BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**198 of 2026**
Complaint filed on:	**14.01.2026**
Date of decision:	**22.05.2026**

Shikher Chand Bothra
R/o – 155/33, Nehru Lane,
Pratap Nagar, opp. S.K. Golden **Complainant**

Versus

Imperia Structures Ltd.
Registered Office at: - A-25, Mohan
Cooperative Industrial Estate,
Mathura Road, New Delhi-110044 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Sh. Sagar Yadav (Advocate) Complainant
Ms. Priya Sharma (Advocate) Respondent

ORDER

1. The present complaint has been filed by the complainant/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 as provided under the provision 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.	Particulars	Details
1.	Name of the project	"The Esfera" Sector, 37 Gurgaon
2.	Nature of Project	Residential group housing colony
3.	DTCP License	64 of 2011 dated 15.07.2017
4.	Name of Licensee	M/s Phoenix Datatech Services Pvt. Ltd and ors.
5.	HRERA Registration	Registered Vide no. 352 of 2017 dated 17.11.2017 valid upto 31.12.2020
6.	Unit no.	104, 1st floor, B block (page 14 of complaint)
7.	Unit admeasuring	1850 sq. ft. (original allotted area) 2035 sq. ft. (Revised area) (page 11 of complaint and 85 of reply)
8.	Date of builder buyer agreement	14.12.2012 (page 12 of complaint)
9.	Possession clause	*10.1* *The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of* ***the said building/said apartment within a period of three and half years from the date of execution of this agreement*** *unless there shall delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and clauses 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment.* (page 29 of complainant)
10.	Due date of possession	14.06.2016 (calculated from the date of

		agreement)
11.	Total sale Consideration	Rs.80,64,500/- (page 20 of complaint)
12.	Amount Paid	Rs.79,06,385/- (as per the ledger account dated 15.03.2024 page 54 of complaint)
13.	Payment Plan	Construction Linked Payment Plan (page 48 of complaint)
14.	Demand notice cum offer of possession	11.08.2021, 28.03.2022, 17.08.2024 (page 51 of complaint, 92, 96 of reply)
15.	Offer of possession for fit out along with demand of Rs.11,55,647/-	15.03.2024 (page 52 of complaint)
16.	Occupation certificate	12.07.2024 (page 87 of reply)
17.	Offer of possession along with a demand of Rs.11,55,647/-	17.07.2024 (page 90 of reply)
18.	Reminder 2/Pre cancellation	28.08.2024 (page 97 of reply)
19.	Cancellation	28.08.2024 (page 150 of reply)
20.	Letter for collection of refund by respondent	24.02.2025 (page 187 of reply)

B. Facts of the complaint.

3. The complainant has pleaded the following facts:

a. That the complainants booked a unit in the project namely *"The Esfera"* at sector 37C, Gurugram, Haryana which is being developed by the respondent. The respondent misled the complainant and provided false assurance that the possession of the unit would be provided to them in habitable condition and within the prescribed time as per the buyer builder agreement and based on said assurances, the complainant was allotted unit no. B-104, First floor in tower B having super area 1850 sq. ft. together with one covered parking space in the project as per the BBA.

b. That the total payment of Rs.79,06,385 /- was duly made by the complainant as per schedule. Clause 10.1 of the agreement unequivocally stipulates that possession of the unit would be handed over to the complainant within three and a half years from date of the execution agreement i.e. 19.06.2016. However, despite the lapse of stipulated timeline, the respondent failed to offer possession of the said unit to the complainant.

c. That clause 8 of the agreement stipulates an imposition of interest rate of 18% per annum for delayed payments , which far exceeds the limit prescribed under RERA Act.

d. That the respondent has received almost full amount to the tune of Rs79,06,385/-. Despite this substantial payment , the respondent has failed to provide possession of the said flat as agreed upon. Furthermore, the respondent has neglected to provide any compensation in course of delay of the project . This constitutes a breach of contract, wherein the respondent has not fulfilled their obligations under the agreement to provide timely possession and as such the respondent is guilty under various provisions.

e. That on 11.08.2021 and 15.03.2024, the respondent issued demand notices cum possession offers for "fit outs" to the complainant. That these possession offers are illegal and invalid as per Section 4 of RERA Act , the respondent had not obtained the requisite occupation certificate at time of issuing these notices. The demands raised in these notices were arbitrary , unjustified and contrary to law. Further the delay possession charges adjusted by the respondent were wrongfully calculated at Rs. 5 per sq. ft. The respondent has asked for increased area charges, escalation charges etc. The respondent has unilaterally increased the area and without prejudice to the same, they have even failed to justify which area has been increased . The escalation cost is also completely baseless and arbitrary.

f. That the respondent obtained the OC only on 12.07.2024, rendering the prior possession offers invalid and illegal. It is settled principle of law that possession cannot be offered without requisite OC, as mandated under RERA Act and other applicable regulations. Any such offer is void ab initio and cannot be considered as valid offer of possession.

g. That the complainant never received any cancellation letter, it is to be noted that the complainant came to know about this cancellation only when he visited the site in April 2025 to enquire about his unit. It is then only he was told that his unit was cancelled and subsequently allotted to someone else without any justifiable cause. The respondent has alleged notices were sent to complainant for cancellation, but no such notice was ever received by the complainant. The cancellation by the respondent is in direct contravention of clause 9.3 of model agreement, HARERA Rules and Regulations, 2017. The respondent acted arbitrarily against the complainant. Despite repeated attempts, the complainant did not receive any satisfactory response or resolution.

h. That due to the said conduct of respondent the complainant is facing several issues and challenges by not being in possession of the said flat as per agreed terms and time and schedule of the buyer builder agreement.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

a. Set aside the illegal demands notices dated 11.08.2021 and 15.03.2024 and to set aside the cancellation of the said unit.

b. Direct the respondent to pay delayed possession charges for every month of delay, till actual handing of the possession and to give possession of the unit to complainant.

5. On the date of hearing, the authority explained to the respondents /promoter about the contravention 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:

6. The respondent has contested the complaint on the following grounds:

I. That the complainant has approached this Authority with unclean hands and has tried to mislead the Authority by making incorrect and false averments and stating untrue and/or incomplete facts.

II. That the complainant is guilty of *suppressio veri and suggestio falsi*, having deliberately suppressed material facts and misrepresented the true position before this Authority. By selectively disclosing facts and presenting a distorted narrative, the complainant has attempted to mislead the Authority. Consequently, the complaint is not only misconceived but also constitutes a clear abuse of the process of law.

III. That the complainant, after making independent enquiries and only after being fully satisfied about the project, had approached the respondent for booking of a residential unit in respondent's project 'The Esfera II' Sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the Unit bearing no. B 104 in favor of the complainant for a total consideration amount of Rs.92,78,441/-, including applicable tax and other charges and opted the construction linked payment plan on the terms and conditions mutually agreed by the complainant and the respondent.

IV. That the respondent entered into builder-buyer agreement dated 14.12.2012 with the complainant in interest of the booked unit. The BBA duly covers all the liabilities and rights pertaining to both the parties involved.

V. That the complainant, of his own volition and with full knowledge and awareness, approached the respondent with the express intent of purchasing a unit in the respondent's esteemed project. He willingly made the requisite payments and coordinated for the execution of the BBA. The agreement was duly signed by the complainant on each and every page without any protest, objection, or indication of duress at any point.

VI. That entering into the BBA was a necessary and voluntary step taken by the complainant in furtherance of his own desire to purchase the said unit. The amounts referred to by the complainant as the total consideration is misleading, as it excludes the applicable taxes. The complainant has incorrectly alleged that the stated amount includes all charges, whereas the taxes have been levied strictly in accordance with prevailing government norms and statutory requirements.

VII. Further, the applicable taxes are clearly and explicitly mentioned in Clause 2 of the BBA, which the complainant duly executed. Therefore, the said taxes have been levied strictly in accordance with the provisions of the builder buyer agreement as well as applicable governmental laws. As a result, the total sale consideration amounts to Rs.92,78,441/-, which the complainant is contractually bound to pay.

VIII. That the payment plan opted by the complainant was the Construction Linked Plan, and accordingly the respondent raised demand letters strictly in accordance with the stages stipulated under the said plan. The occupation certificate for the tower in which the complainant's unit is situated was duly obtained on 13.03.2024. Thereafter, upon receipt of the said OC, the respondent issued the offer of possession to the complainant vide letter dated 15.03.2024, thereby intimating the complainant about the readiness of the unit for possession and also reminding him of the outstanding dues payable to the respondent. Hence, the Offer of Possession was issued only after obtaining the requisite OC and is fully valid and in compliance with the applicable provisions.

IX. That the further the respondent once again reminded the complainant of his outstanding dues vide letter dated 17.07.2024. The complainant has alleged that the amounts being charged are incorrect, however, all such charges, i.e., Increased Area Charges, Escalation Charges, and GST, have been clearly specified and agreed upon under the terms of the BBA. The complainant voluntarily executed the said agreement after fully understanding its contents and without any protest. Therefore, these charges are entirely contractual, valid, and in strict compliance with the applicable laws and regulations. Despite being duly informed and offered possession in accordance with Section 19(10) of the Act, 2016, which mandates an allottee to take possession within two months from the date of issuance of the OC, the complainant deliberately failed to comply with his obligation to take possession of the unit. This conduct reflects a lack of bona fides on the part of the complainant and is indicative of an attempt to unjustly delay the process while continuing to make baseless allegations against the respondent.

X. That the complainant has not approached the Authority with clean hands or with bona fide intentions. The conduct of the complainant itself demonstrates this, as he repeatedly defaulted in making timely payment of the due instalments, leaving a substantial amount outstanding for a considerable period. It was only after issuance of several reminders and follow-ups by the respondent that the complainant eventually cleared the said dues.

XI. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainant. The BBA executed between the parties have clearly depicted the intention of the respondent with respect to schedule of payment. That vide letters dated 15.03.2024 and 17.07.2024, the Complainant was informed that an amount of Rs.11,55,647/- was outstanding and payable by his towards the unit.

XII. That the complainant himself opted for the Construction Linked Payment Plan, under which payments are to be made in accordance with the completion of specific stages of construction. As per the said plan, an amount of Rs.4,60,388/- became due at the time of offer of possession.

XIII. That the complainant has further alleged that the area of the unit was unilaterally increased from 1850 sq. ft. to 2035 sq. ft. with the alleged intention of extorting money. This allegation is wholly false, baseless, and misleading. That any increase in area has been carried out strictly in accordance with the terms of the BBA, and more specifically Clause 9.2 thereof, which reads as follows:

> *"In case of any major alteration/modification resulting in excess of +/- 10% change in the super area of the said apartment or material/substantial change, in the sole opinion as determined by the Developer/Company, in the specifications of the materials to be used in the said building/said Apartment may time prior to and upon the grant of occupation certificate, shall intimate the Intending Allottee..."*

XIV. Accordingly, the additional demand of Rs.7,71,450/-, raised towards the increased area is entirely lawful and contractually justified. The Complainant's attempt to mischaracterize the increase as "substantial" or "unauthorized" is nothing but an afterthought and a deliberate distortion of the facts and contractual terms, with the intent to evade financial obligations clearly outlined and accepted under the BBA.

XV. Further, the complainant was duly served with letters, which explicitly outlined the applicable escalation charges. Furthermore, the justification for the escalation charges is duly supported by the BBA. Specifically, Clause 1.2

of the Agreement expressly provides that the price of the apartment is based on the cost of labour and materials as of 21.10.2012. That any increase or decrease in the cost of materials or labour shall be recoverable or payable by the complainant, a provision to which the complainant has explicitly consented.

XVI. That the escalation in labour and material charges is the direct cause for the imposition of the escalation charges. That the escalation has occurred as a result of inflationary pressures, which have led to an increase in the costs of labour and materials required for the construction and development of the project. This increase, being beyond the control of the respondent, has been explicitly accounted for in the BBA, under which the complainant has agreed to bear any additional costs arising from fluctuations in the prices of labour and materials. Moreover, to ensure transparency in the calculation of such escalation charges, the Respondent has detailed the methodology for determining these costs in Annexure G of the BBA. Therefore, the escalation charges amounting to Rs.6,61,462/- which are being levied are a necessary and justified consequence of these inflationary changes.

XVII. Furthermore, as stated above that as per the Clause 2 of the BBA, the complainant is contractually bound to pay all applicable taxes. Accordingly, the amount of Rs.2,17,610/- towards taxes is lawful, justified, and fully in accordance with the terms of the BBA.

XVIII. Therefore, the allegation that the demands raised are illegal is completely unfounded, as all terms and conditions, including the demands, are clearly and explicitly set forth in the BBA, which the complainant duly executed after fully reviewing and understanding its contents. Consequently, it cannot be claimed that the said charges are unfounded and illegal.

XIX. That the complainant was duly reminded of his pending payment obligations by the respondent vide reminder letter dated 17.08.2024. However, as the complainant failed to comply and did not come forward to make the requisite payments, the respondent was constrained to issue a Pre-Cancellation Notice dated 28.08.2024.

XX. That the complainant was in continuous default of his payment obligations as stipulated under Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, which mandates that the allottee shall make timely payments as per the agreed payment schedule.

XXI. That the complainant has alleged that the unit was required to be handed over in a habitable condition. That the unit was duly completed and made ready for possession in all respects. That immediately upon receipt of the OC, the complainant was duly informed and was requested to clear the outstanding dues so that the possession of the unit could be handed over. However, the complainant failed to comply with his contractual obligations and instead has chosen to raise baseless and misconceived allegations against the respondent. The complainant has not placed on record any proof or evidence to substantiate the said allegations. That the unit was complete, habitable, and ready for possession, and the contention raised by the complainant is false, frivolous, and liable to be rejected.

XXII. That further the delay in completion of construction of the said project was caused due to certain unforeseeable circumstances. According to the BBA, force majeure provides for both shortage of building material and labour required, along with providing for unforeseeable events which make the construction impossible to be carried out. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court directed a ban on construction activities in the said region from November 4, 2019, onwards, which was a huge hurdle to realty developers in the city. The Air Quality Index (AQI) at the time was running as high as 900 PM, which is severely unsafe for the health. Later, in furtherance of declaration of the AQI levels as 'not severe' by the Central Pollution Control Board (CPCB), the Hon'ble Supreme Court lifted the ban conditionally on December 9, 2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. and consequently, the complete ban was lifted by the Hon'ble Supreme Court on 14th February, 2020. This had caused the project to be delayed and thus, there was a delay in application for OC. Secondly, when the complete ban was lifted on 14.02.2020, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and later lifted the lockdown, conditionally, on 17.05.2020. The pandemic COVID-19 has caused immense delay and obstruction to the construction of the building, as the procurement of labour and raw material proved to be highly challenging. The whole situation led to a reverse migration of workers, who left cities and returned back to their villages, for safety of themselves and their families. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods have left great impact on the realty sector for resuming their respective constructions. Thus, causing delay in the completion of the said project, this was already hampered by the non-payment of outstanding dues by numerous allottees, including the Complainant.

XXIII. Furthermore, a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, bearing CP (IB)-1787(PB)/2018, was filed before the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi by certain petitioners against the respondent. The said proceedings, which commenced in the year 2018, remained pending for an extended period and continued to adversely affect the respondent's operations and reputation. Ultimately, the Hon'ble Tribunal, vide its order dated 07.12.2022, was pleased to allow the withdrawal of the said petition.

XXIV. That the respondent entered the Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) vide order dated 31.08.2023, passed by the Hon'ble National Company Law Tribunal. During the period of the moratorium, which lasted for six months, all operations of the Respondent Company were suspended. The respondent was subsequently discharged from the CIRP by the order of the Hon'ble National Company Law Appellate Tribunal dated 01.02.2024.

XXV. That the respondent was also adversely impacted by legal proceedings initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016, before the Hon'ble National Company Law Tribunal, New Delhi Bench, in CP IB No. 656/ND/2024. The said proceedings were initiated by a group of allottees on 13.05.2024, claiming the status of financial creditor under various real estate projects undertaken by the Respondent. Consequently, the Tribunal dismissed the insolvency application for failing to meet the mandatory threshold requirement of 100 allottees or 10% from the same real estate project, as stipulated under the second proviso to Section 7(1) of the Insolvency and Bankruptcy Code, 2016. These legal proceedings, including the pendency of adjudication and the looming threat of CIRP, created an atmosphere of uncertainty and led to considerable disruption in day-to-day operations and financial planning.

XXVI. That the complainant has alleged that he visited the project site in the year 2025 and only then came to know that the allotment of the unit had been cancelled. The said contention is wholly incorrect and misleading. The respondent had been regularly sending reminders to the complainant regarding the outstanding dues and had provided him with ample opportunities to clear the same. However, despite repeated communications, the complainant failed to make the requisite payments. Consequently, having no alternative, the respondent cancelled the allotment of the said unit, which was duly communicated to the complainant vide letter dated 28.10.2024.

XXVII. That the complainant has not placed on record any proof to substantiate his alleged visit to the project site. In fact, the complainant was fully aware of his outstanding liabilities and the consequences of non-payment, yet he deliberately failed to fulfil his obligations and is now attempting to misrepresent the facts.

XXVIII. That due to the complainant's failure to fulfill the outstanding financial obligations, the unit allocated to him was subsequently cancelled, and third-party rights have already been created in accordance with the applicable terms and conditions.

XXIX. That the Hon'ble Authority, in its recent judgment in the matter of Aruna Singh v. Imperia Structures Ltd., CR/4877/2024, categorically upheld the validity of cancellation of a unit where the complainant remained in default after the receipt of the OC. The respondent respectfully places reliance on this precedent, as the facts and circumstances of the present case are strikingly similar — the complainants herein, too, have remained in persistent default despite the OC being obtained, thereby justifying the respondent actions, including the deduction of earnest money.

XXX. That a similar view has also been taken by the Hon'ble Authority in a recent matter, wherein the allottee was found to be in default of payment obligations and the cancellation of the unit was held to be valid. In this regard, reliance is placed on the order passed by the Hon'ble Authority in Arunabh v. Imperia Structures Ltd., Complaint No. CR/296/2025.

XXXI. That despite facing severe financial challenges owing to allottees defaulting on their payment obligations, including the complainant and several others exiting the project midway, the respondent, in order to ensure timely completion of the project, secured a last-mile funding from the SWAMIH Investment Fund-I. This Alternate Investment Fund was established under the Special Window created by the Government of India for stressed real estate projects. The same was duly notified to the complainant vide letter dated 04.05.2021.

XXXII. That the respondent has been bearing a substantial interest burden on the said funding. Nevertheless, through sustained efforts and financial discipline, the respondent has successfully obtained the OC for all towers of the project and is now focused solely on completing the finishing works and handing over possession to the respective allottees.

XXXIII. However, persistent defaults by certain allottees, including the complainant, in making timely payments have continued to pose a serious impediment to the smooth progress of the project and the possession process. That in order to ensure timely completion and handover, it is imperative for the allottees to duly comply with their contractual obligations, including payment of the dues as per the agreed terms. While the respondent remains fully committed to delivering the units in accordance with the applicable provisions, the same cannot be achieved in the face of continued non-compliance and payment defaults on the part of the allottees.

XXXIV. That the respondent being under considerable pressure to complete the project and is simultaneously also paying hefty interest on the funds taken under the lieu of SWAMIH and further due to ongoing proceedings before forums, and the financial strain following the recent end of the moratorium added to this burden. Given these challenges and the failure of the complainant to clear the outstanding dues, the respondent, after careful consideration, was compelled to cancel the unit, proceed with the sale of the unit and create third-party rights.

XXXV. That the respondent states that it is willing to refund the paid amount, subject to a deduction of earnest money @15% in accordance with Clause 4 of the BBA. The BBA has been duly executed and signed by the complainants, thereby establishing it as a legally binding contract between both parties. The complainants' signature on the BBA signifies full acknowledgment and acceptance of its terms, and as such, both parties are legally obligated to adhere to the provisions set forth within the agreement. Therefore, the terms related to the refund, including the 15% deduction, are enforceable as per the express provisions of the signed contract.

XXXVI. Further, the respondent, acting in good faith and with bona fide intent, issued a letter to the complainants on 24.02.2025, followed by an email dated 03.03.2025, requesting them to collect the cheques prepared in their names after deduction of the earnest money. The complainants were specifically requested to visit and collect the same.

XXXVII. That it is further pertinent to mention that the present Complaint has been filed by the complainant after more than one year from the date of cancellation of the allotment. The complainant deliberately remained silent during this entire period and has approached this Hon'ble Authority only after the lapse of considerable time, evidently with the intention of attributing the alleged delay to the respondent and seeking unjust enrichment. The allotment of the said unit had already been cancelled long ago, which was duly communicated to the Complainant, and the said unit has since been sold to a third party, thereby creating third-party rights. Moreover, the respondent had also issued a refund communication to the complainant; however, the complainant failed to take any steps to collect the same or raise any grievance at the relevant time. In view of the above, the complainant cannot now, after such prolonged inaction, seek any relief by attempting to reopen a matter that already stands concluded.

XXXVIII. That the complainant is not entitled to the proposed reliefs as he has approached this Hon'ble Authority with malice and mala fide intentions. The contractual obligations were not met by the complainant, to begin with, and he has concealed these relevant facts, which resultantly render this complaint infructuous and not maintainable.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

10. 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

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.

13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357 and*** *reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount,*

and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.I Set aside the illegal demand notices dated 11.08.2021 and 15.03.2024 and to set aside the cancellation of the said unit.

F.II Direct the respondent to pay delayed possession charges for every month of delay, till actual handing of the possession and to give possession of the unit to complainant.

15. The complainant submitted that he booked unit no. B-104 in the project "The Esfera", Sector-37C, Gurugram and paid an amount of Rs.79,06,385/- as per the agreed payment schedule. It was contended that under Clause 10.1 of the Builder Buyer Agreement dated 14.12.2012, possession was to be delivered within three and a half years from the date of execution of the agreement, however, the respondent failed to hand over possession within the stipulated period despite receiving substantial consideration. The complainant further submitted that the demand notices-cum-possession offers dated 11.08.2021 and 15.03.2024 were illegal as they were issued without obtaining the requisite Occupation Certificate and that the demands raised towards increased area, escalation charges and other dues were arbitrary and unjustified. It was also contended that the Occupation Certificate was obtained only on 12.07.2024 and therefore earlier possession offers were

invalid. The complainant alleged that he never received any cancellation notice and came to know about the cancellation of the unit only upon visiting the project site in April, 2025, where he was informed that the unit had been cancelled and allotted to another person.

16. On contrary, the respondent submitted that the complaint voluntarily booked the unit, executed the Builder Buyer Agreement with full knowledge of its terms and conditions and opted for the Construction Linked Payment Plan. The respondent submitted that all taxes, escalation charges and increased area charges were levied strictly in accordance with the Builder Buyer Agreement and applicable laws and that possession was offered after obtaining the requisite Occupation Certificate. It was further contended that despite repeated reminders and opportunities, the complainant failed to clear the outstanding dues and did not take possession of the unit, resulting in issuance of pre-cancellation and cancellation notices in accordance with the terms of the agreement.

17. Upon careful examination of the documents submitted by both the parties, it was noted that the subject unit of the complainant was cancelled by the respondent on 28.08.2024 after sending certain reminders dated 11.08.2021, 28.03.2022, 15.03.2024, 17.07.2024, 17.08.2024, and seeking outstanding dues. The complainant contested the demands on account of increase in area and escalation cost stating that the same are arbitrary and unilateral. As per the builder buyer agreement dated 14.12.2012 the total sale consideration was Rs.80,64,500/- and the complainant has paid Rs.79,06,385/- against the unit. However, the respondent has further raised a demand of Rs.11,55,647/- towards the increase in area, escalation cost etc.

18. As, per the builder buyer agreement the subject unit was admeasuring 1850 sq. ft. and its area was further increased to 2035 sq. ft. at the time of offer of

possession. Further, as per Clause 9.2 of the Builder Buyer Agreement, it was agreed that if there was any increase or reduction beyond 10%, the respondent would intimate the allottee and seek consent. In the present case, there was an increase of only 10% in the area of the subject unit. The said clause of the agreement is extracted below: -

> *9.2*
> ***"In case of any major alteration / modification resulting in excess of +/- 10% change in the super area of the said Apartment or material/substantial change, in the sole opinion of and as determined by the Developer/Company, in the specifications of the materials to be used in the said Building/said Apartment any time prior to and upon the grant of occupation certificate, the Developer/Company shall intimate the Intending Allottee(s) in writing the changes thereof and the resultant change, if any, in the price of the said Apartment to be paid by him/her and the intending Allottees agrees to deliver to the Developer/Company his written consent or objections to the changes within thirty (30) day*** *from the date of dispatch by the Developer/Company of such notice failing which the Intending Allottee(s) shall be deemed to have given his/her full and unconditional consent to all such alterations/ modifications and for payments, any to be paid in consequence thereof. If the written notice of intending Allottee(s) is received by the Developer/Company within thirty (30) days of intimation in writing by the Developer/ Company indicating his/her non consent/objections to such alterations/modifications as intimated by the Developer"*

19. In view of the above agreed terms, there was only an increase of 10% in the super area of the subject unit. Accordingly, the complainant was liable to make the outstanding payment on account of the increase in area of the subject unit, and the demand raised was justified.

20. Further, the respondent raised a demand on account of escalation cost. As per the Schedule of Payment, Annexure F of the BBA, the basic sale price was subject to escalation, and in Annexure G, the respondent specified the calculation of escalation cost. Accordingly, the demand raised by the

respondent on account of escalation cost was justified and payable by the complainant.

21. Moreover, the Authority has observed that, despite the respondent's repeated efforts to collect outstanding payments, the complainant failed to make the required payments towards the unit. The respondent issued numerous reminders in this regard and further cancelled the unit vide letter dated 28.08.2024.

22. Despite these repeated efforts, the complainant deliberately chose not to make the required payments. His consistent failure to make the outstanding dues despite numerous reminders demonstrates a clear intent to exit the agreement rather than pay the outstanding dues. The complainant's continued non-payment underscores his intention to withdraw from the project and recover the amount paid, rather than continue with the project after possession had been offered following the issuance of the Occupation Certificate.

23. Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation dated 28.08.2024 in view of the terms and conditions of the buyer's agreement dated 14.12.2012 is held to be valid.

24. Clause 4 of the buyer's agreement executed between the parties provides forfeiture of earnest money along with interest and other charges on cancellation/withdrawal by allottee. Same is extracted below:

> *4.*
> ***The Intending Allottee(s) has entered into this Agreement on the condition that out of the amounts) paid/ payable by him / her for the said Apartment and the reserved parking space allotted to him/her, the Developer/Company shall treat 15% (Fifteen Percent) of the Basic Sale Price as earnest money** to ensure fulfilment, by the Intending Allottee(s), of the terms and conditions as contained in the application and this Agreement.*

> ***The Intending Allottee(s) hereby authorizes the Developer/Company to forfeit out of the amounts paid / payable by him/her, the earnest money as aforementioned together with any interest paid, due or payable, any other amount of a non-refundable nature including brokerage paid by the Developer/Company to the brokers in case of booking is done through a broker in the event of the failure of the Intending Allottee(s) to perform his / her obligations or fulfill all the terms and conditions set out in the application and / or this Agreement executed by the Intending Allottee(s)*** *including but not limited to the occurrence of any event of default as described in Clause 12 of this Agreement or in the event of failure of the Intending Allottee(s) to sign and return this Agreement in its original form to the Developer/Company within thirty (30) days from the date of its dispatch by the Developer/ Company.*

25. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases ***of Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj ors. VS. Sarah C. ors., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of

earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under-

> *""5. AMOUNT OF EARNEST MONEY*
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money* ***shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may*** *be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

26. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent is directed to refund the paid-up amount of Rs.79,06,385/- after deducting 10% of the sale consideration being earnest money along with an interest @ 10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation of the unit i.e. 28.08.2024 till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the Authority.

27. 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 cancellation letter dated 28.08.2024 is held to be valid, accordingly the respondent is directed to refund the paid-up amount i.e.

Rs.79,06,385/- to complainant after deducting 10% of the sale consideration being earnest money along with interest at the rate of 10.80% per annum on such balance amount from the date cancellation of the unit i.e. 28.08.2024 till its actual realization.

II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

28. The complaint stands disposed of.

29. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 22.05.2026