

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**Date of decision: **21.05.2026**

NAME OF THE BUILDER		M/S IMPERIA STRUCTURES LIMITED	
PROJECT NAME		"THE ESFERA" PHASE II	
S. No.	Case No.	Case title	Appearance
1	CR/6572/2025	Mrs. Samreen Uppal V/s Imperia Structures Limited	Shri Navdeep Singh and Ms. Uma Singh (Advocates for complainant)
2	CR/6579/2025	Mrs. Samreen Uppal V/s Imperia Structures Limited	Ms. Priya Sharma (Advocate for respondent)

CORAM:

Shri Phool Singh Saini

Member**ORDER**

1. This order shall dispose of both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Esfera Phase-II, situated at Sector-37-C, Gurugram being



developed by the same respondent/promoter i.e., M/s Imperia Structures Limited. The terms and conditions of the booking application form, allotment letter, and the agreement to sell fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delayed possession charges along with the possession of the unit and execution of conveyance deed and others.

3. The details of the complaints, reply 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	"THE ESFERA" PHASE II" at sector 37C, Gurgaon, Haryana.
Project area DTCP License No. Name of Licensee	17 acres 64 of 2011 dated 16.07.2011 valid up to 15.07.2024 M/s Prime IT Solutions Pvt. Ltd. and 4 others
RERA Registration	Registered vide no. 352 of 2017 dated 17.11.2017
<p>Possession Clause: -</p> <p>7. POSSESSION OF THE COMMERCIAL SPACE/SHOP</p> <p>7.1 The Company agrees and understands that timely delivery of possession of the said commercial space/shop is the essence of this Agreement. The Company, based on the approved plans and specifications, assures to hand over possession of the said commercial space/shop on or before 31.12.2021 with three months grace period, unless there is a delay or failure due to war, flood, drought, fire, cyclone, pandemic, epidemic, lockdowns, earthquake or any other calamity caused by nature affecting the regular development of the real estate project i.e. the Project - The Esfera ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the said commercial space/shop, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee(s) agrees and confirms that, in the event it becomes impossible for the Company to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Company shall refund to the Allottee(s) the entire amount without interest received by the Company from the date of allotment within 90 days from that date of issue of formal letter by the Company for non-implementation of the project. After refund of the money paid by the Allottee(s), Allottee(s) agrees that he/ she shall not have any rights, claims etc. against the Company and that the Company shall be</p>	





released and discharged from all its obligations and liabilities under this Agreement.

(As per page no. 34 of the complaint)

Occupation Certificate: 12.07.2024

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant in Rs.
1.	CR/6572/2025 Mrs. Samreen Uppal V/s Imperia Structures Limited DOF: 09.01.2026 Reply Status: 06.03.2026	BBA Copy annexed but not executed	01, Ground Floor, (Page no. 23 of complaint) OOP: - 17.07.2024 (Page no. 72 of complaint)	330 sq. ft. (super area) (Page no. 23 of complaint)	31.12.2021 (Note: - due date of possession mention in the possession clause of the unexecuted agreement)	TSC: - 21,25,000/- (Page no. 26 of complaint) AP: - 22,95,000/- (As per receipt information at page no. 63 of complaint)
2.	CR/6579/2025 Mrs. Samreen Uppal V/s Imperia Structures Limited DOF: 09.01.2026 Reply Status: 06.03.2026	BBA Copy annexed but not executed AL: - 09.11.2020 (Page no. 70 of complaint)	02, Ground Floor, (Page no. 70 of complaint) OOP: - 17.07.2024 (Page no. 72 of complaint)	500 sq. ft. (super area) (Page no. 21 of complaint)	31.12.2021 (Note: - due date of possession mention in the possession clause of the unexecuted agreement)	TSC: - 56,00,000/- (Page no. 24 of complaint) AP: - 60,48,001/- (As per receipt information at page no. 63 of complaint) NDC: - 17.03.2021 (Page no. 69 of complaint)

Relief Sought by the complainant(s):-

- i. Direct the respondent to hand over lawful and peaceful possession of the allotted commercial unit in the project "Imperia Esfera (Phase II), Sector 37-C, Gurugram, to the Complainant immediately from the date of the order, together with all documents of title, access, easement and facility rights appurtenant to the said property. Further, direct the respondent to execute and register the conveyance deed in favour of the Complainant at its own cost and responsibility, in compliance with Sections 17 and 19(10) of the Act 2016, and to deliver possession free from all encumbrances, liens, charges, or third-party claims.
- ii. Direct the respondent to pay delay possession interest to the complainant under Section 18(1)(a) of the Act at the rate of SBI MCLR + 2 % per annum (simple interest) on the total sum of ₹60,48,001/- paid by the complainant, for the period commencing 01 April 2022 (the date immediately following the grace period of possession) till the actual date of possession.
- iii. Direct the respondent to refund the excess GST of ₹85,000 along with interest SBI MCLR + 2% per annum, being the statutory rate prescribed, and permit adjustment of the said amount against any future dues or possession-linked charges, should the Authority deem it fit.
- iv. To impose appropriate penalty upon the respondent under section 61 of the Act, 2016 for continued non-compliance, misrepresentation, and withholding of possession even after obtaining the occupation certificate, thereby violating the statutory duties under sections 4(2) (1)(C), 11, 18 and 19 of the Act and the Rules framed thereunder.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s
BBA	Builder Buyer's Agreement
AL	Allotment Letter
OOP	Offer of possession
NDC	No Dues Certificate

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the booking application form executed between the parties in respect of said units for not handing over the possession by the due date, seeking delayed possession charges along with the possession of the unit and execution of conveyance deed and others.
5. It has been decided to treat the said 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.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6572/2025 titled as Mrs. Samreen Uppal V/s Imperia Structures Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

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

CR/6572/2025 titled as Mrs. Samreen Uppal V/s Imperia Structures Limited

S. No.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase II, Sector 37 C, Gurugram
2.	Nature of the project	Group Housing
3.	Project Area	17 acres
4.	DTCP license no. and validity	64 of 2011 dated 16.07.2011 valid up to 15.07.2024
5.	Name of licensee	Prime IT Solutions Pvt. Ltd. and 4 others
6.	RERA Registered or not	Registered vide no. 352 of 2017 dated 17.11.2017
7.	Unit no.	Shop No. 01 Ground floor (As per page no. 23 of the complaint)
8.	Unit area admeasuring	330 sq. ft. (Super area) 165 sq. ft. (Built up area) (As per page no. 23 of the complaint)
9.	Allotment letter	Not annexed
10.	Date of execution of apartment buyer's agreement	Copy of BBA annexed but not executed between the parties
11.	Possession clause	7. POSSESSION OF THE COMMERCIAL SPACE/SHOP



		<p>7.1 The Company agrees and understands that timely delivery of possession of the said commercial space/shop is the essence of this Agreement. The Company, based on the approved plans and specifications, assures to hand over possession of the said commercial space/shop on or before 31.12.2021 with three months grace period, unless there is a delay or failure due to war, flood, drought, fire, cyclone, pandemic, epidemic, lockdowns, earthquake or any other calamity caused by nature affecting the regular development of the real estate project i.e. the Project - The Esfera ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the said commercial space/shop, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee(s) agrees and confirms that, in the event it becomes impossible for the Company to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Company shall refund to the Allottee(s) the entire amount without interest received by the Company from the date of allotment within 90 days from that date of issue of formal letter by the Company for non-implementation of the project. After refund of the money paid by the Allottee(s), Allottee(s) agrees that he/ she shall not have any rights, claims etc. against the Company and that the Company shall be released and discharged from all its obligations and liabilities under this Agreement.</p> <p>(As per page no. 34 of the complaint)</p>
12.	Due date of possession	31.12.2021 (Note: Due date of possession mentioned in the possession clause)
13.	Total sale consideration	Rs.21,25,000/- + GST (As per page no. 26 of the complaint)
14.	Amount paid by the complainant	Rs.22,95,000/-



		(Page no. 30 of the complaint and also as per receipt information at page no. 63 of the complaint)
15.	Occupation Certificate	12.07.2024 (As per page no. 66 of the complaint)
16.	Offer of possession	17.07.2024 (Page no. 72 of the complaint)
17.	No Dues Certificate issued by the respondent company	17.03.2021 (Page no. 69 of the complaint)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That the complainant, namely Samreen Uppal, booked a commercial unit bearing no. 1 within a residential group housing project in the project "*Imperia Esfera (Phase-II)*", located at Sector 37-C, Gurugram, developed by respondent herein. The total sale consideration was Rs.21,95,000/- (*SIC Rs.56 lakh*) + GST, of which the complainant has already paid an amount of Rs.22,95,000/- (*SIC Rs.60.48 lakh*) (including taxes) to the respondent through proper banking channels.
 - II. That the provisional allotment letter and the allotment letter stipulated that possession would be handed over on or before 31.12.2021, with a grace period up to 31.03.2022.
 - III. Although the Occupation Certificate (OC) has since been obtained by the builder, possession and execution of the conveyance deed have been wrongfully withheld, without any lawful justification. That the respondent further charged GST @ 12 % on the entire basic sale price without deducting the one-third land-value abatement mandated under Notification No. 11/2017-CTR, resulting in an excess collection of approximately ₹ 2.24 lakh plus interest.



- IV. The Complainant has repeatedly requested possession and correction of the illegal GST demand, but the Respondent has failed to comply. Consequently, the complainant approaches this Authority under Sections 18(1)(a), 31 and 61 of the *Act, 2016*, seeking the following directions —
- V. Direction to hand over possession and execute the conveyance deed, delay-interest SBI MCLR rate Plus 2% for the period from 01.04.2022 till actual possession, refund of the excess GST collected with statutory interest.
- VI. That the complainant commercial unit bearing no. 1 is located *outside* the gated boundary of “Imperia Esfera Phase II,” fronting the public road and having completely independent access. The unit does **not** use or rely upon any internal common areas of the residential project— including internal roads, lobbies, lifts, corridors, landscaped areas, tower security, housekeeping, club facilities, firefighting shafts, or residential amenities. Its only linkage to internal infrastructure is the DG-backup power line, for which the complainant is willing to pay strictly on a *pay-per-use* basis.
- VII. In these circumstances, the respondent demands for “CAM,” “commercial CAM,” “maintenance,” or “holding charges” based on residential super area are illegal, arbitrary and untenable, being directly contrary to Sections 11(4)(d), 17(1) and 19(6) of the *Act, 2016*. Under settled HARERA jurisprudence, an allottee can only be charged for services **used**, and external commercial units cannot be burdened with internal residential CAM. Any such levy amounts to unjust enrichment and is void under Section 79 of the *Act*. The Respondent is entitled, at best, to recover actual DG-backup consumption charges — and nothing beyond the penalty and litigation costs against the promoter.

C. Relief sought by the complainant: -



9. The complainant has sought following relief(s):
- I. Direct the respondent to hand over lawful and peaceful possession of the allotted commercial unit in the project "Imperia Esfera (Phase II), Sector 37-C, Gurugram, to the Complainant immediately from the date of the order, together with all documents of title, access, easement and facility rights appurtenant to the said property. Further, direct the respondent to execute and register the conveyance deed in favour of the Complainant at its own cost and responsibility, in compliance with Sections 17 and 19(10) of the Act 2016, and to deliver possession free from all encumbrances, liens, charges, or third-party claims.
 - II. Direct the respondent to pay delay possession interest to the complainant under Section 18(1)(a) of the Act at the rate of SBI MCLR + 2 % per annum (simple interest) on the total sum of ₹60,48,001/- paid by the complainant, for the period commencing 01 April 2022 (the date immediately following the grace period of possession) till the actual date of possession.
 - III. Direct the respondent to refund the excess GST of ₹85,000 along with interest SBI MCLR + 2% per annum, being the statutory rate prescribed, and permit adjustment of the said amount against any future dues or possession-linked charges, should the Authority deem it fit.
 - IV. To impose appropriate penalty upon the respondent under section 61 of the Act, 2016 for continued non-compliance, misrepresentation, and withholding of possession even after obtaining the occupation certificate, thereby violating the statutory duties under sections 4(2) (I)(C), 11, 18 and 19 of the Act and the Rules framed thereunder.
10. 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

11. The respondent contested the complaint on the following grounds: -

- i. That the complainant after making independent enquiries and only after being fully satisfied about the project, had approached the respondent company for booking of a commercial shop in respondent's project "The Esfera II" located in Sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the shop no. 1, in favor of the complainant for a total consideration amount of Rs.22,95,001/-, including applicable tax and other charges and opted the down payment plan on the terms and conditions mutually agreed by the complainant and the respondent company.
- ii. That the complainant has alleged that the respondent company failed to execute the agreement for sale. However, it is pertinent to clarify that the agreement had been duly prepared and the complainant was informed to visit and collect/execute the same. despite such intimation, the complainant failed to come forward to complete the formalities. The respondent company cannot be held responsible for the inaction and non-cooperation on the part of the complainant.
- iii. That without prejudice to the preliminary objections raised herein, it is respectfully submitted that in situations where no Agreement for Sale has been executed and no specific date of possession has been formally stipulated between the parties, the determination of the expected timeline for completion is generally assessed on the basis of a reasonable construction period, as recognized in settled real estate practice. It is a settled position in real estate that a period of 36 months for completion of construction, along with an additional grace period of 6 months, i.e., an aggregate period of approximately 3.5 years, is treated as a reasonable





timeframe for delivery of possession in the absence of a specifically agreed date. Accordingly, even assuming (without admitting) the alleged booking/application date to be 04.01.2021, the reasonable period of 3.5 years would expire only on or about 17.06.2024. Therefore, the contention of the complainant that the possession became due in the year 2022 is legally untenable and based on an erroneous computation. In the absence of a contractually agreed possession date, no cause of action could have arisen in 2022, and the claim premised on such incorrect assumption is liable to be rejected.

- iv. That further the allegations of the complainant to the effect that GST has been charged in excess or contrary to the applicable regime are wholly misconceived and without any legal basis. It is respectfully submitted that GST is a statutory levy imposed under the provisions of the Central Goods and Services Tax Act, 2017 read with Notification No. 11/2017-Central Tax (Rate) and other applicable notifications issued by the Government of India. The respondent company merely collected GST at the rate applicable at the said time, i.e., 12%, which is in accordance with statutory provisions and further duly deposited the same with the Government authorities. The respondent company does not retain the GST component as consideration, and therefore no question of "excess charging" or unjust enrichment arises. In the event the complainant disputes the applicability or computation of GST, the remedy lies under the GST statutory framework before the competent tax authorities. The present proceedings before this Authority cannot be converted into a tax adjudication forum for determination of GST liability or refund thereof. In the absence of any adjudication by the competent tax authority holding that excess GST was levied or deposited,



the prayer for refund of GST is legally unsustainable and liable to be rejected.

- v. Further it is pertinent to mention that the occupancy certificate for project in which the complainant's unit is situated was duly obtained on 13.03.2024, i.e., well before the due date and the possession was duly offered vide letter dated 17.07.2024.
- vi. That the occupation certificate in respect of the project was duly obtained well within the committed timeline and prior to the alleged due date of possession. Once the occupation certificate was obtained, the respondent company duly offered possession to the complainant in accordance with law. It is respectfully submitted that under Section 19(10) of the Real Estate (Regulation and Development) Act, 2016, it is the statutory obligation of the allottee to take physical possession of the apartment within two months from the date of issuance of the occupation certificate. In the present case, despite due intimation and offer of possession, the complainant failed to come forward to take possession within the prescribed period and did not comply with the statutory mandate. Having failed to discharge her own obligation under the Act, the complainant cannot now seek delayed possession charges. Such charges are contemplated only in cases where the promoter is in delay. In the present case, since the occupation certificate was obtained prior to the due date and possession was duly offered, no delay can be attributed to the Respondent Company. The conduct of the complainant clearly reflects an attempt to avoid taking possession while simultaneously claiming monetary benefits. The relief sought is therefore not only legally unsustainable but also amounts to an attempt at unjust enrichment at the cost of the respondent company. Accordingly, the claim for delayed possession charges is liable to be rejected.

- vii. That the complainant has alleged that the shop in question is not connected with or linked to any of the facilities of the society and, therefore, she is not liable to pay the common area maintenance (CAM) charges on the ground that the common areas are allegedly not being utilized by her. The said contention is wholly misconceived and contrary to law. That the shop is very much a part of the Society and is situated within the common development. The liability to contribute towards maintenance of common areas does not depend upon the extent of actual usage by an individual allottee but arises from ownership and participation in the common infrastructure and shared facilities of the project. Further, Section 19(6) of the Act, 2016 clearly casts a statutory obligation upon every allottee to make necessary payments in respect of maintenance charges, municipal taxes, water and electricity charges, and other dues as may be determined. The complainant cannot unilaterally exempt herself from this statutory obligation on the plea of non-usage. The attempt to avoid payment of maintenance charges, despite being a part of the Society and beneficiary of the overall common infrastructure, is legally untenable and reflects deliberate non-compliance with statutory responsibilities. Accordingly, the objection raised by the complainant in this regard deserves to be rejected.
- viii. That it is further submitted that since the complainant has cleared the principal outstanding dues, the respondent company remains ready and willing to hand over possession of the said unit without any delay. However, that certain charges towards registration, stamp duty, and maintenance, which are duly payable at the time of possession, are still outstanding and are required to be cleared by the Complainant to enable completion of the possession and conveyance formalities. It is pertinent to mention that under Section 19(11) of the Act, 2016, the allottee is under a statutory obligation

to participate towards registration of the conveyance deed of the unit. The execution and registration of the conveyance deed necessarily entail payment of applicable stamp duty, registration charges, and other incidental expenses, which are to be borne by the allottee. In the absence of payment of the said charges, the respondent company cannot be compelled to complete the possession formalities. The respondent, however, reiterates its readiness and willingness to hand over possession upon compliance with the statutory and contractual obligations by the complainant.

ix. That the present complaint is not maintainable either in law or on facts and is liable to be dismissed as being devoid of merit. The complainant, having failed to discharge her contractual as well as statutory obligations, including taking possession within the prescribed period and clearing all dues payable at the time of possession, cannot seek relief from this Authority on allegations that are contrary to the record. It is further submitted that the complaint proceeds on selective and incomplete disclosure of facts, while material circumstances have not been fairly presented before this Authority. In view of the complainant's own non-compliance and conduct, the reliefs sought are misconceived, legally untenable, and not liable to be granted.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction



14. 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

15. 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.

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

F. Findings on the relief sought by the complainant(s)

- F. I Direct the respondent to hand over lawful and peaceful possession of the allotted commercial unit in the project "Imperia Esfera (Phase II)", Sector**



37-C, Gurugram, to the complainant immediately from the date of the order, together with all documents of title, access, easement and facility rights appurtenant to the said property. Further, direct the respondent to execute and register the conveyance deed in favour of the Complainant at its own cost and responsibility, in compliance with Sections 17 and 19(10) of the Act 2016, and to deliver possession free from all encumbrances, liens, charges, or third-party claims.

F. II Direct the respondent to pay delay possession interest to the complainant under Section 18(1)(a) of the Act at the rate of SBI MCLR + 2 % per annum (simple interest) on the total sum of ₹60,48,001/- paid by the complainant, for the period commencing 01 April 2022 (the date immediately following the grace period of possession) till the actual date of possession.

17. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.

18. In the present complaint, the complainant herein intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

19. Further, clause 7.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"7. POSSESSION OF THE COMMERCIAL SPACE/SHOP -

7.1 The Company agrees and understands that timely delivery of possession of the said commercial space/shop is the essence of this Agreement. The Company, based on the approved plans and specifications, assures to hand over possession of the said commercial space/shop on or before 31.12.2021 with three months grace period, unless there is a delay or failure due to war, flood, drought, fire, cyclone, pandemic, epidemic, lockdowns, earthquake or any other calamity caused by nature affecting the regular development of the real estate project i.e. the Project - The Esfera ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the said commercial space/shop, provided that such Force Majeure conditions are not of a nature which make it



impossible for the contract to be implemented. The Allottee(s) agrees and confirms that, in the event it becomes impossible for the Company to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Company shall refund to the Allottee(s) the entire amount without interest received by the Company from the date of allotment within 90 days from that date of issue of formal letter by the Company for non-implementation of the project. After refund of the money paid by the Allottee(s), Allottee(s) agrees that he/ she shall not have any rights, claims etc. against the Company and that the Company shall be released and discharged from all its obligations and liabilities under this Agreement"

(Emphasis supplied)

20. **Admissibility of grace period:** As per Clause 7.1 of the unexecuted Buyer's Agreement, the respondent/promoter proposed to deliver possession of the allotted unit to the complainant on or before 31.12.2021. The Authority observes that notwithstanding the fact that the said agreement remained unexecuted between the parties, the respondent was bound by the terms thereof and was under an obligation to hand over possession of the allotted unit in terms of Clause 7.1 of the agreement. Further extension of a period of 3 months (after the expiry of the said date i.e., 31.12.2021) subject to force majeure events or governmental action/inaction. But the respondent has not mentioned as to what force majeure circumstances he is being referring to on the happening on which, he would become entitled for the said extension of period. In such eventuality the authority cannot grant such extension and hence the grace period is disallowed.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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, *ibid*. 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.

22. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.
23. 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., 21.05.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
24. 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;"



25. Therefore, interest on the delay payments from the complainant 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.
26. On consideration of the documents available on record and submissions made regarding contravention of 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.
27. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. 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 is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest i.e., @ 10.80% p.a. w.e.f. 31.12.2021 till the offer of possession (17.07.2024) plus 2 months i.e., 17.09.2024 or actual handing over of possession whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
28. It is pertinent to note that the rate of interest chargeable from the allottee by the promoter, in case of default 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
29. Also, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Occupation certificate has also been obtained by the respondent-promoter on 12.07.2024. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into



between the parties within a period of 30 days from date of this order after payment of outstanding dues, if any.

30. Further, the respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate /completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 60 days from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, 2016.

F.III Direct the respondent to refund the excess GST of ₹85,000 along with interest SBI MCLR + 2% per annum, being the statutory rate prescribed, and permit adjustment of the said amount against any future dues or possession-linked charges, should the Authority deem it fit.

31. It is contended on behalf of the complainant that as per applicant file dated 17.03.2021 the respondent has mentioned a sum of Rs.2,55,000/ on account of CGST/SGST. The possession of the subject unit was required to be delivered by 31.12.2021 and the incidence of GST came into operation thereafter on 01.07.2017. The Authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees where the same was leviable, at the applicable rate, the respondent-builder has to pass on the benefit of input tax credit to allottees as per applicable GST rules subject to furnishing of such proof of payments and relevant details.

F. IV To impose appropriate penalty upon the respondent under section 61 of the Act, 2016 for continued non-compliance, misrepresentation, and withholding of possession even after obtaining the occupation certificate, thereby violating



the statutory duties under sections 4(2) (I)(C), 11, 18 and 19 of the Act and the Rules framed thereunder.

32. In the absence of any document pertaining to the said violation of the respondent, no direction is being given to this effect.

G. Directions of the authority

33. 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):

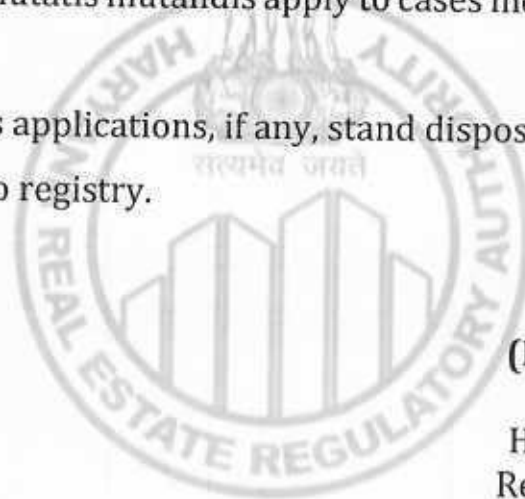
- I. The respondent is directed pay interest at the prescribed rate i.e., 10.80% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 31.12.2021 till the date of offer of possession (17.07.2024) plus two months i.e. up to 17.09.2024 or actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The rate of interest chargeable from the allottees by the promoter, in case of default 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, 2016.
- III. The respondent is directed to handover the physical possession of the allotted unit as per specification of the buyer's agreement entered into between the parties, as the obtaining of occupation certificate from the competent authority in terms of Section 11(4)(b) read with Section 17 of the Act, 2016. The respondent is further directed to get the



conveyance deed of the allotted unit executed in the favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

- IV. The respondent shall not charge anything from the complainant which is not the part of builder buyer's agreement. The respondent is not entitled to charge any amount against holding charges from the complainant /allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. Complaint as well as applications, if any, stand disposed off accordingly.
36. Files be consigned to registry.

Dated: 21.05.2026




(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM