

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

Complaint no.: 1532 of 2023 & Ors.
Date of decision: 07.04.2026

NAME OF THE BUILDER		M/s Imperia Structures Limited	
PROJECT NAME		"MINDSPACE"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1532/2023	Rajiv Kapoor & Tina Kapoor Vs Imperia Structures Limited & Harpreet Singh Batra	Ms Yamini, Advocate for Complainants And Ms Priya Sharma, Advocate for respondent
2.	CR/6226/2024	Sham Lal Mohan Vs Imperia Structures Limited	Shri Chaitanya Mahajan, Advocate And Ms Priya Sharma, Advocate
3.	CR/5829/2024	Arun Kumar & Renu Vs Imperia Structures Limited & Baakir Real Estate Private Limited	Shri Saurabh Maan, Advocate And Ms Priya Sharma, Advocate for R-1 Shri Dhruv Rohatgi, Advocate for R-2

CORAM:

Shri Arun Kumar

Chairman

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, "**Mindspace**" 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:

Project Name and Location		"MINDSPACE" at sector-62, Gurugram, Haryana.		
Possession clause as per MOU				
4.				
<i>The developer has represented to the allottee that the possession of the said unit shall be handed over by the developer to the allottee but in the event of virtual space the space will be registered in favour of allottee and handed over to the lessee within a maximum period of 2 years after the approval of building plans of the project from the competent authorities subject to force majeure...</i>				
(As per page no. 27 of the compliant)				
Sr.	Comp. No.	CR/1532/2023	CR/6226/2024	CR/5829/2024
1.	Date of BBA	Not Executed	Not executed	20.08.2016 [pg. 32 of complaint]
2.	Date of MoU	05.09.2011 [pg. 24 of complaint]	16.09.2011 [pg. 32 of complaint]	N/A

3.	Unit no. and area	IMP-B-0119 (as per offer of possession 16.08.2019 at pg. 36 of complaint) 750 sq. ft. [super Area] [pg. 26 of complaint]	IMP-B-0116 (as per offer of possession 15.07.2019 at pg. 38 of reply) 1000 sq. ft. [super Area] [pg. 34 of complaint]	FC-102, Ground floor, Tower-A (Food Court) 237.67 sq. ft. [super Area] [pg. 37 of complaint]
4.	Total sale consideration	Rs.21,90,000/- [pg. 26 of complaint]	Rs.30,00,000/- (as per page 34 of complaint)	Rs.26,83,885/- [pg. 60 of complaint]
5.	Amount paid	Rs.21,90,00/- [pg. 27 of complaint]	Rs.30,00,000/- [pg. no. 35 of complaint]	Rs. 28,44,385/- [As per SOA on pg. no. 70A of the complaint]
6.	Due Date of possession	05.09.2013	16.09.2013	28.12.2019 as per clause 11 of BBA
7.	Offer for fit out	16.08.2019 [pg. 36 of complaint]	15.09.2019 [pg. 38 of reply]	12.08.2019 [pg. 68 of reply]
8.	Offer of possession	20.06.2020 [pg. 43 of reply]	22.06.2020 [pg. 40 of reply]	22.06.2020 23.05.2021 19.06.2022 [pg. 69, 71 & 72 of reply]
9.	Demand of maintenance	12.12.2022 31.01.2023 11.04.2025	12.12.2022 19.11.2023 21.03.2025	12.12.2022 24.03.2025 [pg. 75 & 76 of reply]
10.	Pre Cancellation	18.09.2025 along with demand of Rs.16,72,650/- [at page 52 of reply]	18.09.2025 [at pg. 54 of the reply to the application filed by respondent]	N/A
11.	Cancellation	N/A	N/A	N/A

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/1532/2023 Rajiv Kapoor & Tina Kapoor Vs Imperia Structures Limited & Ors. 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	"MINDSPACE" at sector-62, Gurgaon.
2.	Project area	8.36 acres
3.	Nature of Project	IT Park Colony
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid up to 22.10.2020
5.	Name of Licensee	Baakir Real Estates Private Limited
6.	RERA registered/ not registered and validity status	Registered 240 of 2017 dated 25.09.2017 valid up to 31.12.2020 (Lapsed Project)
7.	Date of booking	05.09.2011 (at page 19 of reply)

8.	MOU	05.09.2011 (As per page no. 24 of the complaint)
9.	Date of buyer's agreement	Not executed
10.	Unit No.	IMP-B-0119, (as per offer of possession 16.08.2019 at page 36 of complaint)
11.	Unit area admeasuring	750 sq. ft. (super area) (As per page no. 26 of the complaint)
12.	Possession clause	Clause 4 of MOU <i>The developer has represented to the allottee that the possession of the said unit shall be handed over by the developer to the allottee but in the event of virtual space the space will be registered in favour of allottee and handed over to the lessee within a, maximum period of 2 years after the approval of building plans of the project from the competent authorities subject to force majeure.</i> (As per page no. 27 of the complaint)
13.	Due date of possession	05.09.2013
14.	Assured return clause	4. Assured Return <i>"The developer will pay Rs.60/- per sq. ft. per month on 750 sq. ft. as an assured return to the allottee from 05.09.2011 till offer for possession of the space.</i> <i>Thereafter the developer shall pay Rs.50/- per sq. ft. per month on 750 sq. ft. as assured rental till the offered space is leased out to intended lessee.</i> <i>The developer has represented to the allottee that the possession of the said unit shall be handed over by the developer to the allottee but in the event of virtual space the space will be registered in favour of allottee and handed over to the lessee within a, maximum period of 2 years after the approval of building plans of the project from the competent authorities subject to force majeure.</i>

		Leasing Arrangement: a. Rs.50/- per sq. ft. minimum rent b. Initially for 3 years, further extend for 2 more terms of 3 years each with suitable increase in rental. <p style="text-align: right;">(Emphasis Supplied)</p> (As per page no. 27 of the complaint)
15.	Basic Sale Consideration	Rs.21,90,000/- (As per MOU at page no. 26 of the complaint)
16.	Amount paid by complainants	Rs.21,90,000/- (As per MOU at page no. 27 of the complaint)
17.	Occupation certificate	02.06.2020 (at page 55 of complaint)
18.	Offer for fit out along with Rs.37,500/- lease rent	16.08.2019 (at page 36 of complaint)
19.	Offer of possession	20.06.2020 (at page 43 of reply)
20.	Reminder cum offer of possession	03.05.2021 (at page 47 of reply)
21.	Mail by complainant and respondent regarding execution of CD	19.04.2023 and 23.12.2022 (at page 38 of complaint)
22.	Letter by respondent to complainant to execute CD through mail	21.10.2022 (at page 44 of complaint)
23.	Update about pre-lease	Page 45 of complaint
24.	Demand of maintenance by respondent through mail	31.01.2023 (at page 42 of complaint)
25.	Demand of maintenance	12.12.2022 (at page 48 of reply)
26.	Outstanding dues	Rs.15,27,750/- (at page 49 of reply)
27.	Final notice for maintenance	11.04.2025 for Rs.15,13,350/- as maintenance charges (at page 50 of reply)
28.	Final notice/ pre-cancellation	18.09.2025 along with demand of Rs.16,72,650/- (at page 52 of reply)

B. Facts of the complaint:-

7. The complainants have made the following submissions: -

- a. That the respondent no. 1 is engaged in the business of developing housing/Commercial projects and selling of apartments & commercial spaces, having registered office mentioned in title of the complaint, and the respondent no. 2 is Managing Director of the respondent no. 1. The respondent no. 2 is responsible for the acts and conducts of the respondent no. 1. That the complainant had, in the month of September, 2011, booked a Virtual Office Space on the 7th floor, admeasuring 750 sq. fts. in Project "Imperia Mindspace", (earlier known as 'Byron') situated in Sector-62, Gurugram, for a total basic sale consideration price of Rs. 21,90,000/.
- b. That the complainant paid Rs. 21,90,000/- (total basic sale consideration), service tax of Rs. 56,393/- & Rs. 2,33,500/- (full and final payment of all other charges/taxes) to the respondent no. 1 which have been dully acknowledged by the respondent no. 1 vide various receipts, meaning to say that the complainants had paid the total sale price & all other incidental charges/taxes to the respondent no. 1 in respect of Virtual office space on the 7th floor in the project "Mindspace" to be developed by the respondent no. 1.
- c. That all the negotiations before the booking of the virtual office space and at the time of making payment to the respondent no. 1 through cheques, the complainant was lured by respondent no. 1 & 2 to invest in the project on the promises, assurances and pretext that respondents shall pay Rs. 60/- per sq. ft. per month on 750 sq ft. area as an "assured return" till possession and thereafter, respondents shall pay Rs. 50/- per Sq ft. per month on 750 sq. ft. area as "assured rent" till the space/unit is leased out to the intended lessee & it was also promised by the respondents that the

delivery of the virtual office space shall be done within two years after approval of building plans of the project from competent authority i.e. on or before 04.12.2017 as the date of approval of building plan was 04.12.2015.

- d. The possession could only be handed over to the complainant on or after 04.12.2017 only after obtaining Occupation Certificate (O.C.). The occupation certificate in respect of the project was received on 02.06.2020; however, the respondent no. 1 issued a letter of offer of possession dated 16.08.2019 almost 10 months prior of obtaining the Occupation Certificate which is therefore a sham document and is of no consequences. The respondent has played fraud with the complainant as no possession can be handed-over/offered without obtaining occupation certificate. The respondent no. 1 fraudulently issued offer of possession letter dated 16.08.2019 in order to avoid lawful payment of assured return at the rate Rs. 60/- pr. Sq. Ft. per month on booked space. The actual delivery of possession of unit to the complainants have not been made even till this date and as per the provisions of MOU, the complainants are entitled for delayed possession charges with effect from 04.12.2017 till the actual delivery of possession of unit. That as per MOU and contractual obligation under it, the complainants are entitled for 'Assured return' @ Rs. 60/-per sq. ft. per month on 750 sq ft. area till the delivery of possession and thereafter, 'assured rent' @ Rs. 50/- per sq. ft. per month on 750 sq. ft. It is worth to mention here that no possession or charges for delayed possession have been given to complainants by the

- respondents and the respondent no. 1 has stopped giving Assured return from November 2018 till this date.
- e. That the complainants repeatedly followed up with the officials of the respondent no. 1 for payment of charges to the complainants for delayed possession, assured return & possession of the unit but the respondents avoided the matter on one pretext or the other. That instead of fulfilling their "contractual obligation" under MOU i.e. Handing over of possession on time, payment of assured return/rent and payment of Delayed possession charges; the respondents and its authorized representative/company have started demanding monthly maintenance charges from complainant with effect from the Jan' 2023 which is void, illegal, non-binding and is liable to be set aside since no possession has been given by the respondent till this date and even otherwise, complainant is not liable to any kind of maintenance charges even after delivery of possession because as per MOU, it is the obligation of respondent no.1 to give assured return to complainants till delivery of possession and thereafter assured rent till the space/unit is leased out to intended Lessee which they have failed to perform. Also, it is the duty of the respondent no.1 to pay maintenance charges, and after the demised space is leased out to any intended lessee then as per clause 8(g) of MOU, the said lessee will be liable to pay the maintenance and incidental charges.
- f. That as per section 18(1) Proviso of RERA, there respondents have provided false information on the prospectus/Brochure and under the same section the complainant is entitled to get interest on

account of delay in handing over the possession of the flat/apartment.

- g. That the act of the respondents is malafide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to the public policy, equity and fair play and as is unsustainable in the eyes of the law and is liable to be prosecuted under Section 61 and other relevant sections of the Haryana Real Estate (Regulations and Development) Act, 2016.

C. Relief sought by the complainants:

8. The complainants have sought following relief:
- To direct the respondent no.1 give actual physical possession of the unit to the complainant.
 - To direct the respondent no. 1 to pay the charges to the complainant for delayed possession from 05.12.2017 to actual date of handing over of possession to the complainant.
 - To direct respondent to pay assured return @60/- per sq. ft. on 750 sq. ft. area per month from November 2018 till delivery of possession, and thereafter, assured rent @ Rs.50/- per sq. ft. per month on 750 sq. ft. area from delivery of possession till the unit is leased out by the respondents to intended lessee (as per clause of MOU).
 - To declare the demands of maintenance charges as non-binding, illegal, null & void.
 - To direct the respondent to pay cost of litigation to the complainant.

D. Reply filed by the respondent:

9. The respondent has contested the complaint on the following grounds:
- That the complaint is prima facie not maintainable and must be dismissed for being vexatious to law. That the complainants have approached this Authority with malice and have tried to mislead

this Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, the Complainants are guilty of *suppressio very suggestion falsi*. The Complainants have suppressed and/or mis-stated the facts and, thus, the Complaint, apart from being wholly misconceived, is also an abuse of the process of law. On this short ground alone, the Complaint is liable to be dismissed.

- b. That the Complaint filed by the Complainants is baseless, vexatious and is not maintainable in the eyes of law therefore, the Complaint deserves to be dismissed at the very threshold.
- c. That the respondent company has already completed the construction, procured Occupation Certificate and has started offering the possession way back. This is a mere attempt on behalf of the Complainants to harass the Respondent Company and to extort money from them.
- d. That the Complainants at their own free will, booked the **Virtual Office Space** unit admeasuring 750 sq. ft. on 05.09.2011, in Project "Byron" now "MindSpace", located at sector 62, Gurugram, for the total sale consideration of Rs.28,96,493/- including applicable tax and other charges. The Complainants opted for a Down Payment Plan, for booking the Virtual Office Space.
- e. That the Offer of Possession for Fit-out was issued by the Respondent Company dated 16.08.2019 for the unit, to the Complainants at the time of anticipation of the OC. Although the issuance of the OC was delayed due to the unforeseen circumstances arising from the COVID-19 pandemic, it is

customary in real estate practice for the Offer of Possession for fit-out to be provided at least six months in advance of the OC, thereby allowing sufficient time for touch-ups and other preparations before the final possession is offered.

- f. That the construction of the Project was completed way back in 2019 and the OC was applied for. The OC has been received on 02.06.2020 by the Respondent Company.
- g. That the Complainants have alleged that possession was to be handed over within a period of **two years** from the approval of the building plans and have, on that basis, alleged delay in the project. In this regard, without admitting any such alleged delay, the Respondent Company has, in any event, duly complied with its contractual obligations and has paid the Assured Returns for the said period, thereby demonstrating its *bona fide* conduct and adherence to the agreed terms.
- h. That after obtaining the OC on 02.06.2020, the respondent company issued offer of possession for completion of contractual formalities.
- i. That the State Government had acquired the land which comprises the Project land and transferred the same to the Respondent Company, for development of the 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 project land, after obtaining all necessary sanctions/approvals/clearances from different state/central agencies/authorities. The

Respondent Company received initial approval of building plans on 4th of December, 2015, and started the milestone Construction of the Project.

- j. That upon receipt of the Building Plans, the Respondent Company duly commenced construction of the project and simultaneously began the process of allotment of spaces to the concerned allottees. It is further submitted that, pursuant to certain recommendations, the name of the project was changed from "*Imperia Byron*" to "*Imperia Mindspace*".
- k. That the Complainants have alleged that the letter dated 16.08.2019 was issued nearly ten months prior to the receipt of the OC and that no communication offering possession was made after receipt of the OC. The letter dated 16.08.2019 was merely a reminder issued to the Complainants to remind them of their outstanding dues and to inform them about the status of the OC. The possession of the unit was duly and validly offered to the Complainants vide letter dated **20.06.2020**, i.e., after receipt of the OC. Accordingly, the allegation that possession was not offered to the Complainants is wholly incorrect, misconceived, and therefore expressly denied.
- l. That the AR was duly paid against the said space by the Respondent Company from **October 2011 to March 2020**, totaling **Rs. 33,98,000/-**. As per the Clause 4 of the MoU signed between the parties, the lease rent was subject to the **force majeure clause**. The COVID-19 pandemic, which is acknowledged as a *force majeure* event, significantly impacted the real estate and leasing markets. Consequently, the

Respondent Company is not liable to pay any form of consideration beyond March 2020.

- m. That the Complainants have alleged that the AR were stopped in the year 2018. The allegation is emphatically denied as false and misleading. That the Complainants were duly paid the *Assured Returns* up to **March 2020**. The Complainants were also duly informed through email communication dated 07.04.2020, that the payment of Assured Returns would remain suspended for a period of six months owing to a force majeure situation, arising from uncertainty regarding the date of receipt of the OC. The Occupation Certificate was subsequently received in **June 2020**, and consequently, no AR was payable thereafter in accordance with the agreed terms. Accordingly, the allegation that the AR was stopped in 2018 is wholly incorrect and is therefore expressly denied.
- n. 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. Despite several hindrances and certain *force majeure*, such as recent COVID-19 pandemic, the Respondent Company has successfully procured the OC dated 02.06.2020, which exhibits the *bona fide* intention of the Respondent Company to complete the project.
- o. That the Complainants have been fully aware of the fact that the OC has been obtained for the said Project. The Respondent

Company has been maintaining the building and the subject space from its own resources ever since the grant of OC, and continues to incur maintenance expenses on account of the failure to **complete possession-related formalities, i.e., execution of the Conveyance Deed**. Despite communications and reminders, including letter dated 13.05.2021 and 12.12.2022, the Complainants have deliberately withheld themselves from taking possession, seemingly in an attempt to unjustly claim delayed possession charges. Such conduct clearly violates the statutory duty imposed under **Section 19(6)** of the Real Estate (Regulation and Development) Act, 2016, which obligates the allottee to make necessary payments, **including maintenance charges**, in accordance with the terms of the agreement. In view of the continued default and non-cooperation on the part of the Complainants, the Respondent is constrained to claim holding charges and maintenance dues, which as of date cumulatively amount to **Rs. 15,27,750/-**.

- p. That due to continued non-compliance on the part of the Complainants, the Respondent Company was constrained to initiate the process of cancellation of the allotment. Despite the lapse of more than five years from the date of receipt of the OC, the Complainants neither came forward for execution of the Conveyance Deed nor cleared the outstanding dues payable by them. Accordingly, a **Final Notice** dated **11.04.2025** was issued to the Complainants, granting them a final opportunity to comply with their contractual obligations. However, as no compliance was forthcoming from the Complainants, a further notice dated

18.09.2025 was issued, whereby the allotment in favour of the Complainants was duly cancelled in accordance with the applicable terms and conditions.

- q. That the Complainants have alleged that they are not liable to pay maintenance charges on the ground that the space has not yet been leased out. The contention is wholly misconceived and contrary to the terms of the MoU as well as the statutory framework. That nowhere in the MoU has it been stipulated that maintenance charges shall become payable only upon the leasing of the space. Equally, the MoU does not provide any exception or waiver of maintenance charges in the event the space remains unleased. The obligation to pay maintenance is an inherent and continuing obligation attached to the allotment of the space, irrespective of its usage or leasing status.
- r. That further the Respondent Company entered the Corporate Insolvency Resolution Process vide order dated 31.08.2023, passed by the Hon'ble National Company Law Tribunal. During the period of the moratorium, which lasted for four months, all operations of the Respondent Company were suspended. The Respondent Company was subsequently discharged from the CIRP by the order of the Hon'ble National Company Law Appellate Tribunal dated 1.02.2024. The complaint had been filed by the Complainants and was kept *sine die* by the Authority
- s. That that the virtual spaces are inherently un-demarcated, un-identifiable, and incapable of physical possession, and therefore do not fall within the ambit of an "apartment", "plot", or "building" as considered under the Act. In the absence of any

physical unit capable of being handed over, the statutory obligation under Section 19(10), which directs delivery of physical possession within a stipulated period upon receipt of the OC becomes wholly inapplicable. Accordingly, arrangements relating to virtual space investments do not constitute allotment of real estate as defined under the RERA Act and, therefore, fall outside the regulatory purview of the Act, rendering complaints arising therefrom not maintainable.

- t. That the Complainants are also seeking relief pertaining to Lease Rent, which falls outside the jurisdiction of the Authority under the RERA Act, 2016. That although such returns may form part of the commercial terms agreed upon under the MoU, they are compensatory in nature, intended to provide the buyer with a financial return during the period when the unit remains under construction and is not capable of being used or let out.
- u. That Accordingly, under the statutory framework of the RERA Act, Section 71 specifically vests jurisdiction with the Adjudicating Officer to decide matters relating to interest and compensation. Therefore, any claim concerning *Lease Rent*, being monetary in nature and flowing from the contractual terms of the BBA, squarely falls within the domain of the Adjudicating Officer under Section 71, and not within the purview of this Authority.
- v. That the issue pertaining to Lease Rent, being compensatory in nature, does not fall within the jurisdiction of this Authority. Therefore, any claim seeking adjudication of Rentals can only be entertained by the Adjudicating Officer as mentioned in Section 18, who is the competent authority to decide matters relating to

compensation under the Act. Moreover, without prejudice to the ground on merits it is submitted that the any prayer for compensation or litigation cost is not maintainable before this Hon'ble Authority and the same can only be adjudicated by Adjudicating Authority under the relevant provisions of Act, 2016.

- w. That the Complainants have already received the Assured Returns strictly in accordance with the MoU. These assured returns were paid for the entire period, including the period during which the project was allegedly delayed. Therefore, the Complainants have been duly compensated for that duration and cannot now seek to take advantage of the same delay for which they have already received monetary returns. Accordingly, the Respondent Company had already compensated the Complainants for the alleged delay through payment of Assured Returns. Once the Complainants have accepted the Assured Returns for the period of delay, no separate or additional claim for DPC survives, as the Complainant has already been duly compensated.
- x. That in view of the above the present matter does not fall within the purview of this Authority and is, therefore, liable to be dismissed for lack of jurisdiction.
- y. That the Complainants were repeatedly called upon to clear the total outstanding dues, however, despite multiple opportunities, they failed to comply with their financial obligations. Consequently, the Respondent was left with no option but to cancel the allotment and initiate the process of refund, after

deducting the earnest money @15% and adjusting the amounts already paid towards assured returns, in accordance with the MoU.

- z. That the Complainants have themselves repeatedly acknowledged that the space allotted to them was *virtual* in nature. In view thereof, such virtual space was never capable of being physically handed over. That the Respondent Company has duly honored its part of the obligations without any delay, however, the Complainants, are 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 Complainants to file this present Complaint.
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 no.1 to give actual physical possession of the unit to the complainant.**
- F.II. To direct the respondent no. 1 to pay the charges to the complainant for delayed possession from 05.12.2017 to actual date of handing over of possession to the complainant.**
- F.III To direct respondent to pay assured return @60/- per sq. ft. on 750 sq. ft. area per month from November 2018 till delivery of possession, and thereafter, assured rent @**

Rs.50/- per sq. ft. per month on 750 sq. ft. area from delivery of possession till the unit is leased out by the respondents to intended lessee (as per clause of MOU).

F.IV. To declare the demands of maintenance charges as non-binding, illegal, null & void.

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. IMP-B-0119, admeasuring 750 sq. ft. in the project 'Mindspace', Sector 62, Gurugram. The complainant paid an amount of Rs.21,90,000/- against the total sale consideration of Rs.21,90,000/-. A Memorandum of Understanding (*hereinafter referred as MOU*) was executed between the complainant and the respondent on 05.09.2011.
17. In the present complaint, the complainant intends to continue with the project and is seeking physical possession and delay possession charges on amount paid by them in respect of subject unit. Sec. 18(1) of the Act is reproduced below for ready reference:-

"Section 18: - Return of amount and compensation

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

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

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

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

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

[Emphasis Supplied]

18. **Due date of possession:** As per clause 4 of the MOU, the possession of the allotted unit was supposed to be offered within a period of two year from the date of approval of building plan of the project from the competent Authority. Therefore, the due date of possession comes out to be 05.09.2013.
19. The complainant is seeking interest on entire paid amount however, 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."

20. 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.

21. 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., 07.04.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
22. 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;"

23. The complainants are seeking relief with respect to payment of assured return and lease rental as per the memorandum of understanding executed between the parties dated 05.09.2011. The Authority observes that vide clause 4 of the MoU dated 05.09.2011, the complainants have authorised the respondent to negotiate, finalize, effectuate and enter into the lease deed and other requisite documents, agreements and deeds in respect of the unit, with any suitable and prospective lessee/tenants. Further, as per clause '4' of

the MoU dated 05.09.2011, the respondent promised and assured to the complainants that it shall pay Rs.60/- per sq. ft. per month on 750 sq. ft. from 05.09.2011 till offer of possession and thereafter Rs.50/- per sq. ft. per month on 750 sq. ft. as assured rental from the date of offer of possession till the offered space is leased out to the intended lessee. The relevant portion of clause '4' of MoU is reproduced below for the ready reference:

*"4. That the Developer will pay **Rs.60/- (Rupees Sixty Only)** per sq. ft. per month on 750 sq. ft. as an assured return to the Allottee(s) from 05th Sept., 2011 till offer of possession of the Space. Thereafter, the Developer shall pay **Rs. 50/- (Rupees Fifty only)** per sq. ft. per month on 750 sq. ft. as assured rental till the offered space is leased out to intended Lessee. The Developer has represented to the Allottee (s) that the possession of the Said Unit shall be handed over by the Developer to the Allottee(s) that the possession of the Said Unit shall be handed over by the Developer to the Allottee (s) but in the event of virtual space the space will be registered in favour of Allottee (s) and handed over to the Lessee within a maximum period of 2 years after approval of Building Plans of the Said Project from the competent authorities of the said project subject to force majeure..."*

24. The complainants are seeking unpaid assured returns on monthly basis as per the MOU dated 05.09.2011 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the



- respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the Authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.
25. The money was taken by the promoter as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the Authority for redressal of his grievances by way of filing a complaint
 26. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the MOU for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said MOU dated 05.09.2011.
 27. The Authority further observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of the due date of possession, is entitled to both the assured return as well as delayed possession interest?
 28. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in a MoU. The assured return in this case is payable from the date i.e., 05.09.2011 till offer of possession is made to the complainants-allottees. If we compare the assured return i.e., Rs.45,000/- per

month with delayed possession charges i.e., Rs.19,710/- approximately payable under proviso to section 18 (1) of the Act of 2016, the assured return is much higher. By way of assured returns, the promoter has assured the allottee that they will be entitled for this specific amount till handing over of possession. Accordingly, the interest of the allottee is protected even after the due date of possession is over as the assured return are payable till offer of possession. The purpose of delayed possession interest after due date of possession is over and payment of assured return after due date of possession is over are the same and safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are paid either the assured return or delayed possession interest, whichever is higher.

29. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession interest under section 18 and assured return is payable even after due date of possession till the handing over of possession of the said unit. The allottee shall be entitled to assured return or delayed possession interest, whichever is higher without prejudice to any other remedy including compensation. In the present case, the assured return was payable till offer of possession of the unit. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority.
30. The Authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the

other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:

- a. The possession must be offered after obtaining an occupation certificate/completion certificate.*
- b. The subject unit must be in a habitable condition.*
- c. Possession should not be accompanied by unreasonable additional demands.*

31. In the present case, the essential condition for a valid offer of possession has been met by the respondent. The occupation certificate for the project in which the subject unit is located was issued by the competent authority on 02.06.2020. The respondent had offered possession for the fit-out of the allotted unit prior to obtaining this certificate, specifically on 16.08.2019. Consequently, this offer does not constitute a valid offer of possession. However, the respondent offer possession on 20.06.2020 after obtaining Occupation Certificate from the competent Authorities. The complainants have mentioned in the facts of the complaint that the respondent has paid assured return till November, 2018 but stopped paying the same from December,2018 and the relief sought by the complainants regarding assured return is from November 2018 till offer of possession and thereafter assured rental as per clause 4 of MOU.

32. Hence, the Authority directs the respondent/promoter to pay assured return to the complainants at the rate of Rs.60 per sq. ft. per month on 750 sq. ft. from the date when the payment of the assured returns has not been paid till offer of possession. Thereafter the respondent promoter shall pay Rs.50/- per sq. ft. on 750 sq. ft. as assured rental till the offered space is lease out to intended lessee as per clause 4 & 8 of the said MOU.
33. In light of the reasons mentioned above, the Authority is of the view that as per clause 4 of MOU dated 05.09.2011, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MOU dated 05.09.2011. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per MOU is still continuing. The respondent has paid assured return to the complainant till November, 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 4 of MOU dated 05.09.2011 at the agreed rate i.e., @ Rs.45,000/-per month from the date the payment of assured return has not been paid i.e., December 2018 till offer of possession i.e. 20.06.2020. Thereafter Rs.37,500/- per month till the unit is leased out to the intended lessee as per clause 4 & 8 of the MOU.
34. In the present case, the unit allotted to the complainant is virtual space and there is no clause for handing over of physical possession of the unit. Since physical possession of the unit is not yet handed over neither offered for physical possession being a virtual space and it is the obligation of the respondent to put the said unit on lease

which is yet to be leased out. Accordingly, the maintenance charges shall be payable by lessee once the said unit is put on lease by the respondent and only in eventuality of its non-payment or delayed payment, the complainants-allottee is liable to pay the same in terms of the afore-mentioned agreement.

35. That the Act mandates under **section 11(4)(d)**, that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. The relevant portion of Section 11(4)(d) is reproduced below:

4) The promoter shall

“(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees”

36. The respondent vide 'offer of fit-out and commencement of lease rent' letter dated 16.08.2019, admitted its liability to pay lease rent from August 2019 till July 2022 or till the date the unit is leased out to any intended lessee, whichever is earlier. However, as per the MoU dated 05.09.2011, the respondent was liable to pay lease rental from the date of offer of possession till the date the space is leased out to any intended lessee by the respondent. The Authority observes that the occupation certificate for the project in question was received by respondent from the competent authority on 02.06.2020. Therefore, the said offer of possession for fit-out made before the grant of OC cannot be considered as a valid offer of possession. Further, it is to be noted that the respondent after receipt of occupation certificate on

02.06.2020 issued an 'offer of possession' letter dated 20.06.2020, but the unit of the complainant has not been put on lease till date. In light of the reasons mentioned above, the Authority is of the view that as per the MoU dated 05.09.2011, it was obligation on part of the respondent to pay the committed lease rent and to put the unit of the complainant on lease. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 05.09.2011. Accordingly, the liability of the respondent to put the unit on lease and to pay committed lease rental as per the MoU is still continuing.

37. In view of the above, the respondent/promoter is directed to pay lease rental at the agreed rate i.e. @Rs.50/- per sq. ft. per month on 750 sq. ft. to the complainant from the date of valid offer of possession i.e. 20.06.2020 till the offered space is leased out to intended lessee, as per the terms of memorandum of understanding dated 05.09.2011.
38. Further, the complainants have submitted that vide letter dated 12.12.2022, 11.04.2025 & 18.09.2025, the respondent is illegally raising demand towards maintenance and holding charges from them. The respondent has submitted that despite repeated communications and reminders, the complainants have deliberately withheld themselves from taking possession. In view of the continued default and non-cooperation on the part of the complainants, the respondent is constrained to claim holding charges and maintenance dues, which as of date cumulatively amount to Rs.16,72,650/-. Further, the respondent claim holding charges from the complainants, the Authority observes that holding charges or also

synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit. Further, the Authority observes that the occupation certificate for the tower in question was obtained by the respondent on 02.06.2020, whereas possession of the unit was offered to the complainants only on 22.06.2020. Therefore, the demand on account of maintenance charges can only be demanded by the respondent at the time of offer of possession of unit to the complainants and not before. Further, the respondent cannot not to charge any amount against holding charges from the complainants at any point of time even after being part of the agreement/MOU as per law settled by **Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020**. In view of the above, the demand with respect to holding charges is hereby set-aside. However, the respondent can charge maintenance charges from the complainants, from the date of offer of possession i.e. 22.06.2020 only.

39. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.
40. Further, the respondent shall not charge anything from the complainants which is not the part of the agreement/MOU.
41. Furthermore, the Authority further observes that the unit allotted to the complainant in complaint no. "**CR/6226/2024 titled as Sham Lal**



Mohan Vs Imperia Structures Limited” is cancelled on 18.09.2025 and third-party right was also created on 28.10.2025. The respondent-promoter further direct to reinstate the unit or allot alternate unit of equivalent dimensions within the same project and at the original price agreed with the complainant followed by the execution of the builder buyer’s agreement between the parties.

F.V To direct the respondent to pay cost of litigation.

42. 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.

F.VI Execute Conveyance Deed.

43. The Authority observes that the conveyance has been subjected to all kinds of terms and conditions of MOU/agreement and the complainants not being in default under any provisions of agreement/MOU and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:-



"Section 17: - Transfer of title

17(1) *The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

44. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The respondent is directed to execute the conveyance deed within one month after obtaining Occupation certificate from the competent Authority.

G. Directions of the Authority

45. 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 no. 1 directed to pay arrears of accrued assured return as per MOU/agreement dated 05.09.2011 till date of the valid offer of possession at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and



- failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- b. The respondent is directed to pay lease rental at the agreed rate i.e. Rs.50/- per sq. ft. per month on 750 sq. ft. to the complainants from the date of valid offer of possession i.e. 20.06.2020 till the offered unit is leased out to the intended lease, as per clause 4 & 8 of the MOU dated 05.09.2011.
 - c. The respondent can charge maintenance charges from the complainants, from the date of offer of possession i.e. 20.06.2020 only. Further the complainant is directed to pay maintenance charges after adjustment from assured return to be paid by respondent.
 - d. The respondent is directed to executed conveyance deed of the allotted unit after obtaining occupation certificate 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. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
 - e. The respondent shall not charge anything from the complainant which is not the part of the agreement/MOU.
 - f. The respondent is directed not to charge any amount against holding charges from the complainants/allottee at any point of time even after being part of the agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

- g. 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.
46. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
47. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
48. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026

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