

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

Complaint no. :	1161 of 2025
Date of filing of complaint:	03.04.2025
Date of Order:	08.09.2026

Complainants

1. Vinod Kumar Khurana

2. Savita Khurana

Both R/o: B-6/67, Ground Floor, Safdarjung
Enclave, New Delhi-110029.

Versus

Respondent

Imperia Structures Ltd.

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

Shri Arun Kumar

APPEARANCE:

Sh. B. L. Jangra (Advocate)

Sh. Shubham Mishra (Advocate)

Chairman

Complainant

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, 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.	MoU executed regarding virtual office space with complainant no. 1 and 2 <i>*respondent show inability to give possession of the 2 booked unit and offer 1 unit in the project (The Esfera)</i>	17.06.2015 (As per page no. 26 of the complaint) 20.01.2016 (As per page no. 33 of the complaint)
9.	Date of agreement for sale with both the complainants	26.10.2016 (As per page no. 96 of the complaint)
10.	Addendum agreement for assured return	02.11.2016 (As per page no. 45 of the complaint)
11.	Apartment no.	A-1604, 16 th floor, Tower-A (As per page no. 47 of the complaint)
12.	Unit measuring	2035 sq. ft. (super area) (As per page no. 47 of the complaint)
13.	Possession clause	10.1 Schedule for possession of the said apartment

		<i>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 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.</i> (As per page no. 63 of the complaint)
14.	Due date of possession	26.10.2020 (Note: Due date is to be calculated three and half years from the date of execution of agreement i.e., 26.10.2016 plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
15.	Total sale consideration	Rs.91,57,000/- (As per page no. 63 of the complaint)
16.	Amount paid by the complainants	Rs.95,69,588/- (As per receipt information on page no. 99-101 of the complaint)

17.	Payment plan	Construction link plan (As per page no. 88 of the complaint)
18.	AR clause mentioned in addendum agreement	1(b) Where allottee(s) has paid Rs.50,00,000/- on signing of this addendum agreement, and the developer has agreed to pay a sum of Rs.79,167/- per month to Mr. Khurana w.e.f. 18 th June, 2016 till date of adjustment of balance payment. Where allottee(s) has paid Rs.41,57,500/- in January 2017, the developer shall pay a sum of Rs.79,167/- per month to Mr. Vinod Khurana and a sum of Rs.65,827/- per month to Mrs. Savita Khurana as assured return till the date of offer of possession is being handed over to the allottee. (As per page no. 97 of the complaint)
19.	Mail by complainant regarding assured Return	08.05.2018, 09.07.2018, 21.02.2019, 02.12.2019, 13.10.2020, 25.07.2024, 27.07.2024, 29.08.2024 and 16.12.2024 (As per page no. 103-110 of the complaint)
20.	Occupation certificate	13.03.2024 (As per page no. 164 of the reply)
21.	Offer of possession	15.03.2024 along with outstanding dues of Rs.10,45,629/- (As per page no. 111 of the complaint)
22.	Reminder by respondent	17.08.2024 (As per page no. 169 of the reply)
23.	Cancellation letter	27.11.2024 (default in payment obligation) (As per page no. 113 of the complaint)
24.	Legal Notice regarding AR, demand of Rs.10,45,629/- and cancellation letter	13.01.2025 (As per page no. 115 of the complaint)
25.	Collection of refund letter issued by respondent	24.02.2025 (As per page no. 127 of the complaint)

26.	Mail by respondent regarding collection of refund amount	03.03.2025 (As per page no. 125 of the complaint)
27.	Assured return paid by respondent	Rs.44,75,244/- (As mentioned by respondent on page no. 6 of the reply and as per details mentioned in the ledger account on page no. 104-110 of the reply)

B. Facts of the complaint:

3. That the complainants have made following submissions:
 - I. That the complainants are the law-abiding citizens of India and senior citizens having the age of 79 and 76 years. The complainants have invested huge sum of money in the project, "The Esfera" located at Sector-37 C, Gurugram.
 - II. That on the basis of the representation of the respondent, the complainants entered into two Memorandum of Understanding dated 17.06.2015 and 20.01.2016 wherein each of the complainants booked a unit in the commercial complex of the respondent in the name and style of "IMPERIA H2O OFFICE SUITS" situated in Greater Noida (U.P) as the respondent raised tall claims about the project.
 - III. That subsequently, the respondent showed its inability to give the possession of the 2 booked units in the commercial complex in the name and style of "IMPERIA H2O OFFICE SUITS" situated in Greater Noida (U.P) to the complainants and offered to give one apartment in the other project "The ESFERA" situated in Sector-37-C, Gurugram to the complainants.
 - IV. That in the year 2016, the respondent hugely marketed and promoted the said project using a renowned and reputed brand name "The ESFERA". Since the respondent was unable to give the possession of the

Noida units, the complainants being left with no other option, as hugely invested with the respondent, agreed to receive a unit in the said project. It was represented by the respondent that it is committed to handover the possession of the apartment, along with other facilities and/or amenities in a timely manner.

- V. That believing in the aforesaid representations and rosy picture portrayed by the respondent, the complainants executed an apartment buyer's agreement dated 26.10.2016 with the respondent for allotment of apartment no. 1604, admeasuring 2035 sq. ft. super built area on 16th floor in Block-A along with one covered car parking in the said project for a total consideration of Rs.91,57,500/-. It is submitted that the apartment buyer's agreement further records that an amount of Rs.52,10,000/- has already been paid by the complainants towards the part payment of the said apartment. The respondent raised tall claims about the project and had also assured that the possession would be handed over within 3.5 years from the date of the execution of the apartment buyer's agreement in terms of the clause 10.1 thereof.
- VI. That after the execution of the apartment buyer's agreement on 26.10.2016, an addendum agreement dated 02.11.2016 was executed between the complainants and the respondent wherein it was recorded that the balance sale consideration of Rs.41,57,500/- has been adjusted from the amounts due and payable to the complainant no. 2 in lieu of the earlier booked Noida units. It was further agreed that the respondent will pay an amount of Rs.79,176/- to complainant no. 1 i.e., Mr. Vinod Khurana w.e.f. 18.06.2016 and Rs.65,827/- to complainant no. 2 i.e., Mrs. Savita Khurana w.e.f. January, 2017 per month towards the assured return till the offer of possession is made and the possession is handed over to the complainants. It was also agreed that

the first transfer by the complainants shall attract no file charge or administration costs.

- VII. That thereafter, the opposite party further adjusted an amount of Rs.43,44,588/- inclusive of Service Tax of Rs.1,87,088/- from the complainants and issued a receipt dated 23.12.2016 to the complainants. The complainants have also paid an amount of Rs.15,000/- towards the service tax to the opposite party on 23.12.2016. Subsequently in the month of December, 2024, the opposite party again issued a receipt dated 03.12.2024 wherein the service tax amount has been mentioned as Rs.1,52,747 instead of previous amount of Rs.1,87,088/- as mentioned in receipt dated 23.12.2016. As such the complainants have paid the total sale consideration amounting to Rs.95,69,588/- (inclusive of taxes) to the respondent towards the said apartment.
- VIII. That the respondent paid the assured return to the complainants till June, 2018 and thereafter failed to make the payment towards the assured returns and even failed to give the possession of the apartment within 3.5 years from the date of execution of apartment buyer's agreement in terms of the clause 10.1 thereof.
- IX. That the complainants wrote various emails from 2018 onwards and as well verbally enquired from the Respondent about the status of assured return and possession of the property, and it was informed that there is a temporary setback and all outstanding will be cleared shortly.
- X. That the respondent committed undue delay in constructing and completing the project and requested the complainants to bear for some more time and remain booked in the project with an assurance the delayed interest and assured return would be paid at the time of

handing over of possession of the apartment after obtaining the occupancy certificate.

- XI. That instead of paying the assured amounts and handing over of the possession of the apartment to the complainants, the respondent sent a letter dated 15.03.2024 allegedly demanding an amount of Rs.10,45,629/- towards the escalation in cost of construction without any basis. It is submitted that though the complainants were not liable to pay the said amount to the respondent but even otherwise if the complainants were having any liability to pay the respondent, even then the same could have been adjusted against the amounts due on account of assured return and delay interest payable by the respondent to the complainants.
- XII. That thereafter, the complainants time and again requested the respondent to settle the matter and even visited their office but to the dismay of the complainants, the respondent failed to clear outstanding amount towards the assured return and delayed interest and even failed to hand over the possession of the apartment.
- XIII. That instead of complying with the terms of the agreement, the respondent sent a cancellation notice dated 27.11.2024 thereby wrongfully cancelling the unit of the complainants. It is submitted that the cancellation notice dated 27.11.2024 is absolutely illegal, arbitrary and against the terms of the apartment buyer's agreement dated 26.10.2016.
- XIV. That the complainants have always abided by the terms of the apartment buyer's agreement dated 26.10.2016 and addendum agreement dated 02.11.2016 and are entitled to the possession of the apartment along with assured returns and delay interest in terms of the agreements. The respondent is under contractual and legal

- obligation to give possession of the unit to the complainants as the complainants have paid the entire sale consideration of the apartment.
- XV. That besides various verbal communications being exchanged in this regard between the complainants and respondent, the complainants even issued a legal notice dated 13.01.2025 thereby calling upon the respondent to handover the possession of the possession of the apartment along with assured returns and delay interest in terms of the agreements within a period of 15 days from the receipt of the said notice. The said notice was duly delivered to the respondent. That instead complying the said notice, the opposite party sent an email on 3.3.2025 stating frivolous facts.
- XVI. That the respondent continues to illegally garner benefits from the complainants, who have to divert their hard-earned monies and has not handed over the possession of the unit till date. That owing to the irresponsible and vagrant attitude as showcased by the respondent herein, the complainants find themselves in a precarious situation, where the respondent continue to wilfully default on the terms and conditions agreed between the parties.
- XVII. That owing to the delay in handing over the possession of the unit, the complainants are also entitled to interest @ 18% p.a. on delayed possession from the respondent till the actual date of possession as per the agreement.
- XVIII. That the cause of action in the present complaint is subsisting and continuing as the respondent have wrongly cancelled the apartment of the complainants and neither given possession of the said unit till date as per their own schedule nor they have paid assured return and interest on delayed possession.

C. Relief sought by the complainants:

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

- i. Declare the cancellation notice dated 27.11.2024 illegal, invalid and against the provisions of the Act, 2016 as well as against the terms of the apartment buyer's agreement dated 26.10.2016 and its addendum agreement dated 02.11.2016.
 - ii. Direct the respondent to restore the cancelled apartment in the name of the complainants and handover the possession of the apartment no. 1604, admeasuring 2035 sq. ft. super built area on 16th floor in Block-A along with one covered car parking to the complainants.
 - iii. Direct the respondent to pay the assured return for an amount of Rs.79,176/- to complainant No. 1 i.e. Mr. Vinod Khurana and Rs.65,872/- to complainant No. 2 i.e. Mrs. Savita Khurana per month w.e.f. July, 2018 till the possession is handed over to the complainants along with interest @18% p.a. from the individual date of the payment accrued.
 - iv. Direct the respondent to pay the delay interest @ 18% p.a. from the due of possession i.e., 25.04.2020 on the amounts paid by the complainants i.e., Rs.95,69,588/- till the possession is handed over to the complainants.
 - v. Direct the respondent to pay compensation of Rs.10,00,000/- on account of harassment and mental agony.
 - vi. Direct the respondent to pay cost of litigation of Rs.1,00,000/- be awarded in favour of the complainant as against the respondent.
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 have approached this Hon'ble Authority with unclean hands and have tried to mislead this Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts.
 - II. That the complainants are guilty of *suppressio very suggestion falsi*. The complainants have suppressed and mis-stated the facts and, as such, the complaint apart from being wholly misconceived, is rather the abuse of the process of law.
 - III. That the complainants had earlier booked two virtual spaces in a different project of the respondent company, namely "*H2O Office Suites*" in IT Block-I, and entered into Memorandum of Understanding dated 17.06.2015 and 20.01.2016. The occupation certificate for the said block was obtained on 06.03.2017. It is pertinent to note that the spaces allotted pertained solely to virtual office spaces of 1000 sq. ft., and therefore, by their very nature, no physical possession could have been handed over.
 - IV. That as per the agreed terms of the MoU of IT space, the complainants were required to pay a sum of Rs.2,00,000/- each against the spaces initially booked by them at the time of offer of possession. However, the complainants failed to honour this payment obligation. This outstanding amount is duly recorded in the MoU, thereby evidencing that the failure to make the requisite payment lies entirely with the complainants.
 - V. That the respondent company requested the complainants to change the project. The allegation that the respondent company was unable to deliver possession of the initially allotted spaces (H2O IT Spaces) is wholly incorrect, particularly as the OC for the IT Block I was duly

obtained on 06.03.2017 in which the complainants booked virtual spaces initially. Subsequently, the complainants invested in another project of the respondent company, namely "*The Esfera II*" situated in Sector-37C, Gurugram, Haryana, where there was no payment made. The respondent company allotted unit no. A-1604 to the complainants for a total consideration of Rs.95,35,247/, inclusive of applicable taxes and other charges, under the down payment plan, on terms and conditions mutually agreed between the parties. Therefore, the claim that the complainants were "lured" into entering the subsequent agreement is entirely baseless.

- VI. That thereafter, the complainants and the respondent company entered into a builder buyer's agreement dated 26.10.2016 in respect of the booked unit. It is pertinent to mention that the BBA duly enumerates all the liabilities and rights of both parties.
- VII. That the complainants have been perpetual and wilful defaulters since the very inception of their dealings with the respondent company. From the very outset, they failed to honour their payment obligations in respect of the initially booked virtual spaces. Subsequently, even after the execution of the BBA for the other booked residential unit in *Esfera II*, the complainants did not make a single fresh payment towards the said unit. Instead, they have remained in an unbroken and persistent state of default, spanning the entire duration of their association with the respondent. At every stage when payments fell due, rather than fulfilling their contractual obligations, the complainants conveniently sought adjustments or set-offs, thereby evading their clear liability and demonstrating a consistent pattern of non-payment and non-compliance.

- VIII. That from the very inception, the primary objective of the complainants is booking the unit in "H2O IT Office Suites - IT Block 1" located in KP-5 was to treat the transaction purely as an investment and to secure returns thereon, with their foremost focus being the continuation of assured return payments. It is further submitted that, as per the agreed terms of the MoU's executed in respect of both the virtual spaces, the assured returns were payable only until the date of offer of possession. The complainants were fully aware that the OC for the said project was expected shortly, and that the assured return payments would consequently cease. In order to continue deriving the benefit of such returns, the complainants approached the respondent company with requests aimed at altering or extending the arrangement to suit their advantage.
- IX. That the complainants had booked the unit in "H2O IT Office" located in KP-5 with the intent of deriving monetary gains through appreciation in value and assured return benefits. However, upon realising that the said project situated in KP-5, Greater Noida was not appreciating in value, they, without making any fresh payment in the new booking of residential unit, requested the respondent company to adjust the amounts paid towards the previously allotted unit and transfer the amounts to their other booked residential unit in a different project. The said request to transfer the amount paid with respect to the spaces allotted in the H2O IT Office, was entirely at driven by their personal investment motives, rather than any alleged fault or shortcoming on the part of the respondent company.
- X. That thereafter, an addendum agreement dated 02.11.2016 was executed between the parties, wherein it was expressly stipulated that the payment of assured returns was strictly subject to the timely

payment of the agreed amounts by the allottees. As per the said addendum, upon payment of a sum of Rs.50,00,000/- by the allottees, an amount of Rs.79,167/- per month would become payable to the complainant, Mr. Vinod Kumar Khurana, with effect from 18.06.2016 until the balance adjustment was completed. Furthermore, after the payment of Rs.41,57,500/-, scheduled for January, 2017, the assured returns were again expressly made conditional upon the payment of the aforesaid amount, to be paid at the rate of Rs.79,167/- per month to Mr. Vinod Kumar Khurana and Rs.65,827/- per month to Mrs. Savita Khurana, the co-complainant herein. It is, therefore, evident that the entitlement to assured returns was not absolute but was contingent upon the complainants fulfilling their payment obligations under the addendum.

- XI. That the complainants have alleged that no assured returns were paid after June, 2018. This allegation is false, misleading, and devoid of merit. In reality, both complainants received a substantial sum of Rs.44,75,244/- towards assured returns for the period from December, 2016 to June, 2019. As already stated, the obligation to pay assured returns was strictly contingent upon the complainants making the requisite payments. However, no fresh payments were made by them as per the addendum. Despite having no contractual obligation in the absence of such payments, the respondent company, in good faith and as a gesture to demonstrate its bona fides, has nevertheless made payment of a substantial amount. Hence, the allegation of non-payment is wholly unfounded.
- XII. That further the delay caused in completion of construction of the said project was due to certain unforeseeable circumstances. It is submitted that 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.

- XIII. 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.

- 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 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.
- XVI. That the occupancy certificate for the tower in which the unit of the complainants is situated was duly obtained on 13.03.2024, after complying with all legal and regulatory requirements. The respondent company duly issued an offer of possession to the complainants vide letter dated 15.03.2024, wherein they were informed about the receipt of the OC and were also apprised of their outstanding dues amounting to Rs.10,45,629/-.

XVII. That an amount of Rs.1,59,502/- towards GST has been levied strictly in accordance with the prevailing government norms and applicable statutory provisions. It is crucial to highlight that the applicable taxes are clearly and explicitly mentioned in clause 2 of the BBA, which the complainants 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.

XVIII. That the complainants were 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.

- XIX. 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 amounting to Rs.8,86,126/- which are being levied are a necessary and justified consequence of these inflationary changes.
- XX. That as stated above, the complainants are contractually bound to pay all applicable taxes, which have been clearly stipulated in the BBA. Accordingly, the amount of the total amount of Rs.10,45,629/- as raised in the letter dated 15.03.2024 is, justified, and fully in accordance with the terms of the BBA.
- XXI. That the respondent company was prepared to hand over possession and, accordingly, issued reminder letters dated 17.07.2024 and 17.08.2024. Notwithstanding these reminders, the complainants failed to make the required payment.

- XXII. That despite being duly informed and offered possession in accordance with Section 19(10) of the Act, 2016, which mandates an allottee to take possession within two months from the date of issuance of the OC, the complainants deliberately failed to comply with their obligation to take possession of the unit. This conduct reflects a lack of bona fides on the part of the complainants and is indicative of an attempt to unjustly delay the process while continuing to make baseless allegations against the respondent company.
- XXIII. 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 company.
- XXIV. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainants. The BBA executed between the parties have clearly depicted the intention of the respondent company with respect to schedule of payment. After providing the complainants with ample opportunities, the respondent company had no alternative but to cancel the allocation of the said unit, as communicated in the letter dated 27.11.2024.
- XXV. That due to the failure of the complainants to fulfill the outstanding financial obligations, the unit allocated to them was subsequently cancelled, and third-party rights have already been created in accordance with the applicable terms and conditions.
- XXVI. That the respondent company, 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 company, after careful consideration, was compelled to cancel the unit, proceed with the sale of the unit and create third-party rights.

- XXVII. That the respondent company states that it is willing to refund the paid amount, subject to a deduction of earnest money @15% in accordance with clause 4 of the BBA. 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 signature of the complainants 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.
- XXVIII. That further, the respondent company, acting in good faith and with bona fide intent, issued a letter to the complainants on 24.02.2025, followed by an email dated 03.03.2025, requesting them to collect the cheques prepared in their names after deduction of the earnest money. The complainants were specifically requested to visit and collect the same.
- XXIX. That the complainants are not entitled to the proposed reliefs as they have approached this Hon'ble Authority with malice and mala fide intentions. It is also submitted that the contractual obligations were not met by the complainants, to begin with, and they have concealed

these relevant facts, which resultantly render this complaint infructuous and not maintainable.

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 Declare the cancellation notice dated 27.11.2024 illegal, invalid and against the provisions of the Act, 2016 as well as against the terms of the apartment buyer's agreement dated 26.10.2016 and its addendum agreement dated 02.11.2016.

G.II Direct the respondent to restore the cancelled apartment in the name of the complainants and handover the possession of the apartment no. 1604, admeasuring 2035 sq. ft. super built area on 16th floor in Block-A along with one covered car parking to the complainants.

11. The above-mentioned relief(s) sought by the complainants are taken together being inter-connected.
12. In the present complaint, the complainants are seeking possession of the unit allotted to them vide agreement dated 26.10.2016.
13. The counsel for the complainants vide proceedings of the day dated 08.09.2026 brought to the notice of the Authority that originally the respondent has executed an MOU with complainant no. 1 on 17.06.2015 and with complainant no. 2 on 20.01.2016 for virtual space admeasuring 1000 sq. ft. each. Thereafter, the respondent shows his inability to give two virtual spaces and offered an apartment to the complainants instead of two virtual spaces and an apartment buyer's agreement dated 26.10.2016 has been executed between the complainants and the respondent. The complainants were allotted unit no. A-1604 situated on 16th floor in Tower-A and as per the agreement dated 20.10.2016.
14. The counsel for the respondent vide proceedings of the day dated 08.09.2026 stated that the unit was cancelled on 27.11.2024 on account of non-payment of instalments and thereafter an email was sent to the complainants on 03.03.2025 to collect the refund amount. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainants is valid or not?

15. The Authority has observed that the respondent has obtained occupation certificate from the competent Authority on 13.03.2024 and offer of possession on 15.03.2024. And as per possession letter dated 15.03.2024, an outstanding amount of Rs.10,45,629/- was to be paid by the complainants on offer of possession in the name of balance amount, increased area change, escalation cost, GST etc. Thereafter, the respondent cancelled the unit of the complainants on 27.11.2024 on account of outstanding dues after issuing a reminder letter dated 17.08.2024. The Authority has observed that the complainants have opted a construction linked payment plan and as per the opted payment plan, 10% payment was to be made at the time of booking, next 10% within 45 days of booking, next 75% as per stages of construction and remaining 5% was to be made at the time of offer of possession. Moreover, the complainants have paid an amount of Rs.95,54,588/- against the sale consideration of Rs.91,57,000/- way back in 2016 and the due date of possession was lapsed in 2020. There is substantial delay of 4 years in offer of possession as the due date of possession has lapsed on 26.10.2020 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. On consideration of all the submissions made by the parties and documents place on record, the cancellation of the unit stands invalid. Thus, the respondent is directed to reinstate the unit allotted to the complainants within a period of 30 days from the date of this order.
16. Furthermore, in case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants. Further, the possession of the unit shall be

handed over to the complainants as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession as per Section 19 (10) of the Act, 2016.

G.III Direct the respondent to pay the assured return for an amount of Rs.79,176/- to complainant No. 1 i.e. Mr. Vinod Khurana and Rs.65,872/- to complainant No. 2 i.e. Mrs. Savita Khurana per month w.e.f. July, 2018 till the possession is handed over to the complainants along with interest @18% p.a. from the individual date of the payment accrued.

G.IV Direct the respondent to pay the delay interest @ 18% p.a. from the due of possession i.e., 25.04.2020 on the amounts paid by the complainants i.e., Rs.95,69,588/- till the possession is handed over to the complainants.

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

- **Assured returns**

18. The complainants are seeking unpaid assured returns on monthly basis as per the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said agreement. Though for some time, the assured returns were paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019. The authority has rejected the aforesaid objections raised by the respondent in *CR/8001/2022* titled as "*Gaurav Kaushik and Anr. Vs. Vatika Ltd.*" wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this

regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

19. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the complainants-allottees has a right to approach the authority for redressal of their grievances by way of filing a complaint.
20. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on. In view of the above, the respondent is liable to pay the unpaid assured return to the complainants-allottees in terms of the agreement dated 20.10.2016 as well as the addendum agreement dated 02.11.2016 wherein the respondent itself has agreed to pay the assured return till offer of possession is being handed over to the complainants i.e., 15.03.2024.

- **Delay possession charges**

21. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which 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."***

22. In the present case, the agreement for sale was executed on 26.10.2016. As per clause 10 of the buyer's agreement dated 26.10.2016, the contemplates to complete the construction of the said commercial unit within three and half years of the execution of this agreement. Clause 10 of the buyer's agreement is reproduced below for the ready reference:

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 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.

Thus, the construction of the unit of the complainant has to be completed within three and half years months from the date of agreement i.e., 26.10.2016. Therefore, the construction of the project was to be completed by 26.10.2020 including grace period of six months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso

to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the 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. *ibid*. Rule 15 has been reproduced as under:

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

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."

24. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. 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%. The definition of term 'interest' as defined under Section 2(z) 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;"*

Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

25. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The construction of the project was to be completed by 20.10.2020. However now, the proposition before the Authority is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
26. To answer the above proposition, it is worthwhile to consider that the assured return in this case is payable as per the addendum agreement dated 02.11.2016 and the respondent is liable to pay assured return to the complainants-allottee @ Rs.79,167/- per month to complainant no. 1 and Rs.65,827/- per month to complainant no. 2 till offer of possession i.e., 15.03.2024. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs.1,44,994/- (i.e., Rs.79,167/- to complainant no. 1 and Rs.65,827/- to complainant no. 2) per month till offer of possession whereas the delayed possession charges are payable approximately Rs.86,126/- per month approximately payable under proviso to section 18 (1) of the Act of 2016, the assured return is much higher. By way of assured returns, the promoter has assured the allottee that they will be entitled for this specific amount till handing over of possession. Accordingly, the interest of the allottee is protected even after the due date of possession is over as the assured

return are payable till offer of possession. The purpose of delayed possession interest after due date of possession is over and payment of assured return after due date of possession is over are the same and safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are paid either the assured return or delayed possession interest, whichever is higher.

27. In light of the reasons mentioned above, the authority is of the view that as per the addendum agreement dated 02.11.2016, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in agreement to sale dated 26.10.2016 in consonance with addendum agreement dated 02.11.2016. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per addendum agreement is still continuing. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return to the complainants-allottee in terms of clause 1(b) of addendum agreement dated 02.11.2016 at the agreed rate i.e., @ Rs.79,167/- per month to complainant no. 1 and Rs.65,827/- per month to complainant no. 2 till offer of possession i.e., 15.03.2024 after deducting the amount already paid to the complainants on account of Assured Returns.

G.V Direct the respondent to pay compensation of Rs.10,00,000/- on account of harassment and mental agony.

G.VI Direct the respondent to pay cost of litigation of Rs.1,00,000/- be awarded in favour of the complainant as against the respondent.

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

29. The complainants are 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:

30. 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 27.11.2024 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 unit of the complainants is not available, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants followed by execution of agreement for sale between the parties.
- ii. The respondent is directed to pay the assured return at the rate i.e., Rs.79,167/- per month to complainant no. 1 and Rs.65,827/- per month to complainant no. 2 as per agreed terms of addendum agreement dated 02.11.2016 till offer of possession i.e., 15.03.2024 after deduction of amount already paid to the complainants on account of Assured Returns.

- iii. The respondent is directed to pay arrears of accrued assured return as per addendum agreement dated 02.11.2016 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- iv. The complainants are directed to pay outstanding dues, if any remains after adjustment of payable assured returns and thereafter the respondent shall handover the possession of the allotted unit to the complainants.
- v. 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 complainants.
- vi. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

31. Complaint stands disposed of.

32. File be consigned to the registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.09.2026