

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

Complaint no.	:	4624 of 2025
Date of filing of complaint:		11.09.2025
Date of Order:		08.09.2026

Simanti Singh Roy Khanna

Complainant**R/o:** 10, Inyo Place, Redwood City, California,
USA-94061

Versus

Imperia Structures Ltd.

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

Shri Arun Kumar

Chairman**APPEARANCE:**

Sh. B. L. Jangra (Advocate)

Complainant

Sh. Shubham Mishra (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 complainant, 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, Sector 37 C, Gurgaon, Haryana
2.	Nature of the project	Group Housing
3.	DTCP license no.	64 of 2011 dated 16.07.2011 valid up to 15.07.2024
4.	Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and 4 others
5.	RERA Registered/ not registered	352 of 2017 dated 17.11.2017 valid up to 31.12.2020 plus six months covid-19 extension i.e., 30.06.2021
6.	Extension of RERA registration	RC/ REP/HARERA/GGM/ 352 of 2017 /7(3)/2022/04 dated 30.08.2022
7.	Validity of extension	01.07.2021 to 30.06.2024
8.	Date of apartment buyer's agreement with complainant and co-allottee i.e., Mr. Sumit Kumar Khanna	09.08.2013 (As per page no. 36 of the complaint)
9.	Endorsement in the name of the complainant	07.03.2014 (As per page no. 76 of the reply)
10.	Apartment no.	1201, 12 th floor, Tower-C (As per page no. 38 of the complaint)
11.	Unit measuring	1650 sq. ft. (super area) (As per page no. 38 of the complaint)
12.	Revised unit area	1815 sq. ft. (super area) (As per page no. 80 of the reply)
13.	Possession clause	10.1 Schedule for possession of the said apartment <i>The developer/company based on its present plans and estimates and</i>

		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 clauses 11.1, 11.2, 11.3 and clause 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the developer/company from time to time or any failure on the part of the intending allottee(s) to abide by all or any of the terms or conditions of this agreement. (As per page no. 53 of the complaint)
14.	Due date of possession	09.02.2017 (Note: Due date is to be calculated three and half years from the date of execution of agreement i.e., 09.08.2013)
15.	Total sale consideration	Rs.75,19,250/- (As per page no. 42 of the complaint)
16.	Amount paid by the complainant	Rs.85,94,459/- (As alleged by the complainant on page no. 24 of the complaint) Rs.93,93,294/- (As per details of payment on page no. 90 of the complaint)
17.	Payment plan	Construction link plan (As per page no. 68 of the complaint)
18.	Letter of intimation of possession	03.02.2023 (As per page no. 87 of the reply)

19.	Offer of possession for fit outs	15.03.2024 (As per page no. 80 of the reply)
20.	Occupation certificate	12.07.2024 (for tower C) (As per page no. 82 of the reply)
21.	Offer of possession	17.07.2024 (As per page no. 85 of the reply)
22.	Reminder letter	17.08.2024 (As per page no. 90 of the reply)
23.	Reminder letter/pre-cancellation notice	28.08.2024 (As per page no. 91 of the reply)
24.	No dues certificate by the respondent	24.04.2025 (As per page no. 85 of the complaint)

B. Facts of the complaint:

3. That the complainant has made following submissions:
 - I. That the complainant, being an overseas citizen of India and having full knowledge about the facts of the present case, and competent to sign, verify, and file the present complaint before this Hon'ble Authority, seeking possession and claiming delayed possession charges.
 - II. That the complainant on 15.12.2011 submitted an application form and subsequently had booked an apartment no. 1201 having an approximate super area admeasuring 1650 sq. ft. located on 12th Floor in Block-C with 1 covered parking space in the respondent's said project against total sale consideration of Rs.75,19,250/- which includes PLC, parking charges & other charges. The complainant had paid an amount of Rs.5,78,831/- at the time of booking on 15.12.2011 which was duly received and acknowledged by the respondent.
 - III. That subsequent to the booking of the said apartment, a notarized builder buyer's agreement dated 09.08.2013 was executed between the complainant and the respondent. It is relevant to mention here that the complainant opted for construction linked payment plan.

- IV. That as per clause 10.1 of the BBA the respondent was under contractual obligation to handover the physical possession of the said apartment within a period of 3.5 years from the date of execution of the BBA, hence the due date of handing over of physical possession was on or before 09.02.2017.
- V. That the complainant had already paid a total sum of INR 85,94,459/- including GST to the respondent and the respondent in this regard has also issued a no dues certificate dated 24.04.2025 and a no objection certificate issued by Axis Trustee Services Ltd. which clearly shows the total amount paid by the complainant. Moreover, the complainant numerous has asked to provide certificate for complete GST payment but the respondent have neglected to provide the same.
- VI. That the respondent has mischievously increased the super area from 1650 sq. ft. to 1815 sq. ft. without informing the complainant and submitting any proof in this regard. The respondent has illegally charged excess money of Rs.7,16,925/- for increased super are of 165 sq. ft. under threat of cancellation which the respondent is liable to refund to the complainant but refused. Moreover, the respondent taking advantage of their own wrong for inability to deliver the project in time has also illegally charged construction escalation charges amounting to Rs.7,24,547/- including GST without any basis or containing any clause in respect thereof in BBA in breach of RERA laws. The delay of 6.5 years in handing over of possession is clearly on account of non-performance on the part of the respondent which cannot be attributable to the complainant nor can be put to any escalation charges. Hence, the respondent is liable to refund the same but refused.

- VII. That as per the BBA clause 1.1 PLC was agreed at Rs.4,95,000/- but the respondent has illegally charged increased PLC of Rs.5,44,500/- thus, the excess PLC charged is Rs.49,500/- which the respondent is liable to refund but refused.
- VIII. That the complainant has been following up with the respondent regarding the execution and registration of conveyance deed but the respondent had sent 2 drafts of the conveyance deed but refused to mention the actual carpet area in the conveyance deed which is in grave violation of RERA laws.
- IX. That it has come to the knowledge of the complainant, the respondent had obtained occupation certificate on 12.07.2024 issued by the DTCP but the respondent is neglecting to handover the possession and execute the conveyance deed on the basis of the carpet area.
- X. That the respondent after obtaining OC sent offer of possession letter dated 17.07.2024 directing the complainant to take physical possession of the said apartment. Moreover, on visiting the site the complainant had found the project had still remained incomplete and not fit for possession.
- XI. That there is an inordinate delay of 6.5 years in completion of the project from the due date of possession i.e., 09.02.2017 till date.
- XII. That it is evident from the alleged acts, deed and omission the respondent has neglected to complete the project and have grossly violated the term and conditions of buyer's agreement.
- XIII. That the respondent failed to handover the physical possession of the said apartment as per clause 10.1 of the BBA dated 09.08.2013 on or before 09.02.2017, thus played upon unfair trade practice hence the complainant is entitled to seek delay possession charges in the form of interest for inordinate delay of 6 years & 5 months.

- XIV. That the RERA law stipulates, if 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.
- XV. That no other suit/case/complaint is pending or decided by any other competent court.
- XVI. That the present complaint is being filed within period of limitation and proper fee has been paid by the complainant.
- XVII. That for the reason stated above, the complainant is left with no other efficacious remedy available except to file the present complaint before the Hon'ble Authority for seeking possession and delayed interest for wilful breach of BBA and thus, are liable to be compensated by the respondent under Act, 2016.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to handover the physical possession of apartment no. 1201, Tower – C, located on 12th floor, having super area of 1815 sq. ft. in the project.
 - ii. Direct the respondent to pay delayed possession charges in the form of interest of 6 years and 5 months from date of possession i.e., 09.02.2017 till date.
 - iii. Direct the respondent to refund sum of Rs.14,90,972/- for illegal excess amount charged for increased super area, construction escalation charges and excess PLC.
 - iv. Direct the respondent to provide GST Certificate.
 - v. Direct the respondent to waive off interest on any kind of maintenance charges or holding charges that were payable after the offer of possession.

- vi. Direct the respondent to pay the legal expenses & incidental charges.
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 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' located in Sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. C 1201 in favor of the complainant for a total consideration amount of Rs.93,63,989/- 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.
 - II. That the respondent entered into builder buyer's agreement dated 09.08.2013 with the complainant 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.
 - III. That the complainant, of her own volition and with full knowledge and awareness, approached the respondent company with the express intent of purchasing a unit in the respondent's esteemed project. She 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.

- IV. That the amount 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.
- V. That further, the applicable taxes are clearly and explicitly mentioned in clause 2 of the BBA, which the complainant duly executed. Therefore, the claim that the total price was inclusive of all charges, including taxes, is factually incorrect and contrary to the terms mutually agreed upon:

*"That the Intending Allottee(s) agrees to pay directly or if paid by the Developer/Company then reimburse to the Developer/Company on demand, Govt. rates, property taxes, Wealth Tax, taxes, fees or levies of all and any kind -- by whatever name called, whether levied or leviable now or **in future on the said Complex and/or building(s) constructed on the said Portion of Land** or the said Apartment, as the case may be, as assessable/applicable from the date of application of the Intending Allottee(s) and the same shall be borne and paid by the Intending Allottee(s) in proportion to the Super Area of the said Apartment to the super area of all the Apartments in the said Building/said Complex as determined by the Developer/Company. Further the Intending Allottee(s) shall be liable to pay from the date of his/her application house-tax, property-tax, firefighting tax or any other Fee or Cess as and when levied by a Local Body or Authority and so long as the said Apartment of the Intending Allottee(s) is not separately assessed to such Taxes, Fee or Cess, the same shall be paid by the Intending Allottee(s) in proportion to the super area of the said Apartment to the total super area of all the Apartments in the said Building/said Complex as determined by the Developer/Company. These taxes, fees, cesses etc., shall be paid by the Intending Allottee(s) irrespective of the fact whether the maintenance is carried out by the Developer/Company or its Nominee or any other Body or Association of all or some of the Apartment owners."*

Therefore, the said taxes have been levied strictly in accordance with the provisions of the builder buyer's agreement as well as applicable governmental laws. As a result, the total sale consideration amounts to Rs.93,63,989/-, which the complainant is contractually bound to pay.

- VI. That the in-principle occupation certificate for the tower in which the complainant's unit is situated was duly obtained on 13.03.2024, and the same was duly communicated to the complainant vide letter dated 15.03.2024, thereby also reminding her of the pending dues payable to the respondent company. The final OC was obtained on 12.07.2024, and immediately thereafter, the respondent company once again reminded the complainant of her outstanding dues vide letter dated 17.07.2024.
- VII. That the complainant has alleged that the amount 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.
- VIII. That the complainant has not approached this Hon'ble 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.
- IX. 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 company with respect to schedule of payment.

- X. That vide letters dated 15.03.2024 and 17.07.2024, the complainant was informed that an amount of Rs.19,82,448/- was outstanding and payable by her towards the unit.
- XI. That the complainant herself 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.4,43,570/- became due at the time of offer of possession.
- XII. That the complainant has further alleged that the area of the unit was unilaterally increased from 1275 sq. ft. to 1380 sq. ft. with the alleged intention of extorting money. This allegation is wholly false, baseless, and misleading. It is most important to highlight 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..."*
- XIII. Accordingly, an additional demand of Rs.7,16,925/- 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.
- XIV. 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 complainant, a provision to which the complainant has explicitly consented.

- XV. 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. Therefore, the escalation charges amounting to Rs.6,17,893/- which are being levied are a necessary and justified consequence of these inflationary changes.
- XVI. That as stated above, as per the clause 2 of the BBA, the complainant is contractually bound to pay all applicable taxes. Accordingly, the amount of Rs.2,04,060/- towards taxes is lawful, justified, and fully in accordance with the terms of the BBA. 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.

- XVII. That the complainant was duly reminded of her pending payment obligations by the respondent company 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 company was constrained to issue a pre-cancellation notice dated 28.08.2024.
- XVIII. That the complainant was in continuous default of her payment obligations as stipulated under Section 19(6) of the Act, 2016, which mandates that the allottee shall make timely payments as per the agreed payment schedule. It was only pursuant to repeated reminders issued by the respondent company that the complainant eventually cleared the outstanding dues, and that too after considerable delay. Such conduct clearly demonstrates non-compliance with her statutory obligations and establishes the lack of *bona fides* on her part.
- XIX. That the complainant has alleged that the unit was not habitable when she visited the same after possession was offered on 17.07.2024. The said allegation is baseless, misconceived, and vehemently denied. The complainant has failed to place on record any proof or evidence to substantiate such a claim. It is submitted that the unit was complete in all respects and was duly ready for possession. Hence, the said contention of the complainant is false, frivolous, and liable to be rejected.
- XX. 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 complainant.

XXI. 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.

- XXII. That despite facing severe financial challenges owing to multiple allottees defaulting on their payment obligations and several others exiting the project midway, the respondent company, 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.
- XXIII. That the respondent company 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. However, persistent defaults by certain allottees in making due payments continue to pose a serious hindrance to the completion and handover process. In the present scenario, it is crucial that the allottee fulfil their contractual obligations to avoid further delays or complications in the possession process. The respondent remains fully committed to delivering the units but cannot be expected to do so unilaterally in the face of continued non-compliance by defaulting allottees.
- XXIV. That thereafter, the payments were made by the complainant and the same have been strictly done in accordance with the terms of the BBA, and no amount whatsoever has been collected by the respondent under any head outside the scope of the said agreement. It is further pertinent

to mention that this Hon'ble Authority has time and again observed that any charges expressly provided for in the BBA are lawful and recoverable from the allottee. Therefore, the allegations of charging any extra money are wholly baseless, misconceived, and nothing but an attempt to mislead this Hon'ble Authority, and the same deserve to be outrightly rejected.

- XXV. That, in accordance with the payment made by the complainant, a No Dues Certificate was issued. The said no dues certificate explicitly records and acknowledges that no financial liability remains either against the respondent company or against the complainant. It is further pertinent to note that as mentioned above, the project in question has been funded by the SWAMIH Fund. Accordingly, while obtaining the no objection certificate from the financing bank, it was duly conveyed and explained that the complainant had, on 24.04.2025, signed the no dues certificate confirming that all dues had been settled against both the parties. On the basis of this confirmation, the bank thereafter issued the NoC. Therefore, the claim for delayed possession charges is not maintainable, as the complainant has already accepted and acknowledged through the no dues certificate that no further financial liability subsists against the respondent company.
- XXVI. That further, since the complainant has now cleared the outstanding dues, the respondent company remains ready and willing to hand over possession of the said unit. The respondent has also been making continuous efforts to contact the complainant to complete the requisite internal formalities to ensure a smooth handover process. However, the complainant has neither responded to these communications nor shown any interest in proceeding further with the possession formalities.

- XXVII. That the complainant has specifically sought a waiver of maintenance charges; however, it is respectfully submitted that the obligation to pay such charges has been explicitly stipulated under clause 14.1 of the BBA, which the complainant has duly acknowledged and accepted. Furthermore, certain charges towards registration of the unit, which are payable at the time of possession, are still outstanding. Hence, the complainant is required to clear all such dues to enable the respondent company to complete the possession formalities.
- XXVIII. That the complainant herself has admitted in the present complaint that the draft of the conveyance deed was duly shared with her by the respondent company. When the complainant raised certain queries and concerns regarding the same, the respondent company, in good faith, duly considered and incorporated the suggested changes and thereafter re-shared the revised draft with her for further process. However, instead of executing the conveyance deed, the complainant has attempted to shift the blame upon the respondent company, despite the latter's continuous cooperation and willingness to complete the formalities. It is evident that the complainant, with the intent of unjustly enriching herself and claiming unwarranted delayed possession charges, has deliberately refrained from signing the said document, whereas the default lies solely on her part.
- XXIX. That as stated hereinabove, the complainant, on one pretext or the other, has consistently failed to appear for the execution of the conveyance deed. It is pertinent to submit that the respondent, in good faith, even made necessary amends as desired by the complainant; however, instead of proceeding with the execution, the complainant has chosen to file the present complaint despite being solely at fault.

XXX. That the OC for the project was duly obtained by the respondent last year, and ever since, the respondent company has been maintaining and up-keeping the premises entirely at its own expense. Therefore, the prayer of the complainant seeking waiver of holding and maintenance charges is wholly untenable and deserves outright rejection. Furthermore, as per clause 7.3 of the Model Builder Buyer Agreement (BBA) prescribed under Rules, 2017, it is categorically provided that *in the event the allottee fails to take possession or execute the conveyance deed within the stipulated period after the offer of possession, the promoter shall be entitled to charge holding charges for such period of delay.* Accordingly, the imposition of holding charges in the present case is not only legitimate but also fully in accordance with the statutory model agreement framed under the aforesaid Rules. Hence, the respondent company is lawfully entitled to recover such holding charges, as the delay in execution of the conveyance deed is solely attributable to the complainant, who has deliberately refrained from completing the requisite formalities to unjustly enrich herself at the expense of the respondent.

XXXI. That the present complaint is not maintainable and is liable to be dismissed as being devoid of merit and contrary to law. The complainant, having failed to discharge her contractual obligations, has approached a 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 complainant:

- G.I Direct the respondent to handover the physical possession of apartment no. 1201, Tower – C, located on 12th floor, having super area of 1815 sq. ft. in the project.**
- G.II Direct the respondent to pay delayed possession charges in the form of interest of 6 years and 5 months from date of possession i.e., 09.02.2017 till date.**
11. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.

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

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

13. The due date of possession of the apartment as per clause 10.1 of the builder's buyer's agreement dated 09.08.2013, is to be calculated as three and half a years from the date of execution of buyer's agreement, which comes out to be 09.02.2017.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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., 08.09.2026 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(zd) 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:
- "(zd) "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 complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
19. The counsel for the respondent vide proceedings of the day dated 08.09.2026 draws attention of the Authority to the fact that the occupation certificate of the project was received on 12.07.2024 and offer of possession was made to the complainant on 17.07.2024. As per possession letter dated 17.07.2024, an outstanding amount of Rs.12,02,452/- was to be paid by the complainant on offer of possession

under the head of balance amount, increased area change, escalation cost, GST etc. He further stated that the complainant never come forward to take possession and payment of outstanding dues despite issuance of multiple reminders for the same. On 28.08.2024, the respondent issued a pre-cancellation/reminder letter after issuing a reminder letter dated 17.08.2024 to the offer of possession dated 17.07.2024 which consists the details of outstanding dues to be paid by the complainant.

20. The Authority has observed that the complainant has paid an amount of Rs.93,93,294/- i.e., more than 100% of the total sale consideration of Rs.75,19,250/- and the due date of possession was lapsed in the year 2017. Though the total sale consideration has been paid by the complainant on 31.01.2025 and thereafter the respondent has issued a no objection certificate on 24.04.2025 in which it was mentioned that there are no outstanding dues payable by the allottee in respect of the residential space bearing no. 1201 situated on 12th floor in Tower-C. There is substantial delay of almost 7 years in making offer of possession i.e., 17.07.2024 after obtaining occupation certificate on 12.07.2024 as the due date of possession has lapsed way back on 09.02.2017.

21. 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 complainant after obtaining occupation certificate on 17.07.2024. So, it can be said that the complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural

justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months of reasonable time is to be given to the complainant 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., 09.02.2017 till actual handing over of possession or offer of possession made on 17.07.2024 after obtaining occupation certificate from competent authority plus two months, whichever is earlier.

22. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement dated 09.08.2013 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., 09.02.2017 till offer of possession (17.07.2024) plus 2 months i.e., up to 17.09.2024 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.III Direct the respondent to refund sum of Rs.14,90,972/- for illegal excess amount charged for increased super area, construction escalation charges and excess PLC.

23. The complainant has contended about various illegal charges raised by the respondent-promoter in its letter dated 17.07.2024 detailed as under:

S. No.	Particulars	Amount (Rs.)
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1.	Demand towards Balance Sale Consideration	4,43,570/-
2.	Increased Area Charges (i.e., Increase in Area x Booking/ Allotment Rate)	7,16,925/-
3.	Average Escalation Cost, as per indexed construction Escalation between 2014-2017	6,17,893/-
4.	GST (As applicable)	2,04,060/-
5.	Less: Delay Penalty @ Rs.5/- sq. ft.	7,79,996/-
6.	Total Outstanding Dues	12,02,452/-

24. 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.7,16,925/- but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 09.08.2013 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 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 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.....

25. It is not disputed that the due date for completion of the project has already expired on 09.02.2017 and occupation certificate was received on 12.07.2024. The impugned demand against the above-mentioned head was raised vide letters dated 17.07.2024 and the same is as per the above-mentioned provision of the buyer's agreement. If the complainant has any objection against the proposed change/increase, then she has a right to challenge the same within the period stipulated as per buyers' 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.
26. 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 17.07.2024 with increase in area of 165 sq. ft. i.e., 10% without any justification or prior intimation to the complainant.
27. 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 charge 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.

28. In view of the above, the Authority has clear observation that there was an increase in a super area which was intimated to the complainant at the time of offer of possession for fit outs and not before. Further, no justification and intimation were made to the complainant in respect of increase in area. So, the respondent can charge from the complainant 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**

29. The complainant 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 complainant at the time of booking/agreement and the same was incorporated in the buyer 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 Allottee(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.

30. 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 09.08.2013 executed between the complainant and the respondent subject of furnishing details and requisite certificates.

- **GST charges:**

31. It is contended on behalf of the complainant that vide letter dated 17.07.2024 the respondent raised a demand for a sum of Rs.2,04,060/ on account of balance service tax/GST. The possession of the subject unit was required to be delivered by 09.02.2017 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 to charge GST.

32. Keeping in view the above-mentioned clauses of the buyer's agreement, the Authority hereby directs the respondent to not to charge anything beyond what has been agreed vide agreement dated 09.08.2013 and if anything beyond the same has been charged, the respondent shall refund the amount to the complainant.

G.IV Direct the respondent to provide GST Certificate.

33. In the present complaint, the complainant is seeking the relief of issuance of GST certificates for the payments made by the complainant. The Authority observes that the respondent is well within right to claim the GST amount and other government charges as agreed between the parties and the same shall be payable by the allottee over and above the sale consideration. Accordingly, the respondent is directed to furnish the details of payment of such taxes paid to the concerned Authority. If the respondent/promoter failed to provide the details of taxes as well as applicable charges as per the law of land then the respondent shall refund the excess amount.

G.V Direct the respondent to waive off interest on any kind of maintenance charges or holding charges that were payable after the offer of possession.

• **Maintenance charges**

34. As per clause 14.1 of the agreement dated 09.08.2013, it was agreed between the parties 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:

14.1. Maintenance of the said Building/said Complex/said apartment:

In order to provide necessary maintenance services, dedicated focus and transparency in accounting and audit procedures the developer/company shall, upon the completion of the said building/ said complex, handover the maintenance of the said building/ said complex to any association/ body/

condominium of apartment owners or to any other nominee/agency/association of apartment owners or body(hereinafter referred to as "maintenance agency") as the developer/company in its sole discretion hereby agrees to execute tripartite maintenance agreement with the maintenance agency as may be appointed/ nominated by the developer/company from time to time for the maintenance and upkeep of the said portion of land/ the said building/ the said complex. The intending allottee(s) further undertakes to abide by the terms and conditions of the tripartite maintenance agreement and to pay promptly all the demands, bills, charges as may be raised by the maintenance agency from time to time. The developer/company reserves the right to change, modify, amend, impose additional conditions in the tripartite maintenance agreement at the time of its final execution. The maintenance charges shall become applicable/ payable from the date the maintenance agency commences the maintenance of the said complex/ said building after the developer/ company has received the occupation certificate/ the date of allotment, whichever is later.

35. In view of the above-mentioned facts, the maintenance charges are to be paid by the complainant-allottee in terms of clause 14 of the agreement dated 09.08.2013 executed between the parties subject to obtaining of occupation certificate.
36. 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 12.07.2024. Thus, the respondent shall charge the maintenance charges in consonance with the terms of buyer's agreement dated 09.08.2013 and agreed payment plan.

- **Holding charges**

37. As per law settled by *Hon'ble Supreme Court* in *Civil Appeal Nos. 3864-3889/2020* decided on **14.12.2020**, 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. Thus, the respondent shall not charge holding charges from the complainant.

G.VI Direct the respondent to pay the legal expenses & incidental charges.

38. The complainant is seeking relief w.r.t compensation in the aforesaid relief, **Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

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. 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 complainant from due date of possession i.e., 09.02.2017 till 17.09.2024 i.e., expiry of 2 months from the date of offer of possession (17.07.2024).
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- iii. The respondent shall handover the possession within a period of 30 days from the date of this order.
- iv. The respondent is directed to execute the conveyance deed of the allotted unit in terms of Section 17 of the Act, 2016 on payment of requisite stamp duty by the complainant.

- v. 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.
- vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by **Hon'ble Supreme Court** in **Civil Appeal Nos. 3864-3889/2020** decided on **14.12.2020**.
40. Complaint stands disposed of.
41. File be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.09.2026