BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**3189 of 2025**
Date of filing of complaint:	**23.07.2025**
Date of Order:	**20.08.2026**

1. Kapish Dokania
2. Rakhi Dokania

Both R/o: 75, Geejgarh Vihar, Hawa Sadak, Jaipur-302019. **Complainants**

Versus

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

CORAM:

Shri Phool Singh Saini **Member**

APPEARANCE:

Ms. Priyanjali Singh (Advocate) Complainants

Sh. Shubham Mishra (Advocate) 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. **Unit and project related details**

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

S. No.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase 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	Phoenix Datatech Services Pvt. Ltd. and 4 others
6.	Unit no.	703, 7th floor & Block-E (As per page no. 34 of the complaint)
7.	Unit area admeasuring	1650 sq. ft. (Super area) (As per page no. 34 of the complaint)
8.	Date of execution of buyer's agreement	09.01.2013 (As per page no. 32 of the complaint)
9.	Possession clause	*10.1 Schedule for possession of the said apartment* ***The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement*** *unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3 & clause 49........xxxx* (As per page no. 46 of the compliant)

10.	Due date of possession	09.07.2016 (**Note:** Due date to be calculated three and half years from the date of execution of agreement i.e., 09.01.2013)
11.	Total sale consideration	Rs.75,68,750/- (As per page no. 38 of the complaint)
12.	Amount paid by the complainants	Rs.65,87,002/- (As per Applicant ledger on page no. 80 of the complaint)
13.	Occupation Certificate	22.11.2024 (As per page no. 86 of the reply)
14.	Offer of possession	01.02.2025 (As per page no. 88 of the reply)
15.	Reminder letters	07.05.2025, 26.05.2025, 02.06.2025 (As per page no. 90-97 of the reply)
16.	Pre-cancellation letter	13.06.2025 (As per page no. 98 of the reply)
17.	Legal Notice for possession	19.06.2025 (As per page no. 94 of the complaint)
18.	Cancellation letter	02.07.2025 (As per page no. 101 of the reply)
19.	Initiation of refund of amount of Rs.54,99,096/-	01.09.2025 (As per page no. 155 of the reply)

B. Facts of the complaint:

3. That the complainants have made following submissions:

I. That the complainants are husband and wife, who jointly applied for allotment of a single apartment in the aforementioned project. Vide letter dated 01.03.2012, the promoter-respondent allotted an apartment no. E 703, Tower-E on the seventh floor in the aforementioned project.

II. That the complainants entered into a builder buyer's agreement dated 09.01.2013 with the promoter, wherein clause 1.1 specified that the subject flat was having super area of 1650 sq. ft. and total sale consideration for the same is Rs.75,68,750/-.

III. That clause 10.1 of the builder buyer's agreement specified that the deadline for delivery of completed flat was three and half years from the date of execution of the said agreement. Hence the contractual deadline for the delivery of apartment was on/before 09.07.2016. But the promoter failed to meet the contractual deadline for delivery of apartment.

IV. That by 2017, the complainants had already paid Rs.68,61,444/- towards sale consideration of the subject unit. But despite continuous follow up the promoter failed to even update the construction status of the project.

V. That on 13.05.2025, the complainants received an email which had a PDF attachment titled 'Possession letter' dated 07.05.2025. The complainants were shocked to discover that this possession letter demands a sum of Rs.17,93,938/- from them. The break up as contained in the aforementioned letter is completely unjustified and illegal as follow:

a. **No proper calculation & payment of delay penalty to allottee:** This is payable as per Act, 2016 and Rules, 2017 at the rate of MCLR +2 % from 09.07.2016 till possession of unit. But the promoter credited only Rs.8,15,994/- @ Rs.5/- per sq. ft. per month for an unspecified period of time.

b. **A huge demand under the head of escalation of Rs.6,22,684/-** : Without giving any basis of this alleged escalation. In any event, this escalation is not only completely illegal but it cannot be charged for a period beyond 09.07.2016 (i.e., the contractual deadline for delivery)

c. **A huge demand of Rs.7,21,875/- for alleged increase in super area from 1650 sq. ft. to 1815 sq. ft.:** There is no basis/explanation for this alleged increase in super area. It is submitted that there is no increase in carpet area at all. This entire demand is illegal and unjustified and against RERA Act, 2016.

d. **GST demand of Rs.2,77,720/-:** GST cannot be charged from the complainants as this tax was introduced in 2017, i.e., after the expiry of the contractual deadline for delivery of the completed subject unit.

VI. That the complainants protested and sent email asking for clarifications and removal of illegal demands. But instead of acting in a reasonable and legal manner, the promoter sent an email dated 09.06.2025 titled 'Reminder-2/Pre-cancellation notice'. The allottee never received any Reminder-1. The allottee protested against the aforementioned illegal 09.06.2025 email, but the promoter continued with his illegal efforts. Thereafter, the complainants also received another email dated 18.06.2025 containing a PDF attachment of a document titled 'Final notice/Pre-cancellation notice' dated 13.06.2025. This email dated 18.06.2025 contained further 2 additional illegal demands:

i. The promoter illegally demanded payment of maintenance charges w.e.f 15 days from the date of issue of letter dated 07.05.2025, whereas the same is payable only after handing over of the unit. (This demand is malafide also in that the letter itself admits that the promoter will take another 20-25 days from the date of payment to complete the fitout)

ii. The promoter has illegally demanded 1% of the Basic Sale Price as 'applicable registration charges' in addition to stamp duty. This demand is not only illegal, but it is patently preposterous. The complainants undertake to pay stamp duty whenever their conveyance deed is registered. But the respondent has no legal basis to demand 1% of basic sale price as registration charges. It seems the respondent is even misusing the registration process to earn a hefty profit. Such registration charges are not specified in the agreement and it is certainly not permissible as per law

VII. That aggrieved by the aforementioned illegal demands and consistent malafide behaviour being shown by the promoter, the complainants got a legal notice dated 19.6.2025 issued to the promoter. This notice was sent by email as well as courier to the promoter. A copy of the legal notice and its proof of delivery is placed on record. One of the first points raised in the legal notice was that once the delay compensation was calculated at the prescribed rates, the amount payable by the promoter would be greater than the Rs.17,93,938/- (even though this figure included additional illegal demands). Hence, the complainants asked for possession, proper delay compensation and remove of additional illegal demands raised in the offer of possession. The complainants specifically pointed out that they wanted possession of their flat and they should be provided a date for handing over of keys so that they can make the necessary travel plans to come to India and finish all formalities of hand over and registry. But till date, the promoter has chosen not reply to this legal notice.

VIII. That to the shock of the complainants, their family in India called them up and informed them that another letter dated 02.07.2025 had been received at their India address. This letter claimed to be 'final cancellation notice' and informing that the promoter has decided to cancel the unit. This cancellation letter is illegal and has no justification at all. It deliberately ignores all points raised in the complainant's legal notice. It is important to note that the malafide of this cancellation may be gauged by the fact that the respondent deliberately sent this letter only by post to their India address, even though the promoter previously used to always send every communication by email to the complainants. Therefore, the complainants decided to approach the Authority to seek the appropriate relief and filed this complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

i. Direct the respondent to provide the possession of the unit.

ii. Direct the respondent to make the payment of delay possession of Rs.17,93,564/- for the period from 09.07.2016 till date.

iii. Quash the cancellation letters dated 09.06.2025, 13.06.2025/18.06.2025 & 02.07.2025 as illegal and unjustified.

iv. Quash the demand qua alleged increase in super area.

v. Quash the demand qua escalation.

vi. Quash the demand for GST.

vii. Quash the demand of registration charges @ 1% of the basic sale price and direct the promoter to charge only appropriate legal amount.

viii. Direct the respondent-promoter to demand maintenance only from the date of physical handover of the subject unit.

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:

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

I. That the complainants 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' located in Sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. E 703 in favor of the complainants for a total consideration amount of Rs.79,24,808/- including applicable tax and additional miscellaneous charges and opted the construction linked payment plan on the terms and conditions mutually agreed by the complainants and the respondent.

II. That the respondent entered into builder buyer's agreement dated 09.01.2013 with the complainants in interest of the booked unit. It is pertinent to mention that BBA duly covers all the liabilities and rights pertaining to both the parties involved. The respondent has already obtained the occupancy certificate on 13.03.2024, pertaining to the project in question where the unit of the complainants is situated.

III. That subsequent to the issuance of the OC by the competent authority, the respondent duly dispatched the offer of possession dated 01.02.2025. The complainant's allegation that no such letter was ever received constitutes a deliberate attempt to mislead and to unlawfully conceal material facts from the Hon'ble Authority and to demand additional financial compensation from the respondent. That the complainant's allegations against the respondent are unfounded and constitute false claims.

IV. That the complainants have asserted that the full payment for the unit in question has been made. However, with reference to the same clause cited by the complainant, namely clause 3, it was explicitly mentioned that *"The Intending Allottee(s) has already paid a sum of Rs. 23,65,958/- being part payment towards the cost of the said apartment at the time of application and thereafter the receipt of which the developer/company doth hereby acknowledge and the Intending Allottee(s) shall and doth hereby agree to pay the remaining price of the Apartment as prescribed in schedule of payments along with all the other charges, securities etc. as may be demanded by the developer/company within the time and in the manner specified therein."* That pursuant to this clause, the complainants expressly consented to the fact that the payment made constituted a partial payment. In view of the same, the respondent was ready to deliver possession of the said unit to the complainants. That given the fact that the OC had been obtained, the said letter dated 22.11.2024 duly informed the complainants about their liability amounting to Rs.26,09,931/-.

V. That the complainants have further alleged that the increase in area should only be charged in cases where the alteration is within the range of +/- 10% and that the increase in area for the said unit exceeds this threshold. This assertion is factually incorrect. The previous super area of the unit was 1650 sq. ft., and the current super area is 1815 sq. ft., reflecting an actual increase of 165 sq. ft., which constitutes exactly 10% of the previous area. Therefore, the charge for the increase in area is entirely in accordance with the terms of the BBA, which the complainants have duly signed and accepted.

VI. That 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. It further stipulates that any increase or decrease in the cost of materials or labour shall be recoverable or payable by the complainants, a provision to which the complainants have explicitly consented.

VII. 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 complainants have 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 being levied are a necessary and justified consequence of these inflationary changes.

VIII. That the complainants haven't approached this Hon'ble Authority with clean hands or with *bona fide* intentions and the same is depicted in their actions as they have not paid the outstanding instalments in time and it must be noted that till this day a large sum of amount is pending to be paid by the complainants, despite numerous reminders which were issued to the complainants by the respondent.

IX. That the complainants had failed to make the required payments despite receiving numerous reminders, and has directly contradicted the facts by asserting that she has made the full payment as per the BBA. This assertion is entirely false, as outlined in the aforementioned facts, where it is evident that the complainants did not comply with the payment plan they themselves had selected. Additionally, at the time of signing the BBA, the complainants expressly consented to bear the costs associated with the increased area and escalation charges. However, they have now failed to fulfill this obligation.

X. That the terms under buyer's agreement delineates the respective obligations of the complainants as well as of the respondent as an aftermath of breach of any of the conditions specified therein. It must be noted that this provision was also confirmed and agreed to by the complainants, who is now attempting to put on an innocent façade to escape their responsibilities and liabilities.

XI. That delay was caused in completion of construction of the said project 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 04.11.2019 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, 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 09.12.2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. It 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 complainants.

XII. That the complainants were duly reminded of their payment obligations by the respondent through a reminder letter dated 26.05.2025, followed by another reminder dated 02.06.2025. Despite these repeated communications, the complainants failed to clear their outstanding dues. Consequently, after sending several reminders and receiving no compliance, the respondent was constrained to initiate the cancellation process of the said unit and accordingly intimated the complainants vide pre-cancellation notice dated 13.06.2025.

XIII. That despite being repeatedly reminded and afforded multiple opportunities to make the requisite payments, the complainants failed to comply with their payment obligations within the stipulated timelines. Consequently, the respondent was left with no alternative but to cancel the said allotment strictly in accordance with the terms and conditions of the BBA, after following due process. The said cancellation was duly communicated to the complainants vide letter dated 02.07.2025.

XIV. That further the respondent company entered the Corporate Insolvency Resolution Process vide order dated 31.08.2023, passed by the Hon'ble National Company Law Tribunal. During the period of the moratorium, which lasted for four months, all operations of the respondent company were suspended. The respondent company was subsequently discharged from the CIRP by the order of the Hon'ble National Company Law Appellate Tribunal dated 01.02.2024.

XV. That as mentioned above, 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 complainants 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. In accordance with the above-mentioned circumstances the respondent has already created third party in the favour of the said unit.

XVI. That the respondent states that it is willing to refund the earnest money amount, subject to a deduction of 15% in accordance with clause 4 of the BBA. It is further emphasized that the BBA has been duly executed and signed by the complainants, thereby establishing it as a legally binding contract between both parties. The complainant's 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. Further, the respondent, acting in good faith and with bona fide intent, issued a letter to the complainants on 26.08.2025, followed by an email dated 01.09.2025, requesting them to collect the cheques prepared in their names after the deduction of the earnest money.

XVII. That the present complaint is not maintainable and is liable to be dismissed as being devoid of merit and contrary to law. The complainants, having failed to discharge their contractual obligations, have approached this Hon'ble Authority with unclean hands and suppressed material facts. Accordingly, the reliefs sought are misconceived and not liable to be granted.

7. 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:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

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

> ***Section 11(4)(a)***
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

9. 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 objections raised by the respondent:

F.I Objection regarding force majeure conditions:

10. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, demonetisation, shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events

taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to provide the possession of the unit.

G.II Direct the respondent to make the payment of delay possession of Rs.17,93,564/- for the period from 09.07.2016 till date.

G.III Quash the cancellation letters dated 09.06.2025, 13.06.2025/18.06.2025 & 02.07.2025 as illegal and unjustified.

11. The above-mentioned relief(s) sought by the complainants are taken together being inter-connected.

12. In the present complaint, the complainants intend to continue with the project and are 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)***

13. The due date of possession of the apartment as per clause 10.1 of the builder's buyer's agreement dated 09.01.2013, is to be calculated as three and half a years from the date of execution of buyer's agreement i.e., 09.01.2013. Therefore, the due date of possession comes to 09.07.2016.

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

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

15. 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.

16. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.08.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

17. 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;"

18. 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 the complainants in case of delayed possession charges.

19. The counsel for the complainant has mentioned in the facts of the complaint that the respondent has failed to adhere to the contractual obligations arising out of the agreement dated 09.01.2013. As per the possession clause of the agreement, the possession of the unit was to be delivered way back in 2016 but the respondent failed to fulfil its commitments. Moreover, the allotment of the unit was cancelled on 02.07.2025 despite paying an amount Rs.65,87,002/- against the sale consideration of Rs.75,68,750/- which is of more than 87% of the sale consideration way back in 2017 and seeking possession of the unit along with delay possession charges.

20. The counsel for the respondent vide proceedings draws attention of the Authority to the fact that the in-principle occupation certificate of the project was received on 22.11.2024 and offer of possession was made to the complainants on 01.02.2025. And as per possession letter dated 01.02.2025, an outstanding amount of Rs.16,85,038/- was to be paid by the complainants on offer of possession in the name of balance amount, increased area change, escalation cost, GST etc. He further stated that the complainants never come forward to take possession and payment of outstanding dues despite issuance of multiple reminders for the

same. On 13.06.2025, the respondent issued a pre-cancellation letter after issuing a possession letter dated 01.02.2025 which consists the details of outstanding dues to be paid by the complainants. Further, on 02.07.2025 the respondent cancelled the unit of the complainants on account of non-payment. The counsel for the complainants has raised an objection and stated that the offer of possession dated 01.02.2025 is not a valid offer of possession as the occupation certificate granted by the competent Authority on 22.11.2024 was in-principle occupation certificate for removing objections and the respondent has obtained the occupation certificate on 07.05.2025 .and thereafter, made a fresh offer of possession on 07.05.2025 only. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainants is valid or not?

21. The respondent has cancelled the unit vide cancellation letter dated 02.07.2025 after obtaining occupation certificate from the competent Authority on 07.05.2025 and offer of possession on 07.05.2025 on account of outstanding dues after issuing various reminders and thereafter issuing pre-cancellation letter dated 13.06.2025. The complainants have paid an amount of Rs.65,87,002/- i.e., almost 88% of the total sale consideration of Rs.75,68,750/- way back in 2017 and the due date of possession was lapsed in 2016. There is substantial delay of 8 years in offer of possession as the due date of possession has lapsed on 09.07.2016 only and if the delay possession charges to be paid by the respondent are considered it is the respondent who has to pay even after considering the additional demands made by the respondent on offer of possession. Moreover, the Authority also observed that the last unpaid demand was raised on 07.05.2025 along with offer of possession and the unit was cancelled on 02.07.2025 after

issuing a pre-cancellation dated 13.06.2025 i.e., within 55 days from the last unpaid demand. It clearly depicts that the respondent has not abide the terms and conditions of the agreement for sale as well as the provisions of the Rules, 2017.

22. On consideration of all the submissions made by the parties and documents place on record, the cancellation of the unit stands invalid.

23. Although there is substantial delay in making offer of possession i.e., 07.05.2025 after obtaining occupation certificate on 07.05.2025 as the 05.2025 as the unit was supposed to be offered in 2016 and the same was offered in 2025.

24. As per Section 19(10) of the Act of 2016, it is the obligation of the allottee to take possession within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit to the complainants after obtaining occupation certificate on 07.05.2025. So, it can be said that the complainants would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 09.07.2016 till actual handing over of possession or offer of possession made on 07.05.2025 after obtaining occupation

certificate from competent authority plus two months, whichever is earlier.

25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 09.01.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 09.07.2016 till offer of possession plus 2 months i.e., up to 07.07.2025 at the 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.IV Quash the demand qua alleged increase in super area.
G.V Quash the demand qua escalation.
G.VI Quash the demand for GST.

26. The complainants have contended about various illegal charges raised by the respondent-promoter in its letter dated 07.05.2025 detailed as under:

S. No.	Particulars	Amount (Rs.)
1.	Demand towards Balance Sale Consideration	9,87,652/-
2.	Increased Area Charges (i.e., Increase in Area x Booking/ Allotment Rate)	7,21,875/-
3.	Average Escalation Cost, as per indexed construction Escalation between 2014-2017	6,22,684/-
4.	GST (As applicable)	2,77,720/-
5.	Less: Delay Penalty @ Rs.5/- sq. ft.	8,15,994/-
6.	Total Outstanding Dues	17,93,938/-

27. It is pleaded that out of the above-mentioned charges detailed, there is no basis to demand charges against increase in area, average escalation cost and balance service tax/GST. Though demand under the heading

increased area charges (i.e., increase in area x booking/ allotment rate) has been mentioned as Rs.7,21,875/-but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 09.01.2013 and clause 9.2 provides with regard to major alteration/modification resulting in excess of +/- 10% change in the super area of the apartment or material/ substantial change in the sole opinion of and as determined by the developer/company. A reference to clause 9.2 of the agreement must detail as under:

> ***9.2 Major alteration/modification***
> *In case of any major alteration/modification resulting in excess of +10% change in the super area of the aid 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 develop/company shall intimate the intending allotee(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 allottee agrees to deliver to the Developer/Company his/her written consent or objections to the changes within thirty days from the date of dispatch by the Developer/Company of such notice failing which the intending allottee shall be deemed to have given his/her full and unconditional consent to all such alterations/modifications and for payment, if any to be paid in consequence thereof.........*

28. It is not disputed that the due date for completion of the project has already expired on 09.07.2016 and occupation certificate has received on 07.05.2025. The impugned demand against the above-mentioned head was raised vide letters dated 07.05.2025 and the same is as per the above-mentioned provision of the buyer's agreement. If the complainants have any objection against the proposed change/increase, then they have a right to challenge the same within the period stipulated as per buyer's agreement. However, the respondent-builder is also duty bound to explain that increase in the super area of the unit vis a vis the project before raising such demand.
29. Considering the above-mentioned facts, the Authority observes that the respondent has increased the super area of the flat from 1650 sq. ft. to

1815 sq. ft. vide offer of possession dated 07.05.2025 with increase in area of 165 sq. ft. i.e., 10% without any justification or prior intimation to the complainants.

30. That in ***NCDRC consumer case no. 285 of 2018 titled as Pawan Gupta Vs Experion Developers Private Limited***, it was held that the respondent is not entitled to change any amount on account of increase in area. The relevant part of the order has been reproduced hereunder:

> *The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.*

31. In view of the above, the Authority has clear observation that there was an increase in a super area which was intimated to the complainants at

the time of offer of possession and not before. Further, no justification and intimation were made to the complainants in respect of increase in area. So, the respondent can charge from the complainants only on account of increase in the super area up to 10% as per clause 9.2 of the buyer's agreement after providing proper justification and specific details regarding the increase in the super area/carpet area.

- **Escalation charges**

32. The complainants took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of offer of possession. The respondent-builder submits that cost of escalation was duly agreed by the complainants at the time of booking/agreement and the same was incorporated in the buyer's agreement. The undertaking to pay the above-mentioned charge was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder:

Clause 1.2

It is mutually agreed and binding between the Allottee(s) and the Company that 50% of the Total Price of the Said Apartment, shall be treated as construction cost for the purpose of computation of Escalation Charges. It is further mutually agreed that within the above stated construction cost, the components of steel, cement, other construction materials, fuel and power and labour shall be 15%. 10%, 40%, 5% and 30% respectively of the construction cost. Escalation charges shall be computed at the expiry of 42 months i.e. in April, 2016. The RBI indexes for the month of September. 2012 and for the month March, 2016 shall be taken as the opening and closing indexes respectively to compute the Escalation Charges. The Company shall appoint a reputed firm of Chartered Accountants to independently audit and verify the computation of escalation charges done by the Company from time to time. Such audited and verified Escalation Charges shall be paid/refunded (or adjusted), as the case may be, by/to the Allottee(s) before the offer of possession of the Said Apartment to the Allotlee(s). Escalation Charges, as intimated to the Allottee(s) shall be final and binding on the Allottee(s). The Allottee(s) agrees and understands that any default in payment of the Escalation Charges shall be deemed to be a breach under the terms and conditions of the Agreement. No possession shall be handed over to the Allottee(s) unless Escalation Charges are paid in full along with delayed interest, if any.

33. This is just to comment as to how the builder has misused his dominant position and drafted such one-sided clause in the agreement and the

delay was a result of the respondent's failure to hand over the possession of the unit, leading to an increase in escalation cost. However, buyer's agreement being a pre-RERA agreement, the respondent can charge the escalations charges from the complainant as per clause 1.2 of the buyer's agreement dated 09.01.2013 executed between the complainants and the respondent subject of furnishing details and requisite certificates.

- **GST charges:**

34. It is contended on behalf of the complainants that vide letter dated 07.05.2025 the respondent raised a demand for a sum of Rs.2,77,720/ on account of balance service tax/GST. The possession of the subject unit was required to be delivered by 09.07.2016 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 before 01.07.2017 i.e., date of coming into force of GST, the builder is not entitled for charging GST w.e.f. 01.07.2017. Thus, the promoter shall not charge GST from the complainants.

G.VII Quash the demand of registration charges @ 1% of the basic sale price and direct the promoter to charge only appropriate legal amount.

35. In the present complaint, the complainants have agreed to the payment plan wherein registration and stamp duty charges are included. However, there is no document placed on record in which the respondent has raised a demand of registration charges @ 1% of the basic sale price. As the complainants have failed to substantiate the facts, thus no direction to this effect. But the respondent may charge the registration and stamp duty charges required for execution of conveyance deed as per Section 17 of the Act of 2016.

G.VIII Direct the respondent-promoter to demand maintenance only from the date of physical handover of the subject unit.

36. As per clause 14.4 of the agreement dated 09.01.2013, it was agreed between the complainants and the respondent that the expenses of the maintenance charges shall be borne and paid by the allottee. The relevant portion of the said clause is reproduced below for the ready reference:

> ***14.4. Fixation of Total Maintenance Charges:***
> *The total maintenance charges as more elaborately described in the tripartite Maintenance Agreement will be fixed by the maintenance agency on an estimated basis of the maintenance costs to be incurred for the forthcoming financial year. Maintenance charges would be levied from the date of issue of occupation certificate for the THE ESFERA/ date of allotment, whichever is later, and the intending allottee(s) undertakes to pay the same promptly. The estimates of the maintenance agency shall be final and binding on the intending allottee(s). The maintenance charges shall be recovered on such estimated basis on monthly/ quarterly intervals as may be decided by the maintenance agency and adjusted against the actual audited expenses as determined at the end of the financial year and any surplus/ deficit thereof shall be carried forward and adjusted in the maintenance bills of the subsequent financial year. The intending allottees(s) agrees and undertakes to pay the maintenance bills on or before due date as intimated by the maintenance agency.*

37. In view of the above-mentioned facts, the maintenance charges are to be paid by the complainants-allottee in terms of clause 14.4 of the agreement dated 09.01.2013 executed between the complainants and the respondent.

38. The Authority is of the view that the respondent shall charge maintenance charges in terms of the agreed terms after obtaining occupation certificate. In the present complaint, the respondent has obtained the occupation certificate on 07.05.2025. Thus, the respondent shall charge the maintenance charges in consonance with the terms of buyer's agreement dated 09.01.2013 and agreed payment plan.

H. Directions of the Authority:

39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. Cancellation dated 02.07.2025 is bad in eyes of law and hence set-aside and the respondent is directed to reinstate the unit of the complainants within 30 days of this order. In case, the same unit is not available, the respondent shall allot a alternative unit of the same specifications as mentioned in buyer's agreement dated 09.01.2013.

ii. The respondent is directed to pay the 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. 09.07.2016 till 07.07.2025 i.e., expiry of 2 months from the date of offer of possession (07.05.2025). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

iii. 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.

iv. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues, if any, after adjustment of delayed possession charges.

v. The respondent is further directed to handover the physical possession of the unit within 90 days of this order.

vi. The respondent is directed to execute the conveyance deed registered in favour of the complainants within 90 days as per section 17 of the

Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.

vii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/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**.

40. Complaint stands disposed of.

41. File be consigned to the registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.08.2026