

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

**Complaint no.** : 2984 of 2024  
**Date of filing** : 19.07.2024  
**Date of decision** : 27.01.2026

Ram Pal Vashist  
Advitiya Vashist  
Asha Vashist

**Complainants**

**Regd. Address:** L-175, DLF Capital Greens, New  
Moti Nagar, New Delhi -110015

Versus

M/s Imperia Structures Limited

**Regd. office:** A-25, Mohan Cooperative Industrial  
Estate, New Delhi-110044

Pragati Associates Private Limited

**Regd. office:** A-25, Mohan Cooperative Industrial  
Estate, New Delhi-110044

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri P S Saini

**Chairman  
Member**

**APPEARANCE:**

Complainant in person  
Sh. Shubham Mishra (Advocate)

**Complainant  
Counsel for Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

| S. No. | Heads  | Information  |
|--------|--|--|
| 1.     | Name and location of the project                               | The Esfera I, Sector 37 C, Gurgaon, Haryana  |
| 2.     | Nature of the project  | Group Housing  |
| 3.     | DTCP license no.   | 64 of 2011 dated 16.07.2011 as per OC dated 07.02.2018 at page 11 of reply filed by R-1.       |
| 4.     | RERA Registered/ not registered                                | Un-Registered vide no. 62 of 2017 dated 17.08.2017 valid up to 16.02.2020                      |
| 5.     | Booking date   | 27.09.2011<br>(page no. 39 of complaint)   |
| 6.     | Letter regarding execution of BBA to complainant by respondent | 31.01.2013<br>(page 13 of reply)   |
| 7.     | Cancellation of application for booking by respondent          | 01.09.2012<br>(page no. 41 of complaint)   |
| 8.     | Apartment no.  | H-1002 (I-1002), Tower-H<br>(as per intimation of possession at page no. 43 & 66 of complaint) |
| 9.     | Unit measuring   | 1650 sq. ft. (super area)<br>(page no. 39 & 66 of complaint)                                   |
| 10.    | Date of Agreement for Sale with R—1                            | 19.10.2013<br>(page 15 of reply)   |

|     |   |  |
|-----|---|--|
| 11. | Maintenance and service agreement with R-2                    | 20.07.2023<br>(page 122 of complaint)  |
| 12. | Possession clause   | 3.5 years from the date of execution of agreement dated 19.10.2013 as per clause 10.1 at page 36 of reply  |
| 13. | Due date of possession  | 19.10.2017 as per clause 10.1 of agreement dated 19.10.2013 at page 82 of reply  |
| 14. | Total sale consideration                                      | Rs.67,15,464/-<br>(as per page no. 71 of complaint)  |
| 15. | Amount paid by the respondent                                 | Rs.70,54,864/-<br>(as per SOA at page no. 53 of the complaint)   |
| 16. | Payment plan  | Construction link plan as per agreement at page 110 of complaint   |
| 17. | Occupation certificate  | 07.02.2018<br>(at page 11 of reply)  |
| 18. | Request for copy of OC  | 02.08.2023<br>(page 144 of complaint)  |
| 19. | Intimation regarding possession                               | 02.01.2018 along with demand of Rs.13,78,803/-<br>(page no. 43 of complaint)<br><br>21.02.2018 along with demand of Rs.13,97,232/-<br>(page no. 45 of complaint)<br><br>08.03.2018 along with demand of Rs.13,72,039/-<br>(page no. 49 of complaint) |
| 20. | Mail by complainant regarding possession                      | 21.07.2023<br>(page 140 of complaint)  |
| 21. | Objection raised by complainant regarding offer of possession | 17.01.2018<br>25.01.2018<br>01.03.2018<br>(page no. 44 of complaint)   |
| 22. | Demand letter   | 03.05.2016<br>(page no. 42 of complaint)   |

|     |  |  |
|-----|--|--|
| 23. | Legal Notice                                 | 03.03.2018 regarding offer of possession and outstanding dues (page 47 of complaint) |
| 24. | Letter by promoter regarding execution of CD | 13.07.2022 (at page no. 6 of application reply filed by respondent on 06.03.2025)    |
| 25. | Noc from respondent                          | 19.08.2019 (page 54 of complaint)  |

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:

- a. That the complainants booked with Imperia Structures Limited (respondent promoter herein after) one apartment admeasuring **1650** sq. ft. in his group housing project "Esfera" Sector 37 Gurugram with an earnest money of Rs.5,67,000/- vide application dated 29.08.2011. The sale consideration understanding was Basic Sales Price Rs.45,27,874/- and total consideration being Rs.59,09,124/- in a construction linked payment plan. The respondent promoter accepted the booking as per terms and conditions contained in the application form vide his letter dated 27.09.2011. Thus, a legally binding contract was created between the two parties.
- b. That however, the acceptance letter showed the BSP @3150/sqft. The respondent promoter was apprised of the agreed rates, and he agreed to rectify. Instead, the promoter cancelled the booking vide letter dated 01.09.2012. Upon representation, the respondent promoter withdrew the cancellation and waived off the interest charges amounting to Rs.1,56,681/- as is evident from

his demand letter and statements of accounts dated 15.09.2018 and 26.08.2019. The complainants had no other option but to keep on paying instalments as per the demands raised by him.

- c. That the respondent promoter sent a letter dated 02.01.2018 captioned 'letter of intimation regarding possession' followed by two identical letters 21.02.2018 and 08.03.2018 one after the other, offering possession upon payment of the demanded amounts. Pertinently the demanded amount differed in each other in all aforesaid three letters being Rs.13,78,803, Rs13,97,232/- and Rs.13,72,039/- respectively. The respondent promoter informed the final super area of the booked apartment at 1760 sq. ft. and booked Tower H had been named as Tower I as per the occupation certificate. The offer of possession letters were without any enclosure. The complainants vide email dated 17.01.2018 with reminders 25.01.2018, 01.03.2018 and 03.03.2018; asked for detailed calculation of the escalation cost and other charges.
- d. That the respondent promoter in the aforesaid offer of possession letters did not do any reconciliation of already paid excess amount charged in terms of BSP and PLC. Instead, the promoter continued demanding the BSP and PLC at the higher rates than the agreed ones. The respondent additionally raised a demand as escalation cost in the offer of possession letters which was not supported by the applicable contract /agreement. He was apprised of the aforesaid concerns with the request to provide detailed calculations of the demanded amounts and issue rectifications. After the complainants held many meetings, he

asked the complainants to deposit a sum of Rs.11,32,424/- against the demanded Rs.13,72,039/- vide his offer of possession letter dated 08.03.2018 and gave commitment that final reconciliation would be done at the time of issue of no dues certificate. The complainants paid the said amount by 26.04.2018 dully acknowledged by the respondent promoter. Thus, the complainants paid in total a sum of Rs.70,54,864/- dully acknowledged by the respondent promoter in his two statements of account.

- e. That the complainants visited the site Esfera Phase 1 on 26.04.2018 to know the status of readiness of the project and its Apartment H-1002(I-1002 as per the offer of possession letters) and found that the project and the Apartment was grossly incomplete as per terms and conditions set in the application form and prospectus; and the Apartment was inhabitable. The flooring was nonexistent, the wash rooms were without any sanitary fittings, the walls were roughly plastered without any paint etc., the electrical wiring being incomplete and hanging. The drainage pipes belonging to upper floor were hanging in all three wash rooms. The electricity supply was on generator and rationed; and the water supply was through tankers. The club which was part of the booking was nowhere. The basement where booked parking space was proposed; was totally raw without any plastering or flooring etc.
- f. That, thereafter the complainants received a statement of accounts dated 26.08.2019. The statement showed the rates charged except for escalation charges were as per the agreed rates

in the application fully described under para 1 here before. In the statement, the respondent promoter charged Rs.3,72,000/- plus taxes as escalation charges which were not supported by the applicable contract /agreement. The respondent promoter played a trick in the statement in order to avoid refund of over payments made to him in the BSP and PLC. The respondent showed that all installments from day one was receivable @1760 sq. ft. against the factual @1650sft. Thus, he charged penal interest on this alleged default.

- g. That, thereafter the complainants received a copy of the BBA executed on 28.08.2019. The BBA showed the consideration rates as had been agreed in the application. The respondent promoter **(a)** replaced unilaterally handing over of possession clause 10 of the application (36 months plus grace period from the date of application) with clause 10.1 in the BBA with 42 months from the date of execution of the agreement **(b)** incorporated unilaterally an escalation charges clause 1.2 against no such clause in the application form and **(c)** blatantly committed fraud by replacing the size of the booked apartment to **1760 sq. ft.** in the application dated 29.08.2011. The fact is that undisputedly the apartment was booked for 1650sft super area and all installments were paid @ 1650 sq. ft. The final super area 1760 sq. ft. and demand for payment of additional 110 sq. ft; were conveyed by the offer of possession letters.
- h. That the complainants went to the site office at the Esfera Phase-1 to take the possession of I-1002 apartment on 28.08.2019 . The apartment I-1002 (located on the 10<sup>th</sup> Floor of Tower I) was in

complete and inhabitable. The flooring was still incomplete; walls were without plaster. The wash rooms were without flooring and fittings. The drainage pipes belonging to the upper floor flat were hanging in all the washroom ceilings. The electricity supply was still on generators and the water supply was still through tankers. There was no sign of any club and parking space. The completion certificate was nowhere as the respondent promoter had reportedly arbitrarily divided the Esfera project in two phases namely phase 1 and phase 2. The representative of the respondent promoter noted the defects and assured early completion after receiving instructions from the respondent builder.

- i. That after much correspondence and visits, the respondent promoter agreed to hand over the possession. The complainants made an inspection of I-1002 along with the respondent promoter on 20.05.2023 when the apartment was again found to be inhabitable with many defects. After many visits, telephone calls and emails requesting the respondent promoter to hand over possession, he handed over the possession on 20.07.2023. The complainants had to accept defective and incomplete possession. The apartment I-1002 was still having defects namely the hanging sewerage and draining pipes belonging to upper flat in all the wash rooms covered under a substandard foam plastic material based false ceiling, plasters peeling off, the painting peeling off with overall poor quality of construction and material used. No parking space was handed over and there was no club in existence. No OC and completion certificate was handed over. The respondent promoter was requested to rectify the deficiencies

vide email dated 21.07.2023. He was also requested to supply a copy of occupation certificate and completion certificate. There is no response from the respondent promoter till date.

- j. That the respondent promoter has not executed a conveyance deed of the Apartment.
- k. That the respondent 2 is a company owned by the respondent promoter and has been entrusted with maintenance of common areas in Esfera Phase 1 for the last more than five years. The complainants had to sign an agreement called 'Maintenance and Service Agreement' already framed and printed by the respondent promoter on 20<sup>th</sup> July 2023 as a prerequisite to hand over possession. The agreement is having many one-sided clauses in favor of the respondent 1 and respondent 2. The agreement vide its Annexure 1 fixes an exorbitant fixed rate amounting to Rs 6850 per month as the maintenance charges for the said Apartment in violation to the RERA 2016.

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

4. The complainants have sought following relief(s).
  - a. Direct the respondent to calculate due date of delivery of possession be treated as 36 months from the date of application as per Clause 10 of the application. The grace period of six months may be declared inadmissible.
  - b. Declare offer of possession dated 21.02.2018 and 08.03.2018 be invalid.
  - c. Direct the respondent to pay delay possession charges to the complainants at the prevailing rate of interest from the expected

date of delivery on 29.08.2014 till actual handing over of the possession on 20.07.2023.

- d.** Direct the respondent to hand over parking space and pay delayed possession charges of the Parking Space from the date of handing over of the possession of the Apartment i.e. 20.07.2023 till its actual handing over of the possession.
- e.** The respondent promoter may be directed to hand over the club membership and pay delayed handing over membership charges of the membership of the club from the date of handing over of the possession of the Apartment i.e. 20.07.2023 till its actual handing over.
- f.** The escalation of charges demanded with the offer of possession letters may be declared as inadmissible. The charged amount may be refunded with interest.
- g.** The BBA clauses stating that the Apartment was booked for 1760sft vide application dated 29.08.2011 be treated as amended with factual 1650 sq. ft. booked with application. The interest charged by the respondent promoter on account of this fraud amounting to Rs.1,50,722/- in the statement of account dated 26.08.2019 be treated as inadmissible.
- h.** The respondent promoter be directed to refund the overcharged amount with interest from the date of their collection with each installment till the date of refund.
- i.** The respondent promoter be directed to charge the rate of interest from the complainants equal to the rate of interest which the promoter is liable to pay the allottee, in case of default and

refund out of the amount of Rs 2456 charged as interest for delayed receipt of payments.

- j. The GST amounting to Rs.37,792/- collected by the respondent be declared inadmissible and be refunded with interest.
  - k. The respondent promoter be directed to rectify the defects in the apartment.
  - l. The respondent promoter be directed to obtain completion certificate of Phase 1 Esfera and supply a copy to the complainants.
  - m. The respondent promoter be directed to execute conveyance deed within three months.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1.**

6. The respondent no. 1 has contested the complaint on the following grounds:-
- a. That the complainants have approached this Authority with malice and have tried to mislead this Authority by placing or record concocted facts and 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 is-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 respondent no.1 has already completed the construction, procured Occupation Certificate on 07.02.2018 and has started giving out physical possession of the project way back. The complainants were also sent offer of possession on 21.02.2018. The present complaint is mere an attempt on behalf of the complainants to harass respondent no. 1 and to extort money from them.
- c.** That the Complainants at their own free will, booked a unit on 29.08.2011 with Respondent No. 1, in the Project namely 'The Esfera', located at Sector- 37C, Gurugram, for a total sale consideration of Rs.70,04,693/- including applicable tax and additional miscellaneous charges.
- d.** That the construction of the project has already been completed and respondent no. 1 has already Occupation Certificate on 07.02.2018.
- e.** That the respondent has already started giving out physical possession of the project way back. The complainants were also sent offer of possession on 21.02.2018.
- f.** That the complainants have mislead the Authority by omitting key details. The unit in question was initially booked in the year 2011, with the application from signed on 29.08.2011. thereafter, due to non- payment of outstanding amounts, respondent no. 1 cancelled the unit allotted to the complainants on 01.09.2011 and upon the complainant's request and clearance of outstanding payments, the unit was restored. Subsequently, a letter dated 31.01.2013 was sent to the

complainants to execute the BBA. Thereafter the BBA was executed on 19.10.2013.

- g.** That in para 10 of the complaint, the complainants have claimed that the BBA as executed on 28.08.2019, however, the same is incorrect as the said date pertains to the date when spare copy of the BBA was provided as the original BBA was lost, for which an e-complaint was filed with Delhi Police following the NCR registration on 27.08.2019.
- h.** Furthermore, the unit in question i.e., Unit H-1002 (as per OC-I-1002) in the tower H (as per OC tower-I) is part of the project for which the respondent attained OC on 07.02.2018 and following which an offer of possession was sent on 21.02.2018 thereby requesting the complainants to clear outstanding dues of Rs.13,97,232/-. The said demand is in alignment with the terms of the BBA specifically Annexures F and G, which the respondent no. 1 adjusted to Rs.11,32,424/- upon the complainants' request, thereby showing cooperative approach.
- i.** That the BBA was executed on 19.10.2013 thereby provides the date of possession as 19.04.2017. Although, respondent no. 1 obtained the OC on 07.02.2018. hence, DPC is justifiable till the date when OC was attained i.e., 07.02.2018. Following the OC, respondent no. 1 issued possession offers and reminder, yet the complainant did not take possession. Thus, after adjusting DPC till OC date, the complainants are liable to pay maintenance charges and holding charges from 07.02.2018 until 20.07.2023 when the possession was finally handed over.

j. That the complainants have already signed the maintenance agreement, they are liable to pay maintenance to the designated maintenance company i.e. respondent no. 2. Therefore, the complainants must address any issue through respondent no. 2 as they had executed maintenance agreement with respondent no. 2.

k. That the respondent no. 1 had asked the complainants to get their unit registered but the complainants have failed to do so, therefore, the respondent no. 1 is entitled to claim holding charges from the complainants.

l. That the complaint is liable to be dismissed.

**E. Reply by the respondent no. 2**

7. The respondent no. 2 has contested the complaint on the following grounds:

a. That the complainants have approached this Authority with malice and have tried to mislead this Authority by placing on record concocted facts and 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 is-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 Complainants at their own free will, booked a unit on 29.08.2011 with Respondent No. 1, in the Project namely 'The Esfera', located at Sector- 37C, Gurugram, for a total sale consideration of Rs.70,04,693/- including applicable tax and

additional miscellaneous charges. Thereafter, due to non-payment of outstanding amounts, respondent No. 1 cancelled the unit allotted to the Complainants on 01.09.2012. However, upon the Complainant's request and clearance of outstanding payments, the unit was restored. Subsequently, a letter dated 31.01.2013 was sent to the Complainants thereby inviting the Complainants to execute the BBA. Thereafter, BBA was executed on 19.10.2013.

- c. That the construction of the Project has already been completed and Respondent No. 1 has already procured Occupation Certificate for the same on 07.02.2018. Thereafter, the Complainants were sent offer of possession on 21.02.2018 & 08.03.2018.
- d. That the unit in question was handed over to the Complainants on 29.08.2019 and thereafter Respondent No. 2 sent a letter dated 04.11.2019 to the Complainants thereby requesting the Complainants to execute Maintenance Agreement and further claiming maintenance with regard to the unit in question. The Complainants signed the maintenance agreement with Respondent No. 2 on 20<sup>th</sup> July 2023; hence, they are liable to pay maintenance to Respondent No. 2.
- e. That the Respondent No. 2 is duly entitled to claim maintenance charges from the Complainants, as the subject unit was handed over to them on 20.08.2019, and a Maintenance Agreement was subsequently executed. However, the Complainants have failed to make any payment towards the maintenance charges to date. The Complainants are liable to pay the maintenance charges from the date of possession, as the Respondent company has been solely responsible for the upkeep of the building. The construction and

subsequent maintenance of the building have been carried out after incurring substantial costs, which continue to be borne by the Respondent company.

f. That the complaint has been filed by the Complainants to evade their liability of paying maintenance & holding charges, and therefore, the said complaint is not maintainable and liable to be dismissed, due to the fault on the part of the Complainants itself.

8. 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.

**F. Jurisdiction of the Authority**

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

**F.I Territorial jurisdiction**

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

**F.II Subject-matter jurisdiction**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11***

.....  
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

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

12. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Findings on the relief sought by the complainants.**

**G.I. Direct the respondent to calculate due date of delivery of possession be treated as 36 months from the date of application as per Clause 10 of the application. The grace period of six months may be declared inadmissible**

**G.II. Declare offer of possession dated 21.02.2018 and 08.03.2018 be invalid.**

**G.III. Direct the respondent to pay delay possession charges to the complainants at the prevailing rate of interest from the expected date of delivery on 29.08.2014 till actual handing over of the possession on 20.07.2023.**

**G.IV. The respondent promoter be directed to charge the rate of interest from the complainants equal to the rate of interest which the**

**promoter is liable to pay the allottee, in case of default and refund out of the amount of Rs 2456 charged as interest for delayed receipt of payments.**

**G.V. The respondent promoter be directed to obtain completion certificate of Phase 1 Esfera and supply a copy to the complainants.**

13. 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.
14. In the present matter the complainant was allotted unit no. H-1002, admeasuring 1650 sq. ft. (super area) in the project "The Esfera I" Sector 37 C by the respondent-builder for a sale consideration of Rs.67,15,464/- and they have paid a sum of Rs.70,54,464/-. The agreement for sale was executed on 28.08.20192 between the complainants and respondent no. 1. As per clause 10.1 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within three and half year from the date of execution of agreement. The period of 3 and half year is calculated from the date of execution of buyer agreement and due date of possession comes to 19.04.2017. Further, the Authority allows 6 months grace period being unqualified. Accordingly, the due date of possession comes out to be 19.10.2017. The Occupation Certificate for the project has been obtained on 07.02.2018 from the competent Authority.

15. The complainants intends to continue with the project and are seeking delay possession charges interest on the amount paid. 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:

***“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, -*

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

*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.”*

16. Clause 10.1 of the BBA provides for handing over of possession and is reproduced below:

*“The Developer/company based on its present plans and estimates and subject to all just expectations, contemplates to complete the construction of the said building/said apartment with a period of three and half years from the date of execution of the agreement unless there shall be delay .....*”

17. **Due date of possession and admissibility of grace period:** As per clause 10.1 of the BBA, the possession of the allotted unit was supposed

to be offered within three and half year. Further, the Authority allows 6 months grace period being unqualified. Accordingly, the due date of possession comes out to be 19.10.2017.

- 18. Payment of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*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.*

- 19.** 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.

20. 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., 27.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. **10.80%**.
21. 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—  
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 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;"*

22. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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.

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e. **10.80%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. 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.
25. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the allotment letter and BBA. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
26. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 19.10.2017 till the date of valid offer of possession i.e. 21.02.2018 plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- G.VI. Direct the respondent to hand over parking space and pay delayed possession charges of the Parking Space from the date of handing of the possession of the Apartment i.e. 20.07.2023 till its actual handing over of the possession.**
- G.VII. The respondent promoter may be directed to hand over the club membership and pay delayed handing over membership charges of the membership of the club from the date of handing of the possession of the Apartment i.e. 20.07.2023 till its actual handing over.**
- G.VIII. The escalation of charges demanded with the offer of possession letters may be declared as inadmissible. The charged amount may be refunded with interest.**
- G.IX. The BBA clauses stating that the Apartment was booked for 1760 sq. ft. vide application dated 29.08.2011 be treated as amended with factual 1650 sq. ft. booked with application. The interest charged by the respondent promoter on account of this fraud amounting to Rs.1,50,722/- in the statement of account dated 26.08.2019 be treated as inadmissible.**
- G.X. The respondent promoter be directed to refund the overcharged amount with interest from the date of their collection with each installment till the date of refund.**
- G.XI. The GST amounting to Rs.37,792/- collected by the respondent be declared inadmissible and be refunded with interest.**
- G.XII. The respondent promoter be directed to rectify the defects in the apartment.**

27. 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.
28. 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.
29. The respondent has obtained occupancy certificate of the tower in which the units of the complainant are located on 07.02.2018. Thereafter, the respondent to mandated to provide essential services and maintain the building in terms of section 11(4)(d) of the Act, 2016. In view of the above, the complainant is obligated to pay the maintenance charges from the date of offer of possession i.e. 21.02.2018.
30. 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.
31. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being

part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under

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

32. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.
33. Furthermore, the respondent shall not charge anything from the complainants which is not the part of the agreement.
34. It is important to note that the rest of the relief mentioned above was not pressed by the complainant during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information to the above-mentioned relief sought. The Authority is of the view that the complainant counsel does not intent to peruse the said relief sought by the complainant. Hence, the Authority has not returned any finding with regard to the above-mentioned relief.

#### **G.XIII. Execute conveyance deed.**

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

in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for occupation certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent Authority.

#### **H. Directions of the Authority**

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

- a. The respondent no. 1 is directed to pay interest at the prescribed rate of 10.80% p.a. for every month of delay from due date of possession i.e., 19.10.2017 [*inadvertently mentioned as 09.04.2017 in proceedings dated 27.01.2026*] till the date of valid offer of possession i.e. 21.02.2018 plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondents are directed to hand over the actual physical possession of the unit to the complainant within one month from the date of this order.

- c. The respondents are directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent Authority.
- d. The rate of interest chargeable from the allottees by the promoter, in case of default, if any, shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- e. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- f. The respondents shall not charge anything which is not the part of BBA.
- 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.
37. Complaint stands disposed of.
38. File be consigned to registry.

  
(P & Saini)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2026