

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

**Complaint No. :3610-2023
Date of Decision: 16.03.2026**

Harjeet Kaur Dhillon and H. S. Dhillon, both residents of B-82, Seema Apartments, Plot No. 7, Sector-11, Dwarka, New Delhi-110075.

.....Complainants.

Versus

M/s Imperia Structures Ltd. A-25, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044.

.....Respondent

APPEARANCE

**For Complainants: Mr. Anuj Kumar Chauhan, Advocate.
For Respondent : Mr. Shubham Mishra, Advocate.**

ORDER

This is a complaint, filed by Ms. Harjeet Kaur Dhillon & Mr. H. S. Dhillon, (allottees), under Section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s Imperia Structures Ltd. (promoter).

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2. Briefly stated, according to the complainants, they were allotted a residential apartment in group housing project of the respondent namely "The Esfera" bearing no. B-1004, admeasuring 1850 sq. ft. in Sector-37C, Gurugram. In furtherance of the booking and the allotment letter, a Builder Buyer Agreement (BBA) was executed between the parties on 05.11.2013 wherein the total sale consideration for the said unit was fixed as Rs.78,15,162/-. It was promised by the respondent that the possession of said unit shall be delivered within 42 months from date of execution of BBA, which comes out to be 05.05.2017.

3. That with utmost bona-fide intentions, they (complainants) made payment of Rs.73,37,269/- till 22.06.2017 which comes out to be 95% of the total sale consideration. The respondent due to its ill-motive violated the Act of 2016 and other applicable laws. It (respondent) failed to deliver the peaceful possession of the subject unit, after receiving the mandatory Occupation Certificate.

4. That the respondent owing to its dishonest intentions even after taking timely payments from them (complainants) against the unit purchased, has failed to deliver the possession of the unit, thereby infringing the rights of the innocent complainants, who have spent their hard-earned life savings in the purchase of the said unit. The inability of

the respondent in developing the project and its irresponsible and desultory attitude and conduct has caused immense loss and pain to them (complainants), who despite depositing all their life savings, with the respondent now stand at a crossroad, to nowhere.

5. That due to errant conduct of the developer, they (complainants) were forced to file a complaint bearing No.6240 of 2019 before the Authority seeking refund of their amount along with interest. After due proceedings, the Authority vide order dated 23.11.2022 allowed their complaint and directed the respondent to refund the amount of Rs.73,37,269/- along with prescribed rate of interest of Rs.10.35% per annum as prescribed under Rule 15 of The Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till actual date of refund of the amount.

6. Citing facts as mentioned above, the complainants have prayed for following reliefs: -


- a. To direct the respondent to pay loss of rent of Rs.45,000/- per month for delayed period from May 2017 till actual realization;
- b. To direct the respondent to pay Rs.42,00,000/- for loss of appreciation in value;

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- c. To direct the respondent to pay compensation to the tune of Rs.20,00,000/- for mental agony and physical harassment;
- d. To direct the respondent to pay compensation of Rs.500/- per day for delay in lieu of extra expenses incurred due to conveyance and loss of time from Delhi to Gurgaon;
- e. To award Rs.3 lacs as the cost of the three different complaints in the favour of the complainants and against the respondent;
- f. To pass any other order as this forum may deem fit and necessary.

7. The respondent contested the claim of complainants by filing a written reply. It (respondent) denied all averments made in the complaint, save and except the averments, which have been specifically admitted.

8. It is averred that the complaint is prima facie not maintainable and must be dismissed with heavy costs being vexatious to law. According to the respondent, it has already completed the construction, procured Occupation Certificate on 13.03.2024 and has started giving possession of the said project way back. The complainants have been sent offer of possession on 15.03.2024. This is a mere attempt on their behalf to harass the respondent and to extort money from it.


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9. It is further stated that the present complaint is barred by the principle of Res-judicata and is liable to be dismissed. The complainants have no evidence to substantiate their claim and hence not entitled for any compensation, as sought.

10. Stating all this, respondent prayed for dismissal of complaint with exemplary costs.

11. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

12. Factual matrix as narrated by the complainants i.e. allotment of unit in question, payment of total amount of Rs.73,37,269/- out of total sale consideration of Rs.78,15,162/- and delay in handing over of possession did not remain in dispute, during deliberations. As pointed out earlier, the complainants filed a complaint before the Authority bearing No.6240 of 2019 and the Authority has allowed said complaint. The respondent has been directed to refund the amount paid by the complainants along with interest at the rate of Rs.10.35% per annum from the date of each payment till the actual date of refund of the amount. While deciding said complaint, the Authority noted that the Promoter has failed to complete or unable to give possession of the flat in question, in

accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to return the amount to the allottees, as the allottees wish to withdraw from the project.

13. Learned counsel for the complainants pointed out that the Authority observed that his clients i.e. the complainants can claim compensation by filing an application before this Forum.

Section 18(1) of the Act, 2016 prescribes as: -

(1) If the promotor fails to complete or is unable to give possession of an apartment, plot or building:

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified thereon; or

(b) -----

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by himas the case may be, with interest at such rate as may be prescribed in this behalf, including compensation in the manner as provided under this Act.

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14. From this provision, it is clear that if the promotor failed to complete the construction or to handover possession of an apartment/plot/flat, as the case may be, same is liable to refund the amount received by him from the buyer along with interest, as well as compensation.

15. The plea of the respondent that when the complainants have already been allowed compensation, present complaint is hit by principle of resjudicata, does not hold any water. As reproduced above, Section 18(1) of the Act, 2016, allows both i.e. refund of the amount along with interest and also compensation, in case the promotor fails to complete the project in agreed time. It is not in dispute that the respondent failed to complete the project in agreed time and hence, the complainants are entitled for compensation also.

16. Section 72 of the Act of 2016 prescribes the factors which are taken into account by the Adjudicating Officer, while adjudging amount of compensation and the same are: -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;

- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

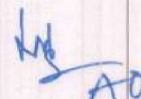
17. Admittedly, the respondent received major part of sale consideration from the allottees/complainants, but failed to deliver the possession in time. In other words, the respondent got disproportionate gain or unfair advantage causing consequential loss to the complainants. The complainants have prayed for Rs.42 lakhs as compensation for loss of appreciation in value of their flat. The complainants did not adduce any reliable evidence to prove as to how much is the appreciation in price of similar flat, as was allotted to them. When the complainants have been found entitled for compensation, their case cannot be thrown away, simply for want of evidence in this regard. This Forum has to adjudge the amount of compensation keeping in view the Section 72 of the Act, facts and circumstances of the case. Even some guesswork is also to be applied along with judicial notice of facts. According to AI overview, **“based on an available market trend, flats in Sector 37-C, Gurugram have experienced significant appreciation between 2017 (due date of possession being 05.05.2017) and late 2023 (order of refund passed by the Authority is dated 23.11.2022) largely driven by development of Dwarka Express way. Some estimates show 79.5% increase over**

last five years as of earlier 2026. The data reflects the sharp rise up to 2023”.

18. Admittedly, the complainants paid Rs.73,37,269/-. Taking appreciation ^{at} 75%, if this amount of Rs. 73,37,269/- was invested in some other similar project, the same would have appreciated to Rs.55,02951/-. As noted above, the amount paid by the complainants has already been ordered to be refunded to them. An amount of Rs.55 lakhs (rounded up) is allowed to the complainants as compensation for loss of appreciation, to be paid by the respondent.

19. When the compensation in the name of loss of appreciation has already been allowed to the complainants, I find no reason to allow compensation in name of loss of rent Rs.45,000/- per month or Rs.500/- per day, for delay in the name of extra expenses incurred on conveyance and loss of time. Request in this regard is declined.

20. The complainants have prayed for Rs.3 lakhs as cost of litigation. This Forum can allow litigation expenses only in case in hands and not for any other cases. No court fee is required to be paid before the Authority, while filing a complaint. No receipt with respect to payment of fees to any Advocate has been placed on the file. But apparently, the

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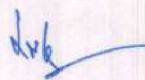
complainants were represented by an Advocate during proceedings of this case, they are allowed a sum of Rs.50,000/- as cost of litigation.

21. Learned counsel for the complainants requested for an amount of Rs.20 lakhs as compensation in the name of mental agony and physical harassment to his clients. When despite making payment of most of sale consideration amount, the complainants could not get their dream house, all this apparently caused mental harassment and agony to the buyers/complainants. They (complainants) are allowed a sum of Rs.one lakh as compensation for mental agony and harassment.

22. The respondent is directed to pay the amounts, mentioned above, along with interest at the rate of Rs.10.85% per annum from the date of this order, till realization of amount.

23. This complaint stands disposed of accordingly. File be consigned to the record room.

Announced in open court today i.e. **on 16.03.2026**


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority, Gurugram