BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of Order: 13.10.2026

NAME OF THE BUILDER		IMPERIA STRUCTURES LIMITED	
PROJECT NAME		"THE ESFERA"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5108/2025	Sonia Bahl & Arvind Bahl V/S Imperia Structures Limited	Ms. Shriya Takkar & Ms. Meenal Khanna (Advocates for complainants) Sh. Tushar Sharna & Sh. Ram Pawar (Advocates for respondent)
2.	CR/5109/2025	Sonia Bahl & Arvind Bahl V/S Imperia Structures Limited	Ms. Shriya Takkar & Ms. Meenal Khanna (Advocates for complainants) Sh. Tushar Sharna & Sh. Ram Pawar (Advocates for respondent)
3.	CR/5113/2025	Joy Bahl Alias Joy Raj Bahl V/S Imperia Structures Limited	Ms. Shriya Takkar & Ms. Meenal Khanna (Advocates for complainant) Sh. Tushar Sharna & Sh. Ram Pawar (Advocates for respondent)
4.	CR/5114/2025	Raj Krishana Construction Company Private Limited V/S Imperia Structures Limited	Ms. Shriya Takkar & Ms. Meenal Khanna (Advocates for complainants) Sh. Tushar Sharna & Sh. Ram Pawar (Advocates for respondent)

CORAM:

Shri Arun Kumar **Chairman**

ORDER

1. This order shall dispose of all the 4 complaints titled as above filed before this authority 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "The Esfera" situated at Sector-37C, Gurugram being developed by the respondent/promoter i.e., M/s Imperia Structures Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to possession of the units in question, execution of conveyance deed along with delay possession charges and other related reliefs.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	**Imperia Structures Limited at "The Esfera" situated in Sector- 37 C, Gurugram.**			
Occupation certificate: 12.07.2024				
Complaint No. & Case Title	**CR/5108/2025 Sonia Bahl & Arvind Bahl V/S Imperia Structures Limited**	**CR/5109/2025 Sonia Bahl & Arvind Bahl V/S Imperia Structures Limited**	**CR/5113/2025 Joy Bahl Alias Joy Raj Bahl V/S Imperia Structures Limited**	**CR/5114/2025 Raj Krishana Construction Company Private Limited V/S**

				Imperia Structures Limited
Reply status	08.12.2025	08.12.2025	08.12.2025	08.12.2025
Unit no.	A-1303, 13th Floor & Tower-A (As per page no. 72 of the complaint)	A-1403, 14th Floor & Tower-A (As per page no. 76 of the complaint)	A-1803, 18th Floor & Tower-A (As per page no. 63 of the complaint)	A-1203, 12th Floor & Tower-A (As per page no. 69 of the complaint)
Area admeasuring	2600 sq. ft. (Super area) (As per page no. 130 of the complaint)	2600 sq. ft. (Super area) (As per page no. 135 of the complaint)	2600 sq. ft. (Super area) (As per page no. 120 of the complaint)	2600 sq. ft. (Super area) (As per page no. 124 of the complaint)
Date of execution of apartment buyer's agreement	06.07.2017 (As per page no. 70 of the complaint)	06.07.2017 (As per page no. 74 of the complaint)	06.07.2017 (As per page no. 61 of the complaint)	06.07.2017 (As per page no. 67 of the complaint)
Due date of handing over of possession	06.07.2021 (**Note:** Due date is to be calculated three and half years from the date of execution of agreement i.e., 06.07.2017 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.)	06.07.2021 (**Note:** Due date is to be calculated three and half years from the date of execution of agreement i.e., 06.07.2017 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.)	06.07.2021 (**Note:** Due date is to be calculated three and half years from the date of execution of agreement i.e., 06.07.2017 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.)	06.07.2021 (**Note:** Due date is to be calculated three and half years from the date of execution of agreement i.e., 06.07.2017 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.)
Offer of possession	17.07.2024 (As per page no. 130 of the complaint)	17.07.2024 (As per page no. 135 of the complaint)	17.07.2024 (As per page no. 120 of the complaint)	17.07.2024 (As per page no. 124 of the complaint)
Total Consideration /	**TSC: Rs.85,68,000 /-**	**TSC: Rs.85,68,000 /-**	**TSC: Rs.85,68,000 /-**	**TSC: Rs.85,68,000 /-**

Total Amount paid by the complainant(s)	(As per page no. 79 of the complaint) **AP: Rs.88,95,171/-** (As per page no. 64, 86, 119 & 140 of the complaint)	(As per page no. 83 of the complaint) **AP: Rs.89,09,448/-** (As per page no. 68, 90, 124 & 145 of the complaint)	(As per page no. 70 of the complaint) **AP: Rs.88,73,298/-** (As per page no. 55, 77, 111 & 130 of the complaint	(As per page no. 76 of the complaint) **AP: Rs.88,16,623/-** (As per page no. 83, 116 & 134 of the complaint)
Email regarding cancellation of allotment	08.09.2025 (As per page no. 151 of the complaint)	08.09.2025 (As per page no. 158 of the complaint)	08.09.2025 (As per page no. 141 of the complaint)	08.09.2025 (As per page no. 145 of the complaint)

The complainants in the above complaint(s) has sought the following reliefs:

1. Set aside the offer of possession for fitouts dated 07.09.2021. 07.12.2022, 15.03.2024 and 17.07.2024 being invalid and unlawful as per the law.
2. Set aside the cancellation sent vide email dated 08.09.2025 and restrain the respondent from creating any third-party rights over the unit in question.
3. Direct the respondent to hand over the possession of the said unit bearing no. A-1303 with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons outside the scope of agreed terms.
4. Direct the respondent to pay the delayed possession charges due from the due date of possession till the actual handover of possession as per the mandate of Section 18 of the Act of 2016.
5. Direct the respondent to waive of delayed interest imposed /collected by it.
6. Direct the respondent to refund the excess amount paid by the complainants towards the unit.
7. Restrain the respondent company from raising any further/fresh demands for payment under any head.
8. Quash the demand qua the holding charges and interest raised vide letter dated 07.12.2024 being arbitrary, unlawful and illegal.
9. Direct the respondent not to charge any maintenance charges till the complete and lawful possession is handed over along with all the promised amenities as common areas were not complete in all respects at the time possession was offered to the complainants and neither the same were complete at the time of filing the present complaint.
10. Direct the respondent be directed to provide the calculations of super area and carpet area of the unit in question.
11. Take cognizance of the fact that the respondent promoter has violated the condition of Registration Certificate no. 20 of 2020 dated 17.08.2020 by deviating from the model buyer's agreement approved by this Hon'ble Authority while granting registration of the project and impose penalty on the respondent.
12. Direct the respondent to pay an amount of Rs.5,00,000/- as compensation for mental agony and harassment.
13. Direct the respondent to pay an amount of Rs.1,00,000/- towards litigation expenses.

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

Abbreviation	Full form
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016 and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges and other reliefs.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the respondent/promoter in terms of Section 34(f) of the Act which mandates the Authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/5108/2025 titled as Sonia Bahl & Arvind Bahl Vs M/s Imperia Structures Limited*** are being taken into consideration for determining the reliefs of the allottee(s) qua possession, delay possession charges and others.

A. Project and unit related details

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

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.	Provisional Allotment	24.03.2014 (As per page no. 63 of the complaint)
9.	Date of apartment buyer's agreement	06.07.2017 (As per page no. 70 of the complaint)
10.	Apartment no.	A-1303, 13th floor, Tower-A (As per page no. 72 of the complaint)
11.	Unit measuring	2640 sq. ft. (super area) (As per page no. 72 of the complaint)
12.	Revised unit area	2600 sq. ft. (super area) (As per offer of possession letter dated 17.07.2024 on page no. 130 of the complaint)
13.	Possession clause	***10.1 Schedule for possession of the said apartment*** *The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment* ***within a period of three and half years from the date of execution of this agreement*** *unless there shall be delay or there shall be failure due to reasons mentioned in 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. 88 of the complaint)
14.	Due date of possession	06.07.2021 (**Note:** Due date is to be calculated three and half years from the date of execution of agreement i.e., 06.07.2017 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.85,68,000/- (As per page no. 79 of the complaint)
16.	Amount paid by the complainants	Rs.88,95,171/- (As mentioned in the ABA and as per receipt information and email information on page no. 64, 86, 119 & 140 of the complaint)
17.	Payment plan	Construction link plan (As per page no. 113 of the complaint)
18.	Letter of intimation of possession	07.12.2022 (As per page no. 125 of the complaint)
19.	Offer of possession for fit outs	15.03.2024 (with outstanding dues of Rs.25,16,500/-) (As per page no. 128 of the complaint)
20.	Occupation certificate	12.07.2024 (for tower-A) (As per page no. 162 of the reply)
21.	Offer of possession	17.07.2024 (with outstanding dues of Rs.25,16,500/-) (As per page no. 130 of the complaint)
22.	Reminder letter	17.08.2024 (As per page no. 132 of the complaint)
23.	Reminder letter/pre-cancellation notice	28.08.2024 (As per page no. 133 of the complaint)

24.	Revised offer of possession	01.02.2025 (with outstanding dues of Rs.18,95,171/-) (As per page no. 138 of the complaint)
25.	Email regarding cancellation of allotment	08.09.2025 (As per page no. 151 of the complaint)

B. Facts of the complaint

8. The complainants have made the following submissions:

I. That the respondent company, M/s Imperia Structures Limited, with mala fide and dishonest intent, approached the complainants—Mr. Arvind Bahl and Mrs. Sonia Bahl—as well as Mr. Joy Bahl and one M/s. Raj Krishna Construction Company Pvt. Ltd., inviting them to invest in and book residential apartments in its project titled "The Esfera", located in Sector 37C, Gurugram. The respondent projected the said project as a one-of-a-kind residential township, claiming it would offer all modern facilities and world-class amenities. Relying upon the representations and assurances made by the respondent—and upon the specific request of the respondent, who expressed that the company was facing a temporary paucity of funds-the complainants, considering their longstanding business relationship with the respondent, agreed to purchase residential apartments in the project. Acting upon these assurances, the complainants submitted an application dated 25.10.2013 for the booking of apartment no. A-1303, along with a booking amount of Rs.35,00,000/- vide cheque dated 25.10.2013. The complainants further booked another apartment in the same tower, being apartment no. A-1403. In addition to the above, one M/s Raj Krishna Construction Company Pvt. Ltd. booked apartment no. A-1203, while Mr. Joy Bahl booked apartment no. A-1803 in the same project. At the time of booking, the complainants were categorically assured by the respondent that possession of the

apartments would be handed over within three years from the date of booking.

II. That the respondent company after repeated requests and reminders and after a delay of almost 5 months allotted apartment bearing no. A-1303 on 13th Floor measuring 2400 sq. ft. at the basic sale price of Rs.2,000/- per sq. ft. in the said project. The total sale consideration of the said unit amounted to Rs.64,00,000/- including Development Charges, IFMS, Club Membership Charges, FFC, PBIC, and EEC. The complainant had opted for the construction linked payment plan. It is evident that not only the respondent company collected more than 10% of the sale consideration before execution of the buyer's agreement but also sold the apartment on super area basis. Both of the afore-said acts of the respondent constitute violations of the provisions of Act, 2016.

III. That the complainants repeatedly requested the respondent to execute the buyer's agreement in respect of the booked apartments. However, the respondent, on one pretext or another, continued to evade and deliberately delayed the execution of the said agreement, despite receiving a substantial booking amount from the complainants.

IV. That on 30.06.2017, the complainants, pursuant to the demand raised by the respondent, made a further payment of Rs.25,00,000/-. The said payment was duly acknowledged by the respondent and is evidenced by receipt dated 30.06.2017. It is respectfully submitted that the complainants were coerced into making the aforesaid payment at the insistence of the respondent. Consequently, the total amount paid by the complainants prior to the execution of the buyer's agreement stood at Rs.60,00,000/-which was in blatant violation of applicable laws and

regulatory norms, rendering such demand and collection of funds illegal and unjustified.

V. That the act of the respondent company in collecting more than 10% of the sale consideration prior to execution of the buyer's agreement, is unsustainable in law. Thus, the collection of monies by the respondent company beyond the statutory limit prescribed under Section 13(1) of the Act, 2016, not only constitutes a flagrant violation of the law but also amounts to an unfair trade practice, rendering the respondent liable for penal consequences under the provisions of the Act of 2016.

VI. That after repeated requests and constant follows up with the respondent, the buyer's agreement was executed between the parties on 06.07.2017. It is submitted that the terms of the buyer's agreement were purely one sided in nature and when the complainants herein raised an objection to the same, they were threatened with cancellation of allotment and forfeiture of the amounts paid by them. The complainants having no other choice was forced to sign on the dotted lines. It is reiterated here that the buyer's agreement was a one-sided pre-printed, unilateral, ex-facie containing arbitrary terms and conditions. The respondent acknowledged in clause 3 of the buyer's agreement that the complainant had already paid Rs.35,00,000/- along with the application. To utter shock and dismay of the complainants the buyer's agreement mentioned the total consideration value of the unit as Rs.85,68,000/- instead of Rs.64,00,000/- as mentioned in the allotment letter dated 24.03.2014. That on enquiring the same from the respondent, it was conveyed by the respondent that the price of the unit has been increased due to increase in the area of the unit. It is pertinent to mention here that the respondent company unilaterally and arbitrarily increased the area to

2640 sq. ft. and enhanced the sale consideration without giving any justification or calculation on the increased area and its rate. Furthermore, the respondent company, with a clear intent to derive undue benefit at the expense of the allottees, has deliberately adopted the practice of charging the sale consideration based on the *super area* instead of the *carpet area*, which is explicitly prohibited under the prevailing law.

VII. That as per clause 10.1 the respondent-promoter was supposed to handover the possession of the apartment within a period of three and half years from the date of the execution of the buyer's agreement. Therefore, the due date of possession comes out to be 06.01.2021.

VIII. That in further compliance of the demands raised by the respondent company, the complainant continued to make timely payments as and when called upon by the respondent. The complainant remitted an amount of Rs.10,00,000/- on 20.09.2018. Accordingly, the respondent company issued receipt dated 20.09.2018.

IX. That despite having collected a substantial portion of the sale consideration from the complainant in respect of unit no. A-1303, the respondent failed to adhere to the construction timelines envisaged under the buyer's agreement dated 06.07.2017. Instead of offering possession within the promised timeline, the respondent after a prolonged and unexplained silence and issued a letter dated 04.05.2021 sharing an alleged update on the project. The aforesaid letter dated 04.05.2021 was vague, ambiguous, and evasive in nature. It neither furnished any concrete construction schedule nor disclosed any justified reason for the inordinate delay of nearly four years beyond the agreed timeline. The respondent merely sought to pacify allottees, including the

complainant, with general statements without committing to any definitive possession date for unit no. A-1303. That the said letter dated 04.05.2021 clearly stated the respondent company's inability to complete the project even after collecting hefty amount from various allottees. The said letter also stated that the respondent had approached SWAMIH Investment Fund-I for capital to complete the project. It is noteworthy to mention here that the said letter manifestly makes it clear that the said project was nowhere near completion whereas the promised date of possession had already expired in January, 2021.

X. That the respondent company on 07.09.2021 sent a letter titled as "Demand Note cum Possession Offer for Fit Outs" raising an unlawful demand of Rs.29,64,930/-. It is submitted that the aforesaid letter is of no consequence whatsoever as the occupation certificate for the apartment in question was never issued by the competent Authorities at that point of time.

XI. That on 28.03.2022, the respondent issued a reminder to the complainants in respect of unit no. A-1303, calling upon them to clear alleged dues. The respondent on its own accord expressed its willingness to waive off the claims on escalation charges post/ beyond the agreement timelines, subject to a corresponding waiver by the complainant of any claim/ demand against the respondent on account of the delay in completing the construction and handing over of possession of the unit to the complainant. It is submitted that the complainants never agreed to the above unilateral terms of the respondent company. The respondent attempted to coerce the complainant to waive its claims related to the delay in completion of construction of the apartment. The respondent's conduct was clearly aimed at precluding the complainants from asserting

their legitimate and statutory rights arising out of the delay in completion of the project. It is specifically submitted that the complainants never agreed to the aforementioned unilateral terms of the respondent company.

XII. That thereafter, on 07.12.2022, the respondent issued a letter titled "Intimation Regarding Possession", wherein it was stated that the "activity related to handing over the possession" of the unit to the complainants would commence shortly. Along with this, the respondent raised a wholly illegal and unjustified demand of Rs.26,68,827/-. Upon scrutinizing the said demand, the complainants discovered that several unlawful charges had been levied, including an average escalation cost amounting to Rs.8,82,498/-, which was immediately objected to by the complainants. Furthermore, the complainants categorically pointed out that they are entitled to compensation for delayed possession, as per the provisions of Act, 2016, as the project was not completed and delivered within the stipulated time period.

XIII. That on 15.03.2024 the respondent issued another letter titled as "Offer of possession for fit outs". It is respectfully submitted that such a letter did not constitute a valid offer of possession in the eyes of law, for the reason that on the date of issuance of the aforesaid letter the respondent had not obtained the occupation certificate for the tower in which the apartment allotted to the complainants was located and therefore was not authorized under law to offer possession of the apartment to the complainants herein. Despite this, the respondent sought to raise an arbitrary and entirely illegal and baseless demand to the tune of Rs.25,16,500/-, which included the frivolous and baseless charges

towards escalation costs as no proof qua the same was ever furnished nor any justification for the same was given.

XIV. That on inquiry, it transpired that the occupation certificate for the apartment in question was obtained by the respondent only on 12.07.2024. Prior thereto, the respondent was in possession of only a part occupation certificate issued up to 13.03.2024, which was restricted to 2nd floor to 7th Floor of Tower A, B, C and EWS. It is pertinent to note that the Complainant's unit, being Unit No. A-1303, is situated on the 13th Floor of Tower A, which was not covered by the said part occupation certificate. Consequently, any communication purporting to offer possession of the said unit prior to 12.07.2024 was patently invalid and without legal sanctity, as possession of a unit located on the 13th Floor could not have been lawfully tendered on the strength of a part OC which was for 2nd floor to 7th Floor of Towers-A, B, C and EWS block. The respondent's act of issuing possession related letters or raising demands before receipt of the occupation certificate was therefore a misguided attempt of the respondent to mislead the complainant to believe that the possession was imminent and to coerce the complainant to clear all the dues raised illegally by the respondent.

XV. That the respondent vide letter dated 17.07.2024, offered the possession of the unit to the complainants and asked the complainants to come forward and take possession of the unit by depositing a sum of Rs.25,16,500/-. That on going through the demands raised vide the offer of possession, the complainants again pointed out the various illegal charges i.e., average escalation cost to the tune of Rs.8,82,498/-.

XVI. That instead of resolving the objections raised by the complainants on the illegal demands raised with the offer of possession the respondent

company on 17.08.2024, issued a Reminder letter-1 to the complainants, in respect of illegal outstanding dues for unit no. A-1303, despite the fact that the complainants had already paid the consideration due for the unit and had become entitled to delay compensation.

XVII. That the respondent company, showing their high handedness, sent Reminder-II/Pre-Cancellation letter dated 28.08.2024 to the complainants. The respondent company by such acts was trying to coerce the complainants to make payment against the illegal and unjustifiable demands by malafidely threatening to cancel the allotment of the unit.

XVIII. That further, the complainants addressed a detailed email dated 05.10.2024 to the respondent company acknowledging receipt of the reminders/letters issued by the respondent and drawing its attention to the various prior communications already sent by the complainants, wherein repeated requests had been made for a proper reconciliation of accounts. It was also pointed out that the complainants along with their relative Mr. Joy Bahl and one M/s. Raj Krishna Constructions Company Pvt. Ltd., had already made excess payments for their allotments. It was specifically submitted that, as on 05.10.2024, according to the complainant's calculations, the entire agreed sale consideration of unit no. A-1303, due as on the said date, had been fully discharged and no further dues remained payable (except for the final demand on notice of offer of possession). The complainants further called upon the respondent to waive and withdraw the illegal and unjustified charges it had sought to levy, particularly under heads such as "escalation costs," pointing out that at the time of booking a fixed sale price for the unit had been agreed between the parties, which could neither be unilaterally enhanced nor altered by the respondent in violation of the terms of

allotment and the buyer's agreement. It is relevant to mention here that the emails pertaining to the apartment in question were sent through the email of M/s. Raj Krishna Construction Company Pvt. Ltd.

XIX. That the respondent company deliberately disregarded the legitimate issues and concerns raised by the complainants and, in an arbitrary and illegal manner, sought to extract and extort the maximum possible amount from them. Pursuant to this intent, the respondent issued another demand letter dated 07.12.2024, raising an amount of Rs.28,60,420/- in respect of unit no. A-1303. The said demand is patently arbitrary, unsustainable, and devoid of any legal or contractual basis. Under the guise of this demand, the respondent has wrongfully imposed charges under frivolous and impermissible heads, including so-called "escalation charges" and "holding charges".

XX. That the complainants protested against the illegal demands and charges raised vide the said offer of possession and asked for the justification of the said demands. Therefore, between 08.12.2024 and 01.02.2025, the complainants got issued multiple emails to the respondent company requesting a proper reconciliation of accounts and an updated statement of account in respect of unit no. A-1303, as arbitrary and inflated demands had been raised. However, the respondent failed to address the issues raised by the complainants.

XXI. That on after repeated requests and follows ups by the complainants, the respondent company on 01.02.2025, finally issued a revised possession letter, wherein the so-called "final demand" was re-assessed and the due amount was re-calculated by the respondent. Pursuant to this re-assessment, the respondent directed the complainant to deposit a sum of Rs.18,95,171/- instead of Rs.28,60,420/- after deducting the unlawfully

demand of Rs.8,82,498/- towards cost escalation charges. That the letter dated 01.02.2025 clearly states that the maintenance charges and security deposit was payable at the time of handing over of possession. It is pertinent to mention here that the above act of the respondent company manifestly clears that the respondent company was well aware about the fact its demand being illegal and unlawful, therefore the earlier alleged letters of offer of possession dated 07.12.2022 15.03.2024 and 17.07.2024 were invalid. Hence, the purported offer of possession dated 15.03.2024 is invalid in the eyes of law and cannot be used to curtail the complainants' entitlement to delay possession charges.

XXII. That in the revised possession letter issued by the respondent company, the final super area of the apartment was once again unilaterally reduced from 2640 sq. ft. to 2600 sq. ft. However, despite this reduction in super area, the respondent failed to proportionately revise the total demand amount. The only adjustment made by the respondent pertained to the removal of escalation charges, while the basic sale price and other cost components were not re-calculated in accordance with the reduced super area. This conduct is arbitrary and results in unjust enrichment of the respondent, as the total consideration payable for a smaller super area ought to have been adjusted in line with the per-square-foot rate agreed upon at the time of booking and as expressly stipulated in the buyer's agreement. The respondent's failure to revise the final demand in line with the reduced super area is not only illegal but also contrary to settled legal principles, thereby causing grave prejudice to the rights and interests of the complainants. It is respectfully submitted that the total revised cost of the apartment amounts to Rs.84,45,000/-, out of which the respondent had already received a sum of Rs.70,00,000/- from the

complainants. However, the respondent vide letter dated 01.02.2025 subsequently raised a further demand of Rs.18,95,171/-, which is in clear excess of the total sale consideration agreed upon between the parties. It is submitted that this inflated demand is a blatant attempt by the respondent company to seek unjust enrichment at the cost of the complainants, and the entire process has been carried out with malafide intent and in complete disregard of the contractual terms.

XXIII. That the complainants to avoid cancellation of their allotment made the payment of Rs.18,95,171/- on 15.02.2025. The complainants vide email dated 17.02.2025 informed the respondent that they had made the payment of the due amounts and also requested the respondent to inform them about the amounts payable by them with respect to maintenance charges. It is noteworthy to mention here that the complainants have paid an amount of Rs.88,95,171/- towards the total sale consideration of Rs.84,45,000/- as agreed in the buyer's agreement. Thus, the respondent was in receipt of excess amount of Rs.4,50,171/-. The complainants had also requested the respondent to adjust the excess amount due towards other charges (if any) payable to the respondent and/or maintenance agency. The complainants thereafter sent several emails and written communications to the respondent between February and April, 2025, specifically requesting completion of the handover formalities and delivery of possession of the unit that had already been fully paid for. Despite these repeated requests and despite being under a statutory obligation to hand over possession upon full payment of consideration, the respondent has failed, neglected, and refused to issue the handover certificate or deliver possession. The complainants got issued email dated 21.04.2025 wherein the respondent was requested to issue NOC and

handover of possession letter for the apartment in question, but to no avail.

XXIV. That the complainants again followed up with the respondent company vide email dated 11.08.2025 for issuance of the NOC so that they could proceed with registry of the unit in question. Further, vide the aforesaid email, it was informed that the complainants along with one Mr. Joy Bahl and M/s. Raj Krishna Construction Company Pvt. Ltd. had made excess payment of Rs.17,21,017/- in total towards the four bookings made by them i.e., Apartment nos. A-1203, A-1303, A- 1403, A-1803.

XXV. That the respondent company, vide frivolous email dated 21.08.2025, issued a response evidently as a counterblast to the previous communications sent by the complainants. In the said email, the respondent, with mala fide intent, falsely alleged that the complainants were not coming forward to take possession of the allotted unit and to pay purported maintenance charges amounting to Rs.3,15,285/- and threatened to cancel the allotment of the complainants. The respondent company, vide a frivolous and false email dated 21.08.2025, issued a response which was evidently a counterblast to the prior communications sent by the complainants. In the said email, the respondent, with ulterior motive, falsely alleged that the complainants were not coming forward to take possession of the allotted unit and had failed to pay purported maintenance charges amounting to Rs.3,15,285/-. It is pertinent to note that this email was the first instance wherein the complainants were informed of any alleged maintenance charges. Furthermore, it is significant to highlight that the respondent's letter dated 01.02.2025 explicitly states that maintenance charges and security deposit were payable at the time of handing over possession. It is further

submitted that the complainants have already paid more than 100% of the total sale consideration as and when demanded by the respondent. In fact, the respondent has collected an amount in excess of what was agreed upon under the buyer's agreement. Therefore, any alleged dues towards maintenance charges, if at all payable at that stage, could and ought to have been adjusted against the excess amount lying with the respondent. The remaining contents of the respondent's email dated 21.08.2025 pertain to entirely unrelated business dealings between the parties and have no relevance or nexus whatsoever to the present allotment under dispute.

XXVI. That in response to the respondent's email dated 21.08.2025, the complainants got issued a reply on 05.09.2025 with the objective of setting the record straight and unequivocally denying the false and frivolous narrative concocted by the respondent. Further, the complainants herein clearly stated that the demand for maintenance charges were entirely misconceived and devoid of merit. Vide the email dated 05.09.2025, the complainants called upon the respondent to withdraw their baseless and misleading email dated 21.08.2025.

XXVII. That the respondent, after having received full payment for the said unit, has, instead of handing over possession, acted with mala fide intent by issuing email dated 08.09.2025, cancelling the complainants' allotment as well as that of their relative Mr. Joy Bahl and one M/s. Raj Krishna Construction Company Pvt. Ltd. allegedly on account of non-payment of maintenance charges and complainants not coming forward to take possession. The respondent company even after in receipt of more than 100% of sale consideration towards the present allotment abruptly cancelled all the units allotted to the complainants and their relatives and

one M/s. Raj Krishna Construction Company Pvt. Ltd., without offering any explanation or valid justification. The said cancellation is ex -facie arbitrary, unjustified, and actuated by mala fide intent, being in direct contravention of the statutory mandate of the Act, 2016. It is submitted that there is no default on the part of the complainants herein rather the complainants and her relatives have deposited excess amounts with the respondent company. As per letter dated 01.02.2025 issued by the respondent the maintenance charges and security deposit were payable at the time of handing over possession. It is submitted that the complainants were always ready and willing to take the possession of the apartment in question and wrote a number of emails requesting the respondent to handover the possession of the unit and get the conveyance deed for the apartment in question registered.

XXVIII. That the respondent company has illegally and wrongfully usurped the hard-earned money of the complainants by misrepresentations, false assurances and deceitful means and benefitting from the same without any proper construction on the site. The facts and circumstances as enumerated above would lead to only conclusion that there is a deficiency of service on the part of the respondent company and as such respondent is liable to be punished and to compensate the complainants.

XXIX. That due to the acts of the respondent company, the complainants have unnecessarily been harassed mentally and financially, therefore the respondent company is liable to compensate the complainants on account of the aforesaid act of unfair trade practice. The complainants should be compensated in a just and reasonable manner by first imposing a penalty to the tune of 20% in addition to compensation for mental

agony and harassment and other consequential losses incurred by the complainants.

XXX. That the respondent company had given false promises and assurances to the complainants and had mala fide intentions with a motive to cheat and extract money from the very inception resulting into harassment and mental agony to the complainants and also the respondent has committed breach of trust, for which the complainants shall be filing separate criminal proceedings. That at the time of the sale of the unit, the respondent had given a rosy picture and had made false promises to the complainants and cheated them by giving an invalid offer of possession which is not as per the buyer's agreement. It is submitted that the respondent till date has miserably failed to comply with their obligations and have failed to complete the entire construction work pertaining to the unit.

XXXI. That the aforesaid acts of commission and omission and fraud only show that the respondent is good only in making false promises and it pressured its customers so that all money they received could be diverted to other projects. Such malpractices, failure to perform these obligations, besides being criminally intended are purposely misconduct of the respondent.

XXXII. That the respondent company in the present case has tried to dupe the allottees by acting in a scandalous way by collecting huge money from the complainants despite being fully aware that the construction is in no way near completion.

XXXIII. That the complainants kept painstakingly pursuing the respondent company by way of calls, personal visits and as well as emails to issue NOC and get the registry done for the unit as the entire chain of events clearly

portray that the complainant were not at fault and have acted in a bonafide manner, but to no avail.

XXXIV. That the cause of action for the present complaint arose in April, 2017 when the respondent company induced the complainant to execute the buyer's agreement containing arbitrary terms and further in January, 2021 when due date of possession was expired. The cause of action again arose in September, 2021 when the respondent company issued the illegal demand cum offer of possession for fit out followed by invalid offer of possession in March, 2024 and asked the complainants to pay against the illegal demands. The cause of action again arose in April, 2025 when despite paying the entire sale consideration amount the respondent company failed to issue NOC and handover of possession letter for the apartment in question. Further, the cause of action again arose on 08.09.2025 when the respondent company arbitrarily cancelled the allotment of the complainants. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent company by an order of injunction and/or passes the necessary orders under Section 36 of the Act restraining the respondent company from creation of third-party rights over the apartment in question.

XXXV. That the complainants after losing all the hopes from the respondent company and losing a considerable amount are constrained to approach this Hon'ble Authority for redressal of their grievances.

XXXVI. That the complainants have not filed any other complaint or suit of similar nature in any court of law.

C. Relief sought by the complainants:

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

i. Set aside the offer of possession for fitouts dated 07.09.2021. 07.12.2022, 15.03.2024 and 17.07.2024 being invalid and unlawful as per the law.

ii. Set aside the cancellation sent vide email dated 08.09.2025 and restrain the respondent from creating any third-party rights over the unit in question.

iii. Direct the respondent to pay the delayed possession charges due from the due date of possession till the actual handover of possession as per the mandate of Section 18 of the Act of 2016.

iv. Direct the respondent to hand over the possession of the said unit bearing no. A-1303 with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons outside the scope of agreed terms.

v. Direct the respondent to waive of delayed interest imposed /collected by it.

vi. Direct the respondent to refund the excess amount paid by the complainants towards the unit.

vii. Restrain the respondent company from raising any further/fresh demands for payment under any head.

viii. Quash the demand qua the holding charges and interest raised vide letter dated 07.12.2024 being arbitrary, unlawful and illegal.

ix. Direct the respondent not to charge any maintenance charges till the complete and lawful possession is handed over along with all the promised amenities as common areas were not complete in all respects at the time possession was offered to the complainants and neither the same were complete at the time of filing the present complaint.

x. Direct the respondent be directed to provide the calculations of super area and carpet area of the unit in question.

xi. Take cognizance of the fact that the respondent promoter has violated the condition of Registration Certificate no. 20 of 2020 dated 17.08.2020 by deviating from the model buyer's agreement approved by this Hon'ble Authority while granting registration of the project and impose penalty on the respondent.

xii. Direct the respondent to pay an amount of Rs.5,00,000/- as compensation for mental agony and harassment.

xiii. Direct the respondent to pay an amount of Rs.1,00,000/- towards litigation expenses.

10. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

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

I. That at the very outset, it is submitted that the above complaint filed by the complainant is liable for outright rejection/dismissal by the Hon'ble Authority in view of concealment of true, correct, relevant and material facts of the transactions having taken place between the answering respondent and the entity/company wherein the above-named complainant has been a director, in a company, namely M/s Raj Krishna Construction Company Pvt. Ltd. The attempt on the part of the complainant to plead, portray and represent in the complaint as if the transaction is simpliciter of booking and allotment of a unit in the project of the answering respondent is *mala-fide* and mischievous attempt on the

part of the claimant aiming to undermine the dignity and decorum of the process of law.

II. That Mr. Nitin Sharma has been duly authorized to represent the respondent company in the above proceeding *vide* Board Resolution dated 02.04.2025.

III. That the complainant above-named is one of the directors in M/s Raj Krishna Construction Company Pvt. Ltd. The company of the complainant was represented to be a company having expertise in performing and carrying out the construction work with perfection of the awarded contract within the stipulated time agreed for such work contract.

IV. That believing the representations and persuasions so made on behalf of the above-named complainant of the company, the respondent company awarded a work contract for civil and structural works for project *"Esfera"* at Tower-A, B, C, D, and E (19 and 23 storey high) and F, G, H & EWS (9 storey, 14 storey and 7 storey) at Sector 37-C, Gurgaon, for Rs.100 crores *vide* award/contract letter dated 01.05.2013. The terms and conditions of such awarded work were reduced into writing *vide* award/contract letter dated 01.05.2013. Additionally, the respondent company also awarded work/contract of hard finishing, soft interior, miscellaneous civil work, external development & related MEP work for Rs.10 crores in addition to the above-said contract *vide* cost plus contract dated 23.09.2019, i.e., award/contract dated 23.09.2019.

V. That as per agreed stipulations between the parties, the awarded work was to be completed by the company of the complainant by or before 31.08.2016, however, the company of the complainant miserably failed to complete the said awarded work. It may be pertinent to mention here that the entire work has not been completed even today. The company of the

complainant also escalated the value of the awarded work from the agreed price of Rs.110 crores plus taxes to Rs.138 crores *(approximately)* plus taxes. It may also be pertinent to mention here that even the work performed by the company of the complainant has several defects/discrepancies and deficiencies which were duly intimated to the complainant from time to time, yet the said company has miserably failed in rectifying the identified defects.

VI. That as per agreed stipulations between the respondent company and the company of the complainant (as per *clause 9.3.0* of the work/contract letter dated 01.05.2013), the respondent company is entitled to agreed liquidated damages at the rate of 0.5% of contract price for each week of delay or part thereof, subject to a maximum of 5% of contract price. In such circumstances, the respondent company is entitled to liquidated damages of Rs.6.93/- crores *(approximately)* (being 5% of the prescribed limit).

VII. That the respondent company is further entitled to damages and compensation on account of inordinate delay in completion of the project, including the liabilities/responsibilities of the respondent company towards the buyers in the project. Total number of units constructed in the work/contract awarded to the company of the complainant counted to 602 units, and the respondent company is liable to be held responsible for the delay attributable to the complainant and his company alone. The respondent company estimates and calculates the said amount/compensation at this juncture to Rs.20 crores. The respondent company, however, reserves its right to seek recovery of the actual amount payable to the unit holders/allottees over and above the amount of compensation being claimed at this juncture.

VIII. That the allotment of the units/flat/land in favour of the complainant and other family members/directors of M/s Raj Krishna Construction Company Pvt. Ltd. has been all the allotments have been in the nature of a barter arrangement, however, for ease of accounting, receipts against the allotment have been shown separately, while the said amount has been separately returned/repaid to the aforementioned company making adjustment thereof from the amounts payable under the transaction of the awarded work/contract.

IX. That in the towers constructed by the complainant and its company wherein the unit were situated, the work/construction carried by the company of the complainant was found illegal and unauthorized by the concerned municipal authorities, whereafter the directions were received to remove the excess illegal/unauthorized constructions and, accordingly, the company of the complainant itself demolished unit no. 004 at Tower-D and unit no. 004 at Tower-E. Considering the relations between the parties, the respondent company restricted its claim on account of loss having been incurred in such construction and its removal, as also on account of loss of its reputation in the field, whereafter the meetings took place between the parties wherein it was conceded to and agreed by the complainant and his company that as against the cost of 5 units calculating to Rs.4.07 crores, it will be taken as Rs.3,54,40,000/- crores.

X. That so far as 2 plots of land agreed to be allotted in the name of the directors and/or their family members of M/s Raj Krishna Construction Company Pvt. Ltd., no payment has been made in respect to plot/unit no. SCO-26, for which the said company attempted to persuade the

respondent company to have the same adjusted from the value of the performed contract/work.

XI. That without prejudice it is submitted that to lay any claim on the units/land allotted to the complainant and his family members of the afore-detailed company M/s Raj Krishna Construction Company Pvt. Ltd., maintenance charges are also required to be paid, which as on date calculates to Rs.3,15,285/-.

XII. That to give a quietus to the claims of the respondent company, the complainant along with the other directors of M/s Raj Krishna Construction Company Pvt. Ltd. had several meetings with the authorities/directors of the respondent company wherein true business spirited gestures were shown on behalf of the respondent company, however, the good gestures and the concessions so offered were declined and not accepted by the complainant and his company. Rather, the complainant and his company indulged in writing frivolous and baseless emails demanding therein imaginary figures and amounts by bifurcating the whole transaction into several parts. The said emails were duly replied to and responded to by the respondent company.

XIII. That since the complainant and his company have failed in resolving the issues, disputes and differences emanating from the transactions as detailed hereinabove, the respondent company at this stage is not willing to give any concession earlier so offered by it. It is submitted that the above complaint, as filed by the complainant, is neither maintainable nor tenable either in law or in the facts of the case. On the contrary, the complainant and his company are liable to pay huge amount of Rs.41.68 crores to lay any claim on the units and plot of lands agreed to be allotted by the respondent company.

XIV. That the alleged allotment of the unit in question is under the barter arrangement and subject to the completion of the awarded work/construction and adjustment of the accounts therefore. Until and unless the entire awarded work/construction is completed in all required aspects and the accounts therefor are reconciled and adjusted, it cannot be stated that the complainant has paid the amount/consideration for the unit in question. In such circumstances and in respectful submissions of the answering respondent, the complainant does not qualify to be an allottee within the meaning of Section 2(d) of the Act, 2016. The complaint, therefore, deserves to be dismissed for this ground alone.

XV. That the complaint is filed misconceived and untenable in filing the complaint under reply, the complainant has concealed the relevant and material facts as described hereinabove, and in view thereof, no relief is liable to be granted to the complainant in the present complaint under reply, which deserves outright dismissal by the Hon'ble Authority.

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

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

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

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

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

15. 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding complainants not being allottees:

16. The respondent took a stand that the complainants are not allottees and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyer's and they have paid Rs.88,95,171/- which is more than the total sale consideration to the promoter towards purchase of a unit in its project. At this

stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

17. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. Thus, the contention of the promoter that the complainants not being allottees stands rejected.

G. Findings on the relief sought by the complainants:

G.I Set aside the offer of possession for fitouts dated 07.09.2021. 07.12.2022, 15.03.2024 and 17.07.2024 being invalid and unlawful as per the law.

18. In the present complaint, the complainants were allotted a unit in the project of respondent "The Esfera" situated in Sector 37-C, Gurugram vide provisional allotment dated 24.03.2014 for a total sale consideration of Rs.85,68,000/-. An apartment buyer's agreement was executed between the parties on 06.07.2017 and the complainants have paid an amount of Rs.70,00,000/- which is 82% of the sale consideration of Rs.85,68,000/- way back on 09.09.2018.

19. On perusal of documents placed on record, the Authority observes that the respondent has made an offer of possession for fit-outs on 07.09.2021, 07.12.2021 & 15.03.2024 which is prior to the obtaining of occupation certificate, as the occupation certificate was obtained on 12.07.2024 by the respondent. But the offer of possession dated 17.07.2024 is made after obtaining of occupation certificate. The complaint has sought the relief of setting aside the offer of possession for fit-outs dated 07.09.2021, 07.12.2022, 15.03.2024 & 17.07.2024 being invalid.

20. The Authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:

    a. *The possession must be offered after obtaining an occupation certificate/completion certificate.*
    b. *The subject unit must be in a habitable condition.*
    c. *Possession should not be accompanied by unreasonable additional demands.*

21. In the present case, the essential condition for a valid offer of possession has not been met vide offer of possession for fit-outs dated 07.09.2021, 07.12.2022 & 15.03.2024. The occupation certificate for the project in which the subject unit is located was issued by the competent authority on 12.07.2024. However, the respondent had offered possession for the fit-out of the allotted unit prior to obtaining this certificate, specifically on 07.09.2021, 07.12.2022 & 15.03.2024. Consequently, the afore-mentioned offers do not constitute a valid offer of possession.

22. The Authority has further observed that the offer of possession dated 17.07.2024 is made after obtaining of occupation certificate on 12.07.2024 which is duly fulfilling the essential condition for a valid offer of possession. Therefore, the offer of possession dated 17.07.2024 is considered a valid offer of possession.

G.II Set aside the cancellation sent vide email dated 08.09.2025 and restrain the respondent from creating any third-party rights over the unit in question.

23. In the present complaint, the complainants were allotted a unit in the project of respondent "The Esfera" situated in Sector 37-C, Gurugram vide provisional allotment dated 24.03.2014 for a total sale consideration of Rs.85,68,000/-. An apartment buyer's agreement was executed between the parties on 06.07.2017 and the complainants have paid an amount of Rs.70,00,000/- which is 82% of the sale consideration of Rs.85,68,000/- way back on 09.09.2018.

24. The counsel for the respondent vide proceedings of the day dated 13.10.2026 that the respondent has obtained the occupation certificate on 12.07.2024 and offered the possession on 17.07.2024. Thereafter, the respondent has sent a pre-cancellation letter dated 28.08.2024 to the complainants and has also revised the offer of possession on 01.02.2025 along with demand of Rs.18,95,171/- (inadvertently mentioned as Rs.8,23,898/- in the proceedings of the day dated 13.10.2026). He further stated that the respondent has cancelled the unit of the complainants on 08.09.2025 on account of non-payment of outstanding dues by the complainants.

25. The counsel for the complainant vide proceedings of the day dated 13.10.2026 draws the attention of the Authority that despite payment of more than 100% of sale consideration the unit of the complainant is cancelled on 08.09.2025 on account of non-payment. She further stated that as per email dated 17.02.2025, the complainants have paid an amount of Rs.18,95,171/- against the demand of Rs.18,95,171/- raised vide revised offer of possession on 01.02.2025 and bank statement regarding the same has also been placed on record by the complainants.

26. On perusal of documents placed on record, the Authority has observed that the complainants have paid more than the entire sale consideration way prior to the cancellation dated 08.09.2025. Thus, the cancellation of the unit of the complainants dated 08.09.2025 stands invalid being bad in eyes of law and is hereby set-aside.

G.III Direct the respondent to pay the delayed possession charges due from the due date of possession till the actual handover of possession as per the mandate of Section 18 of the Act of 2016.

G.IV Direct the respondent to waive of delayed interest imposed /collected by it.

27. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.

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

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.""*
>
> ***(Emphasis supplied)***

29. Clause 10.1 of the apartment buyer's agreement dated 06.07.2017 provides for handing over of possession and is reproduced below:

> *"**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.*

30. **Due date of handing over of possession:** The promoter has proposed to handover possession of apartment to the allottee within three and a half years from the date of execution of agreement i.e., 06.07.2017. Thus, the due date of handing over of possession was 06.01.2021. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 06.07.2021.

31. **Admissibility of delay possession charges at prescribed rate of interest:** 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. 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."*

32. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part*

thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

33. 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., 13.10.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

34. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date for handing over of possession was 06.07.2021. In the present case, the complainants were offered possession by the respondent on 17.07.2024 after obtaining occupation certificate dated 12.07.2024 from the competent authority. Copies of the same have been already placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainants within the stipulated time period as per the terms and conditions of the apartment buyer's agreement dated 06.07.2017 executed between the parties.

35. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 12.07.2024. However, the respondent offered the possession of the unit in question to the complainants only on 17.07.2024, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 (two) months of reasonable time is being

given to the complainants keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.

36. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @10.80% p.a. from due date of possession i.e., 06.07.2021 till offer of possession (17.07.2024) plus two months i.e., 17.09.2024 being earlier, as per Section 18(1) of the Act, 2016 read with Rule 15 of the Rules, 2017.

G.V Direct the respondent to hand over the possession of the said unit bearing no. A-1303 with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons outside the scope of agreed terms.

37. In the present complaint, the respondent has made an offer of possession on 17.07.2024 which is prior to the obtaining of occupation certificate. The complainants have paid an amount of Rs.18,95,171/- raised vide last demand by the respondent vide revised offer of possession on 01.02.2025 and it constitutes that the complainants have paid more than the entire sale consideration. Thus, the respondent is directed to handover the possession of the unit no. A-1303 to the complainants with the amenities and specifications as provided in accordance with the buyer's agreement dated 06.07.2017 within thirty days from the date of this order.

G.VI Restrain the respondent company from raising any further/fresh demands for payment under any head.

G.VII Direct the respondent to refund the excess amount paid by the complainants towards the unit.

38. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.

39. On perusal of the documents placed on record, the Authority has observed that the complainants have paid an amount of Rs.88,95,171/- against the sale consideration of Rs.85,68,000/- which is more than the agreed sale consideration. It is also observed that the area of the unit has been reduced to 2600 sq. ft. from 2640 sq. ft. but the sale consideration has not been decreased as per the reduction of area. Thus, the respondent is directed not to charge anything from the complainants which is not the part of the buyer's agreement dated 06.07.2017 and refund the excess amount if any, charged beyond the agreed terms.

G.VIII Quash the demand qua the holding charges and interest raised vide letter dated 07.12.2024 being arbitrary, unlawful and illegal.

40. As per the law settled by **Hon'ble Supreme Court in Civil Appeal no. 3864-3899/2020 decided on 14.12.2020** which debarred the respondent from claiming holding charges from the complainant/allottee at any point of time even after being part of apartment buyer's agreement. Therefore, the respondent is directed not to levy holding charges raised vide letter dated 07.12.2024.

G.IX Direct the respondent not to charge any maintenance charges till the complete and lawful possession is handed over along with all the promised amenities as common areas were not complete in all respects at the time possession was offered to the complainants and neither the same were complete at the time of filing the present complaint.

41. As per clause 14.1 of the agreement dated 06.07.2017, it was agreed between the complainants and the respondent that the expenses of the maintenance charges shall be borne and paid by the allottee. The relevant portion of the said clause is reproduced below for the ready reference:

> ***14.1 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 may deem fit. The intending Allottee(s) if so directed by the developer/ company at 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.

42. In view of the above-mentioned facts, the maintenance charges are to be paid by the complainants-allottee in terms of clause 14 of the agreement dated 06.07.2017 executed between the complainants and the respondent subject to obtaining of occupation certificate.

43. 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 06.07.2017 and agreed payment plan.

G.X Direct the respondent be directed to provide the calculations of super area and carpet area of the unit in question.

44. In the buyer's agreement dated 06.07.2017, it has been mentioned that the unit allotted to the complainants with an area admeasuring 2640 sq. ft. (super area) and the same has been later reduced to 2600 sq. ft. (super area) but carpet area has not been mentioned anywhere. In the Act of 2016, super area has nowhere been defined, the Act only talks about the carpet area. Even the clause 1.2 model buyer's agreement talks about carpet area only and the cost

of the apartment is to calculated on the basis of the carpet area of the allotted unit. Thus, the respondent is directed to specify the carpet area of the unit and also to give a revised cost of the apartment on the basis of the carpet area of the unit.

G.XI Take cognizance of the fact that the respondent promoter has violated the condition of Registration Certificate no. 20 of 2020 dated 17.08.2020 by deviating from the model buyer's agreement approved by this Hon'ble Authority while granting registration of the project and impose penalty on the respondent.

45. No material evidence has been placed on record w.r.t violations of the conditions of registration certificate no. 20 of 2020. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the day. Thus, no direction to this effect.

G.XII Direct the respondent to pay an amount of Rs.5,00,000/- as compensation for mental agony and harassment.

G.XIII Direct the respondent to pay an amount of Rs.1,00,000/- towards litigation expenses.

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

47. 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:

48. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast

upon the promoter as per the function entrusted to the authority under Section 34(f):

i. Cancellation dated 08.09.2025 is bad in eyes of law and hence set-aside and the respondent is directed to reinstate the unit of the complainants and handover the possession of the unit within 30 days from the date of this order.

ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.80% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 06.07.2021 till 17.09.2024 i.e., expiry of 2 months from the date of offer of possession (17.07.2024). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

iii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order.

iv. 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.

v. The respondent shall execute conveyance deed in favour of the complainant on payment of stamp duty and registration charges as applicable in terms of Section 17(1) of the Act of 2016.

vi. The respondent is directed to specify the carpet area of the unit and also to give a revised cost of the apartment on the basis of the carpet area of the unit.

vii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottee at any point of time even after being part of the buyer's agreement as per law settled by ***Hon'ble Supreme Court*** in ***Civil Appeal Nos. 3864-3889/2020*** decided on **14.12.2020**.

49. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

50. Complaints stand disposed of.

51. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.10.2026