. That as the complainant was legally advised that in view of the present facts and circumstances, the complainant can initiate proceedings seeking insolvency of the respondent and so the complainant filed application to initiate corporate insolvency resolution process against the respondent in the prescribed format dated 16.08.2019.
- n. That accordingly the complainant further filed its petition under section 7 of the Insolvency and Bankruptcy Code 2016 (IBC, 2016) upon the legal advice received seeking to initiate the insolvency proceedings against the respondent herein. Such petition was registered vide case no. C.P. (I.B)-2228(PB)/2019 before NCLT, Principle Bench Delhi.
- o. That objection/ reply was filed by the respondent herein to the said petition wherein false and frivolous legal objections were taken only in order to somehow defeat the valid and legal claim of the complainant. The respondent did not dispute the execution of the agreements between the parties and its terms therein. The respondent also took an objection that the respondent is duly registered with RERA and has been complying with the terms of RERA and that the respondent has been granted time till December, 2020 to complete the project and offer the possession
- p. That the said petition came up for hearing before the Hon'ble NCLT and vide order dated 26.08.2022 the said application filed by the complainant under Section 7 of the IBC 2016 was dismissed by Hon'ble NCLT as it was being held that the application under Section 7 of IBC 2016 has been filed on the basis of Apartment Buyer Agreement and hence, the complainant is covered under the

definition of allottee and hence, is home buyer and so cannot fall in the definition of financial creditor. It was also being held that the Advertisement Agreement between the complainant and respondent is a separate transaction and cannot be clubbed with the claim of the complainant filed on the basis of apartment buyer agreement. It was also been held that complainant failed to file its claim before the NCLT immediately after 24 months of signing the apartment buyer agreement and further as per the judgment of the Hon'ble Supreme Court a petition under IBC 2016 seeking insolvency proceedings can be filed either by at least 100 home buyers or 10% of the total allottees in the said project. Hence, on the above reason the said petition file by the complainant under Section 7 of the IBC 2016 was dismissed vide the said order.

- q. That hence, the complainant who has been declared to be a allottee/ home buyer under the terms of the apartment buyer agreement, hence, the complainant herein has approached this Authority seeking its refund of the amount as the respondent miserably failed to not only fulfil its assurances and promise but also had failed to complete the project and offer the possession within the stipulated period as agreed in the apartment buyer agreement (read with supplementary agreement).
- r. That complainant being so aggrieved by the acts of the respondent has lost all faith and trust with the respondent and its project and as the respondent has also crossed all timelines and so the complainant does not wish to further wait for such possession to be offered and hence seeks the refund of the amount paid along with compoundable interest on 12% per annum as agreed between

the parties along with cost of filing of the present petition and harassment being caused to the complainant.

C. Relief sought by the complainants:

8. The complainants have sought following relief:
 - a. To direct the respondent to refund the amount of Rs. 85,17,673/- as paid by the complainant.
 - b. In terms of the agreement grant compoundable interest @ 12% p.a. from the date of allotment i.e. 11.07.2013 till the amount is refunded in favour of the complainant and against the respondent.
 - c. To direct the Respondent to pay litigation cost of Rs. 1 Lac

D. Reply filed by the respondent:

9. The respondent has contested the complaint on the following grounds:
 - a. That the complaint is *prima facie* not maintainable and must be dismissed for being vexatious to law. That the complainant has approached this Authority with unclean hands and has tried to mislead this Authority by making incorrect and false averments and stating untrue and incomplete facts.
 - b. That the complainant is guilty of *suppressio very suggestion 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.
 - c. That it is false that the complainant was lured in the agreement and 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. 2103 in favor of the complainant for a total consideration amount of Rs. 87,11,603/- including applicable tax and additional miscellaneous charges vide booking dated 07.06.2013 and opted a down payment plan on the terms and conditions mutually agreed by the complainant and the respondent company.

- d. That the construction of the said unit has completed on 10.04.2021 and the Occupation Certificate has already been applied for. The respondent company has duly completed their compliances. The respondent company has successfully completed the construction of the project, way before the agreed timeline, and has applied to the competent Authority for issuance of occupancy certificate on 15.04.2021 itself, after complying with all the requisite formalities, and the same is awaited to be procured anytime now by the end of month of July. The respondent company is not at fault for further delay in the delivery of physical possession to the complainant.
- e. That consequently, the respondent company entered into BBA dated 11.07.2013 with the complainant in interest of the booked unit. The BBA duly covers all the liabilities and rights pertaining to both the parties involved. The respondent company has already successfully managed to procure the No Objection Certificates and Clearances from various departments. These certificates and documents depict and assures the *bona fide*

intentions of the respondent company and their commitment of delivering the physical possession of the said unit at earliest.

- f. That the complainants have not paid the outstanding instalments in time and the complainant has caused delay in the completion of the project by way of delaying in making payments, despite numerous reminders which were issued to the complainant by the respondent company.
- g. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainant. The BBA executed between the parties have clearly depicted the intention of the respondent company with respect to schedule of payment.
- h. That the terms of the BBA were agreed to and signed by the complainant and, as such, the parties are bound by the terms and conditions mentioned in the agreement. As per the clause of the BBA entered between the parties, time was agreed to be a matter of essence in the BBA and the allottees were bound to make timely payments of the instalments due as per the payment plan opted by the complainant. The BBA was duly acknowledged by the complainant after completely and thoroughly understanding each and every clause therein. The complainants were neither coerced nor influenced by the respondent company to sign the BBA.
- i. That despite numerous reminders, the complainant failed to comply by the obligations laid down by the BBA they willingly entered into in a timely manner and the delay in making the payments, have caused delay in completion of the project. The terms of the BBA are binding between the parties.

- j. That the delay of the complainant in paying the outstanding amount and honoring the payment plan, in addition to default in payment by various other buyers in the project, the respondent company has incurred huge losses/damages. On account of the breach of the terms of the agreement by the complainant, and other buyers in the said project, the respondent company had no option left but to resort to availing a last mile funding of Rs.99 crores from SWAMIH Investment Fund-I.
- k. That vide the BBA dated 18.03.2013, signed voluntarily and knowingly by the parties, including the complainants, has clearly and transparently provided for alteration in super-area of the unit involved. The respondent company had warned and reserved rights for alteration in the super-area of the unit at any stage of the development of the project and that the respondent company may charge/cause reduction in charges as per the said alterations, even in the supplementary agreement.
- l. That the respondent company had done no wrong by increasing super area and sending the demand letters, vide which the respondent company charged for alterations in the project. The clause is not a biased one, as one month time is provided to the allottee(s) to object to the changes in payment schedule and if the same is not objected within the stipulated time period, the change is deemed to be accepted by the allottee(s) by way of implied consent. The complainants made no such objections to the changes in the payment schedule and the same is considered to be agreed by implied consent. The unit allotted to the complainant at the price prevalent in the market on the assurance that the

complainant will make timely payments and honor the terms of the BBA. However, the complainant defaulted in making payment despite several opportunities given by the respondent company to complete the payment and thus, the respondent company could not allot the unit to any third party, who was willing to book the unit at a higher price. The complainant has caused the respondent company to incur loss of opportunity & cost, and are thus, liable to indemnify the respondent company towards the same. It is no longer a res integra that failure on the part of the complainant to perform their contractual obligations disentitles them from any relief.

m. That the complainant (HT Media) entered into a **barter arrangement/transaction** with the respondent, same was covered under two types of agreements;

- i) Builder Buyer Agreement dated 11.07.2013 followed by Supplementary Agreement dated 11.07.2013, and
- ii) Advertisement Agreement dated 11.07.2013.

The nature of the transaction was such that the respondent would avail the advertisement services from the complainant, and for making payments thereagainst, 45% of the amount was agreed to be paid by the respondent, while 55% was agreed to be considered under the barter arrangement by offering the allotment/booking of 3 flats to the complainant. Accordingly, 3 flats were booked/allotted to the complainant being flat no. 2003 in Tower-C, 20th floor, flat no. 1901 in Tower C, 19th floor, and flat no. 2103 in Tower-C, 21st floor, in project "Esfera", situated in Sector-37, Gurugram, Haryana. In furtherance to the above detailed

transaction, the complainant transferred a sum of Rs. 2,55,53,019/- via three instruments/cheques dated 17.07.2013, each amounting to Rs. 84,32,496/-, after deduction of applicable taxes. The said amount, as received from the complainant, was immediately returned/transferred back to the complainant via instrument/cheque dated 23.07.2013 amounting to Rs. 2,50,41,959/-, after deduction of TDS amount of Rs. 5,11,060/-, which has also been acknowledged by the complainant. In such a manner, the entire alleged/claimed consideration amount paid by the complainant has been immediately returned to the complainant. After having repaid the consideration amount to the complainant, the respondent availed the advertisement facilities from the complainant.

- n. That during the period commencing from 02.12.2013 to 31.03.2017, in all, the respondent availed advertisement facilities for a sum of Rs.2,21,08,174/- and against the same, has also made payments/NEFT transfers of Rs.1,00,39,912/-. The remaining amount of Rs.1,20,68,262/-, as was treated as adjustment under the barter system. After 31.03.2017, neither did the complainant provide any advertisement services, nor did the respondent avail any such advertisement service. In this manner although the remaining amount of Rs.1,20,68,262/- which in-fact, at best, can be stated as outstanding amount payable against the advertisement facilities as on 31.03.2017, even if treated and taken as the payment towards the price/consideration of the booked/allotted flats, the complainant has made a part payment only. A sum of Rs.1,34,84,757/- remained due and payable by the

complainant towards the price/consideration of the booked three flats. Admittedly, the complainant has failed in making such payment and therefore, the complaint was filed by the complainant merits rejection/dismissal by the Authority. The respondent, without having fulfilled the obligation on the part of the complainant for making payment towards the cost of flats in question, the alleged grievance as raised in the complaint is without any cause of action and otherwise also neither tenable nor sustainable.

- o. That the booking or allotment of the flat to the complainant is not under the ordinary original allotment procedure but is part of the transaction for availing the advertisement facilities. Therefore, the booking/allotment of the flat to the complainant is purely a measure towards providing security to the complainant under such a transaction. That the complainant does not qualify to be an allottee within the meaning of Section 2(d) of the RERA Act. The complaint, therefore, is liable to be dismissed solely on this ground.
- p. That the complaint is otherwise liable to be dismissed by the Authority in view of the complainant having failed to discharge the obligations on its part, including the complete payment as required to be made against the agreed sale consideration.
- q. That the Complaint is further liable to be dismissed in view of the Complainant having been offered the possession of the flat, by requiring him to make further outstanding payments duly intimated before the filing of the complaint, as also after filing the present complaint.

- r. That the claim of refund, as made in the complaint, is liable to be outrightly rejected in view of the repayment of the amount already made by the respondent vide instrument/cheque dated 23.07.2013. The claim of interest, that too at an exorbitant/compoundable rate, is neither tenable nor sustainable, either in the facts of the case or as per the settled principles of law.
10. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority

11. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.I Territorial jurisdiction

12. 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

13. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder."

14. So, in view of the provisions of the Act of 2016 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 regarding relief sought by the complainants.

- F.I. To direct the respondent to refund the amount of Rs. 85,17,673/- as paid by the complainant.**
- F.II. In terms of the agreement grant compoundable interest @ 12% p.a. from the date of allotment i.e. 11.07.2013 till the amount is refunded in favour of the complainant and against the respondent.**
15. 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. Thus, the same being interconnected.
16. In the present matter the complainant purchased a unit bearing no.1901, 19th floor in Tower-C, admeasuring 1650 sq. ft. in the project 'The Esfera', Sector 37-C, Gurugram. The complainant paid an amount of Rs.85,17,673/- against the total sale consideration of Rs.84,11,250/-. An agreement was executed between the complainant and the respondent on 11.07.2013 and according to clause 10.1 of the agreement the respondent was obligated to

complete the construction of the project and hand over the possession of the subject unit within three and half year.

17. That the respondent takes plea that the complaint is not maintainable, as the complainant has failed in making the payment of agreed consideration towards the unit in question. Further, the booking/allotment of the unit is not under the ordinary original allotment procedure but it is part of the transaction for availing the advertisement facilities and the allotment to the complainant is purely a measure towards providing security to the complainant under such a transaction.
18. The complaint intends to withdraw from the project as per the agreed terms and conditions mentioned in the supplementary agreement dated 11.07.2013 read with BBA dated 11.07.2013 executed between the complainant and respondent. The complainant executing their right as per agreed terms in the supplementary agreement read with BBA & Advertisement agreement serve **legal notice dated 24.05.2019** to the respondent & seeking refund of paid-up amount.
19. That the complainant seeking refund after invoking the clauses of supplementary agreement that form a part of BBA dated 11.07.2013. The relevant para of supplementary agreement dated 11.07.2013 read with BBA dated 11.07.2013 is reproduced below:

"It is further clarified that if the delivery of possession of the said apartment is delayed beyond the period of 42 months from the date of execution of this Agreement for whatsoever reasons including Force Majeure circumstances, in such circumstances the intending Allottee shall have right but not obligation for termination of this Agreement along with the Principal Agreement in addition to its

right to recover the charges as stipulated above till date of termination. Upon such termination, the Intending Allottee shall be entitled to receive refund of entire amount as paid by it under the Principal Agreement and this Supplementary Agreement and also the charges as stated in the Agreement; without any deductions whatsoever, upon demand by the Intending Allottee. In any such event as mentioned hereinabove, the entire amount of part payment and other charges paid by the Intending Allottee shall be refunded by the Developer to the Intending Allottee along with interest @12% compounded per annum from the date of payment under this agreement, with 30 days of such demand."

20. The relevant para of advertisement agreement dated 11.07.2013 is reproduced below for ready reference:-

2.2 The company hereby agrees to place advertisements of the value of Rs.4,64,60,035/- (Rupees Four Crores Sixty-Four Lacs Sixty Thousand and Thirty-Five Only) on net billing basis in the HT Media (the "Total Commitment"), during the First Sub-Term, the Second Term, and the Third Term (in each sub term, the "Annual Commitment") in the manner set below:

Sub-Term	Annual Commitment (in Rs)
First Sub-Term	Rs.1,50,00,000/-
Second Sub-Term	Rs.1,50,00,000/-
Third Sub Term	Rs.1,64,60,035/-
Total	Rs.4,64,60,035/-

2.3 Out of the Total Commitment of Rs. 4,64,60,035/- ((Rupees Four Crores Sixty-Four Lacs Sixty Thousand and Thirty-Five only), the Company hereby agrees to make the payment of Rs 2,55,53,019/- (Rupees Two Crores Fifty-Five Lacs Fifty-Three Thousand and Nineteen only). (hereinafter referred to as "Part Payment") within 7 (Seven) Business Days of the execution of this Agreement. Such payment shall be made by a pay order or demand draft or cheque drawn on a recognised bank or such other means that is acceptable to HT. It is further agreed that at the time of releasing its advertisement with HT, the Company shall make an additional payment of 45% of the net billing amount for the advertisement so released and the remaining 55% of the net billing amount for the advertisement so released shall be set-off against the Part Payment made by the Company under this clause. It is agreed between both the parties that the Company shall make the balance payment of 45% of the net billing amount by the last day of every month for the advertisements released by it during previous month. For example, the Company will release the payment by 31st August, 2013, which shall be equivalent to 45% of the total advertisements released by the Company in the month of July, 2013.

21. On bare perusal of the documents placed on record by both parties, it is evident from the clause 3 of the BBA dated 11.07.2013 that the respondent himself admitted that the complainant-allottee paid an amount of Rs.82,08,300/- +Rs.3,09,373/- (service tax) being part payment out of Rs.84,11,250/- towards the unit. In lieu of the same,

the respondent also issue receipts dated 29.07.2013 amounting to Rs.84,32,496/- & Rs.85,177/-. The complainant serves legal notice dated 24.05.2019 to the respondent for seeking refund.

22. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. 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 bghalf 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."

23. As per clause 10.1 of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduced as under:-

"10.1 Schedule for possession of the said apartment:

*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 clause 11.1, 11.2, 11.3 & clause 41....."

[Emphasis Supplied]

24. **Due date of possession:** As per clause 10.1 of the BBA, the possession of the allotted unit was supposed to be offered within a period of three and half year from the date of execution of BBA. Therefore, the due date of possession comes out to be 11.01.2017.

25. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest prescribed rate of interest. The allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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."

26. 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.

27. 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., 20.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
28. 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. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) 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;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

29. On consideration of the documents' available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10.1 of the agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 11.01.2017.
30. It is pertinent to mention over here that even after a passage of approx. 9 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the

respondent. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid 100% of total consideration. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

31. Further, the Occupation Certificate/Completion Certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The Authority is of the view that the allottees 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 and 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.....”

32. Moreover, 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, observed as under:-

“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."

33. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is 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 he 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.
34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent no.1 is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.80% p.a. (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 legal notice dated 24.05.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

35. In view of the same, the Authority observes that the complainant is entitled to refund of paid-up amount from the date of service of legal notice dated 24.05.2019.

F.III To direct the respondent to pay litigation cost of Rs. 1 Lac.

36. That complainant is seeking above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses

G. Directions of the Authority

37. 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 promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to refund the amount received by it i.e., Rs. 85,17,673/- from complainant along with interest at the rate of 10.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of seeking refund i.e. date of service of legal notice dated 24.05.2019 till the date of actual realization of the refund amount.

- b. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
- c. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.
- 38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
- 39. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
- 40. File be consigned to registry.



(P S Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.01.2026