

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

Complaint no. : 3078 of 2021  
Date of filing complaint: 12.08.2021  
First date of hearing : 06.10.2021  
Date of decision : 06.10.2021

1. Hema V Shankaran R/O: - Flat no. 217, Mars Mount, Saptgiri Layout, Hosakerahalli, Danashankari, 3 <sup>rd</sup> stage, Begaluru-560085	<b>Complainant</b>
Versus	
1. M/s Imperia Structures Ltd. 2. Harpreet Singh Batra Regd. Office at: - A-25, Mohan Cooperative, Industrial Estate, Mathura Road, New Delhi- 110044	<b>Respondents</b>

<b>CORAM:</b>	
Shri. Samir Kumar	<b>Member</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Vikas Yadav (Advocate)	Complainant
Ms. Tanya Swarup (Advocate)	Respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate



(Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. No.	Heads	Information
1.	Name and location of the project	"Mindspace", Sector-62, Gurugram
2.	Project area	8.35625 acre
3.	Nature of the project	IT park colony
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid till 22.10.2020
5.	Name of the license holder	M/s Bakir Real Estate Pvt. Ltd. And Ors.
6.	Name of the collaborator	DLF New Gurgaon Offices Developers Pvt. Ltd.
7.	RERA registered/ not registered	<b>Registered</b> Registered vide 240 of 2017 dated 25.09.2017



8.	RERA registration valid up to	31.12.2020
9.	Date of approval of building plan	04.12.2015 (annexure- R4 on page no. 28 of the reply)
10.	Unit no.	072, 6 <sup>th</sup> floor, tower- A (annexure- P/A on page no. 18 of the complaint)
11.	Unit area	305.89 sq. ft. (annexure- P/A on page no. 21 of the complaint)
12.	Date of execution of unit buyer's agreement	12.08.2016 (annexure- P/A on page no. 16 of the complaint)
13.	Payment plan	Flexi payment plan (annexure- P/A on page no. 44 of the complaint)
14.	Total consideration	Rs. 22,21,679/- (annexure- R3 on page no. 25 of the reply)
15.	Total amount paid by the complainant	Rs. 22,27,148/- (annexure- R3 on page no. 27 of the reply)
16.	Possession clause of unit buyer's agreement	<b>12.</b> That the allottee shall be handed over possession of the unit from the company only after the allottee has fully discharged all his obligations and entire total price (including interest due, if any, thereon) against the unit has been paid and all other applicable



charges/dues/taxes of the allottee have been paid and conveyance deed has been executed and registered in his favour. The company shall hand over possession of the unit to the allottee provided the allottee is not in default of any of the terms and conditions of this agreement and has complied with all provisions, formalities, documentation, etc. as may be prescribed by the company in this regard. The allottee shall be liable to pay the maintenance charges from the date referred in the notice for taking possession of the unit. After taking the possession of the unit, it shall be deemed that the allottee has satisfied himself with regard to the construction or quality of workmanship.

17.	Due date of delivery of possession	04.12.2017 (Calculated from the date of approval of building plan as per the similarly situated complaint i.e., 377 of 2021)
18.	Occupation Certificate	28.11.2019 [for tower- A (ground





		floor to 19 <sup>th</sup> floor]]
19.	Offer of possession	23.08.2019 (annexure- R5 on page no. 49 of the reply)  Not a valid/ lawful offer of possession
20.	Delay in handing over of possession till OC of the subject unit plus two months i.e., 28.01.2020	2 years, 1 month and 24 days.

**B. Facts of the complaint**

3. That that the respondent no. 1 is engaged in the business of developing housing/commercial projects and selling of apartments & commercial spaces, having registered office mentioned in titled of the complaint, and the respondent no.2 is director of the respondent no. 1. The respondent no. 2 is responsible for the acts and conducts of the respondent no. 1. That the complainant had, in the month of March 2016, booked a virtual office space on the 6<sup>th</sup> floor in tower A, admeasuring 305.89 sq. ft. in project named "Imperia Mindspace", situated in sector-62, Gurugram for a total price of Rs. 22,41,138/- inclusive of applicable taxes.
4. That the complainant had paid the total sale price to the respondent no. 1 in respect of the subject unit.



5. That all the negotiations before the booking of the apartment and at the time of making payment to the respondent no. 1 in the form of NEFT and cheques, the complainant was lured by respondent no. 1 and 2 to invest in the project on the pretext that delivery of the virtual office space will be done within 30 days after approval of building plans of the said project from competent authority. However, the occupation certificate in respect of the project has been received on 28.11.2019. The letter of offer of possession dated 15.07.2019 is sham document and is of no consequences as the occupation certificate was received on 28.11.2019 almost 4 months after offer of possession by respondent no. 1. The respondents have played fraud with the complainant as no possession can be handed over/offered without their being issuance of occupation certificate. From above stated facts, it is clear that actual delivery of possession of unit to the complainant has not been made and as per the provisions of BBA and the complainant is entitled for delayed possession charges with effect from 29.12.2019 till the actual delivery of possession of unit. It is pertinent to mention here that no charges for



delayed possession have been given to complainant by the respondents till date.

6. That the complainant repeatedly followed up with the officials of the respondent no. 1 for payment of charges to the complainant for delayed possession, but the respondents avoided the matter on one pretext or the other.
7. That as per section 18(1) of the Act of 2016, the respondents have provided false information on the prospectus/brochure and under the same section the complainant is entitled to get interest on account of delay in handing over the possession of the flat/apartment.

**C. Relief sought by the complainant.**

8. The complainant has sought following relief(s):
  - (i) Direct the respondents to pay the charges to the complainant for delayed possession from 29.12.2019 till the actual date of handing over of possession to the complainant.
  - (ii) Direct the respondents to deliver the actual physical possession of the unit to the complainant.

**D. Reply by the respondents.**

9. The respondent is a company duly registered under the provisions of the Companies Act, 1956 and Mr. Varun Kumar



is authorized representative of the respondent company, to sign, verify and file this reply before this authority.

10. That the complainant has filed the complaint before this authority thereby misleading certain facts and manipulated them according to the suitability of their whims and fancies, the correct facts were not placed before this authority, therefore, it has become the dire need of the time to place the correct sequence of events to avoid the deception and miscalculation. Thus, the respondents are hereby seeking dismissal of the present complaint on the ground of misleading and distorted information placed before this authority.
11. That, on 26.03.2016, the complainant has booked an office space with the respondent company at project launch, then named as "Imperia Byron" (presently known as "Imperia Mind space") located at sector-62, Golf Course Road, Gurgaon, Haryana, and thereby signed an "application cum registration form" and opted for the "flexi payment plan."
12. That the complainant after going through all the requisite documents approvals and sanctions executed the ABA dated 12.08.2016 for a total sale consideration of Rs.22,21,679/-





against which the complainant has paid entire amount along with interest totalling to Rs.22,27,148/-.

13. That, it is germane to mention herein that the State Government had acquired the huge land which comprises the said project land from farmers and transferred such land to the respondent company for development in accordance with its master plan and then it had carved out various sectors and plots therein. That, the respondent company started construction over the said project land after obtaining all necessary sanctions/approvals/ clearances from different state/central agencies/authorities. That, it is necessary to mention that the respondent company received initial approval of building plans on 04.12.2015 and started the milestone construction of the present project.
14. That, subsequently receiving the building plans as mentioned herein above the respondent company started the construction in full swing and also allotted the unit to the concerned allottee. That, the respondent company also allotted the unit in the present case to the complainant vide letter dated 24.03.2017, and the same is communicated to the complainant along with the demand raised of



Rs.7,86,351/- and the same has been offered for possession for fit out on 23.08.2019. However till today the complainant has not paid the said demand. It is pertinent to mention here that answering respondents received the occupancy certificate for the project on 02.06.2020 and has offered the permission of the commercial unit.

15. That, it is necessary to bring in notice before this authority that the internal record clearly exhibits that it is the complainant who is a defaulter in the present scenario That, it is, worthwhile to conclude that the respondent company cannot be termed as "willful defaulter" by any stretch of imagination and therefore, the respondent company earnestly requests this authority to appreciate all the factual matrix and circumstances as detailed hereinabove to reach a logical conclusion to serve the ends of justice. The respondents had already obtained the occupation certificate for this very project, Mindspace.

16. That, in the present complaint, the complainant has suppressed material facts as mentioned hereinabove and the same have now been brought to the knowledge of this authority by the respondent company through this reply, and



the complainant has thereby tried to mislead this authority. The present complaint has merely been filed with a view to harass the respondent company and therefore complaint of the complainant deserves to be dismissed with exemplary costs imposed on the complainant for abusing the process of law as well as the process of this authority. It is strenuously denied that the respondent company has made any illegal demand from the complainant. However, it is submitted that all the demands of the respondent company are legal and as per the terms and conditions agreed between the parties.

17. That, in view of the above said detailed reply; it is crystal clear that all the issues and grievances of complainant are vexatious, mischievous and misleading. It is denied that the complainant is entitled for any relief as prayed for by the complainant. Hence, the said complaint may kindly be rejected/dismissed in the interest of justice.
18. The respondent company craves leave of this authority to add, amend or alter this reply, if found necessary, at any stage of the proceedings. The respondent company shall submit any documents or details or above referred judgments as may be required by this authority. The



respondent company also craves leave of this authority to make further submissions at the appropriate stage, if so advised.

19. Copies of all the relevant do 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**

20. The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 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;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

**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.*

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 promoters leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the relief sought by the complainant.**



**F.I Delay possession charges.**

**Relief sought by the complainant:** Direct the respondents to pay the charges to the complainant for delayed possession from 29.12.2019 till the actual date of handing over of possession to the complainant.

21. In the present complaint, the complainant intends 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."*

22. Clause 12 of the unit buyer's agreement dated 12.08.2016, is silent w.r.t the stipulated time of delivery of possession of the subject unit and the same is reproduced below:

*That the Allottee shall be handed over possession of the Unit from the Company only after the Allottee has fully discharged all his obligations and entire Total Price (including interest due, if any, thereon) against the Unit has been paid and all other applicable charges/dues/taxes of the Allottee have been paid and Conveyance Deed has been executed*



*and registered in his favour. The Company shall hand over possession of the Unit to the Allottee provided the Allottee is not in default of any of the terms and conditions of this Agreement and has complied with all provisions, formalities, documentation, etc. as may be prescribed by the Company in this regard. The Allottee shall be liable to pay the Maintenance Charges from the date referred in the notice for taking possession of the Unit. After taking the possession of the Unit, it shall be deemed that the Allottee has satisfied himself with regard to the construction or quality of workmanship.*

23. A unit buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. Unit buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as



the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

24. The authority has gone through the possession clause of the agreement and observed that the said clause is silent w.r.t the stipulated time of delivery of the possession. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that nothing w.r.t timeline of delivery of possession has been mentioned. The authority is of the view that it is a wrong trend followed by the promoters and it is their unethical behaviour and dominant position that needs to be struck down. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the unit buyer's agreement by the promoters is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.





25. The respondent promoters have not mentioned anything w.r.t the timeline of handing over of possession in the above-mentioned clause. The said clause is silent in this respect hence it is vague in this regard.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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 promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

27. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so



determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

28. 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., 06.10.2021 is 7.30% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% p.a.
29. 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;"*



30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondents/promoters which is the same as is being granted to the complainant in case of delay possession charges.

31. **Validity of offer of possession:** At this stage, the authority will clarify the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession, liability of promoters for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoters continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. **Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the concerned department certifying that all the basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water



supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

ii. **The subject unit should be in habitable condition-**

The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections, etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottee should accept possession of an apartment with such minor defects under protest. This authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not at all habitable because the plastering work is yet to be done, flooring





works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational, then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession.

- iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottee. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if the additional demands are made by the developer, the allottee may accept possession under protest or decline to take possession raising objection against unjustified demands.

32. In light of the above-mentioned reasoning, the offer of possession dated 23.08.2019 made by the promoters in the present matter is not a valid/ lawful offer of possession as



the same has been made before obtaining OC from the competent authority which is a necessary pre-requisite. The OC for the subject unit has been obtained by the respondent promoters on 28.11.2019.

33. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. As, the clause 12 of the unit buyer's agreement is silent w.r.t the stipulated time of delivery of possession. So, the authority is of the view that due date of possession should be calculated in the present matter as per the timelines of possession being promised in the similarly situated complaints. The date of approval of the building plan for the subject project is 04.12.2015. By virtue of MOU executed between the parties on 02.11.2011 in complaint no. 377 of 2021, the possession of the booked unit was to be delivered within a period of two years after approval of building plans of the said project from the competent authority which comes out to be 04.12.2017. On



same analogy, the due date of possession in the present matter is also taken as 04.12.2017.

34. 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. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he 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. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 04.12.2017 till the date of obtaining occupation certificate from the competent authority (28.11.2019) plus two months i.e., 28.01.2020 as per the provisions of section 19(10) of the Act.

35. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such complainant is entitled to delayed possession charges at the



prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondents from the due date of possession i.e., 04.12.2017 till the date of obtaining occupation certificate from the competent authority (28.11.2019) plus two months i.e., 28.01.2020 as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

**H. Directions of the authority**

36. 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 promoters as per the function entrusted to the authority under section 34(f):

- I. The respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 04.12.2017 till the date of obtaining occupation certificate from the competent authority plus two months i.e., 28.01.2020 as per section 19 (10) of the Act.
- II. The arrears of such interest accrued from 04.12.2017 till 28.01.2020 shall be paid by the promoters to the allottee within a period of 90 days from date of this order.





- III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottee by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- V. The respondents shall not charge anything from the complainant which is not the part of the agreement.
37. Complaint stands disposed of.
38. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 06.10.2021**

JUDGEMENT UPLOADED ON 26.12.2021