

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

Complaint no. :	2156 of 2021
Date of filing complaint:	22.04.2021
Date of order reserve	26.07.2024

Mayank Manu Bhardwaj R/O: H.No800, Sector 9, Gurugram	Complainant
Versus	
M/S Advance India Projects Limited Regd. Office: The Masterpiece Golf Course Road, Sector 54, Gurugram-122002, Haryana	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. M.K Dang (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joy Central", Sector-65, Gurgaon
2.	Nature of project	Commercial colony
3.	RERA registered/not registered	Not registered
4.	DTPC License no. and validity	249 of 2007 dated 02.11.2007 Valid upto 01.11.2024
5.	Licensed area	3.987 acres
6.	Name of Licensee	M/s Wellworth Project Developers Pvt. Ltd.
7.	Application letter dated	12.01.2018 [As per page no. 90 of complaint]
8.	Unit no.	Retail shop no. 1031 on 1 st floor [As per page no. 90 of complaint]
9.	Unit no. was renumbered	The complainant received an email on 21.05.2020 Retail shop FF-18 on 1 st floor [As per page no. 102 of complaint]
10.	Unit area admeasuring	207.23 sq. ft. [Super area] [As per page no. 90 of complaint]
11.	Revised unit area admeasuring	215.47 sq. ft. [Super area] <u>ie 3.9 % increased</u> [As per page no. 102 of complaint]
12.	Allotment letter	22.05.2018 [As per page no. 90 of complaint]
13.	Date of builder buyer agreement	Not executed



14.	Total sale consideration	Rs. 33,72,875.48/- [BSP] Rs. 35,33,685.96/- [TSC] [As per statement of accounts dated 02.12.2020 on page no. 87 of complaint]
15.	Amount paid by the complainant	Rs. 31,93,195.59/- (94.67%) [As per statement of accounts dated 02.12.2020 on page no. 87 of complaint]
16.	Possession clause	Clause j as per application form <i>The company shall subject to force majeure conditions proposes to handover possession of the unit on or before December 2022 notified by the promoter to the authority at the time of project under the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules 2017 and regulation made thereunder for completion of the project or as may be further revised/approved by the authorities.</i>
17.	Due date of possession	December 2022 [Since no buyer's agreement has been executed inter-se parties and therefore, due date of handing over of possession is calculated as per clause j of application form] [pg. 113 of complaint]
18.	Demand letter & reminder	04.02.2020 & 20.02.2020 [As per account statement dated 02.12.2020 on page no. 58-59 of reply]
19.	Pre-termination letter dated	22.04.2020 [As per page no. 60 of reply]
20.	Termination letter dated	10.07.2020 [As per page no. 61 of reply]
21.	Last payment received by the respondent	The complainant made a payment of Rs. 16,36,566/- on 05.08.2020 and Rs. 45,553/- on 19.08.2020. [As per account statement on page no. 88 of complaint]

22.	Occupation certificate	24.12.2021 [As per website of DTCP]
23.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainant on various representations and assurances by the respondent filed the booking application of the unit in the project on the date 10.01.2018 and later, and subsequently the demand by the respondent was raised for the booking amount, which was paid by the complainant, amounting to Rs. 5,00,000.00 vide Cheque no. 609614 dated 10.01.2018 drawn on State Bank of India, of the said unit bearing 1031, which was later revised as 'FF-18' by the respondents via email dated 22.05.2018 at " AIPL Joy Central " in Sector 65, Badshahpur, Gurugram having super area measuring 207.24 sq. ft. to the respondent.
4. That the complainant made a payment of Rs. 10,10,476.00/- to the respondent on 03.05.2018 vide Cheque No. 609619 drawn on State Bank of India. The complainant received allotment letter dated 22.05.2018 along with the details of receipt of payment and future payment plan.
5. That the complainant made a payment of Rs. 600/- to the respondent on 25.05.2018 vide Wire transfer from HDFC Bank. The complainant's assured returns on the investment were froze by the respondent citing Covid-19 as a reason, which the complainant was entitled via email dated 10.04.2020. The complainant was served with a pre-termination letter by the respondent as a threat to the complainant by stating that non-payment would lead to

forfeiture of right in the property and the hard earned money paid to the respondent, therefore misusing a global pandemic as an opportunity.

6. That the complainant received a notification via email dated 21.05.2020 informing about the increased the super area of the said unit without any confirmation or prior approval of the complainant from 207.23 Sq. ft. to 215.47 Sq. ft. The complainant made a payment of Rs. 16,36,566.00 to the respondents on 05.08.2020 vide chequen no. 509624 drawn on State Bank of India and made another payment of Rs. 45,553.00 /-by Wire Transfer on 19.08.2020.

7. That the complainant made a payment of approximately 90% to 95% of the total consideration towards the total basic sale price, external development charges /infrastructure development charges, of the unit from 2018 onwards. The complainant opted for possession linked payment plan according to builder buyer agreement and made payments promptly and in a timely manner as and when the demand letters were raised by the respondent.

8. That after the payment of each and every demand letter, the complainant was in the hope that they will be able to execute the buyer agreement of their unit soon, but the dreams of the complainant were shattered and scattered as the respondent left no stone unturned to cheat the complainant and extract money from the complainant, by constantly reminding them of termination of their hard earned money. The development on the site was not in line with the construction linked plan based on which the payment was being collected.

9. That the complainant received assured returns acknowledgement from the respondent via email dated 28.06.2021. The complainant was shocked to see that the amount on which the returns are calculated is much less than the amount which was communicated to the complainant orally, and the amount received as assured return per month is less than the quoted amount in the email.
10. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the execution of uba or revision made to the unit super area.
11. That the complainants lost hope of getting possession of the unit and also his hard-earned money as neither the agents of the respondent nor the company itself were responding about the status or the date of the physical possession of the unit/flat.
12. Written submissions were filed by the complainant. The same were taken on record and perused further.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):
- i. Direct the respondent to refund the total amount paid by the complainant to the respondent along with interest from the date of each payment till the realization of the money.
 - ii. Direct the respondent to compensate for the loss or injury in deficiency of service for Rs. 15,00,000/- , Rs.1,00,000/- for litigation cost , Rs.

35,00,000/- as the complainant was deprived of the benefit of the escalation of the price.

D. Reply by respondent:

The respondent by way of written reply made following submissions: -

14. That the complainant, after checking the veracity of the project namely, 'AIPL Joy Central', Sector 65, Gurugram had applied for allotment of a unit vide the booking application form. The complainant agreed to be bound by the terms and conditions of the documents executed by him.
15. That based on it, the respondent vide its allotment offer letter dated 22.05.2018 allotted to the complainant Unit no. 1031 having tentative super area of 207.23 sq.ft for a sale consideration of Rs. 35,33,685.96 (exclusive of the registration charges, stamp duty, service tax and other charges). As per the terms of the allotment, it was agreed that time is the essence with respect to the due performance by the complainant under the allotment and more specially timely payment of instalments towards sale consideration and other charges, deposits and amounts payable by the complainant. It is important to mention here that it was acknowledged by the complainant that the unit was purchased not for the purpose of self-occupation and use by the complainant but was for the purpose of leasing to third parties. The complainant had purchased the said unit on assured return basis and they used to get the same every month from the respondent. The complainant has already earned huge amount as assured return from the respondent. The complainant had chosen the said unit for investment as they were interested in getting return on their investment. As per the terms of the Allotment offer

letter, the payment of the assured return by the respondent was subject to the complainant making payment towards the total sale consideration on time.

16. That the complainant had understood vide Clauses (b) and (c) of the booking application form that there could be changes/alterations, revision or modifications in the layout plans, building plans and/or drawings by the competent authority or for technical reasons or otherwise required by the respondent in the best interest of the project and that the complainant would not have any object to the same and would abide by such changes.

17. That on account of revision in the building plan, the respondent had invited objections from all the allottees of the project in question. The respondent had invited objections from the complainant vide its letter dated 21.11.2019. However, no objections were received from the complainant and the size of the unit was increased marginally. The said change in unit was intimated to the complainant vide its letter dated 19.05.2021.

18. Despite being aware that timely payment of the installment amount was the essence of the allotment, the complainant defaulted in making payment towards the demanded amount. The respondent had sent a payment demand to the complainant on 04.02.2020. However, the complainant miserably failed to make any payment towards the demanded amount despite reminder dated 20.02.2020 and pre-termination letter dated 22.04.2020. It was intimated to the complainant vide the pre-termination letter that in case the due amount is not remitted by the complainant, the respondent would be in such case constrained to terminate/cancel the

application//allotment of the unit and forfeit the earnest money along with other non-refundable amounts in terms of the Application. However, the complainant failed to do the needful and the respondent was constrained to terminate the allotment vide its letter dated 10.07.2020.

19. That after the termination, the complainant approached the respondent and requested it to restore the allotment after waiving interest that was accumulated due to the defaults committed by him. Although there was no such obligation on the part of the respondent to do, the respondent being a customer oriented company acceded to the request of the complainant. The respondent has even waived 50% of the amount towards the interest accrued and the same is evident from a bare perusal of the statement of account attached by the complainant.

20. That as per clause (j) of the booking application form, the possession of the unit is to be handed over on or before December, 2022. The present complaint has been filed pre-maturely and the same is liable to be dismissed on this short ground alone.

21. That although the time to handover the possession has till date not lapsed, the respondent is on the verge of completion the construction of the project in question.

22. All other averments made in the complaint were denied in toto.

23. The respondent has filed written submissions and the same has been taken on record.

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

E. Jurisdiction of the authority:

25. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

26. 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

27. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

28. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the

adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

29. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Entitlement of the complainants for refund:

F.1 Direct the respondent to refund the total amount paid by the complainant to the respondent along with interest from the date of each payment till the realization of the money.

30. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has not obtained occupation certificate and no possession has been offered by it. The complainant in the present case has sought refund on 22.04.2021 by filing the present complaint which is prior to the due date of possession.

31. The complainant is admittedly the allottee of respondent - builder of a unit on the basis of application letter dated 12.01.2018. The unit was allotted to the complainant vide allotment letter dated 22.05.2018. The respondent later revised the area of the originally allotted unit, which is a mere percentage of 3.9%. The total sale consideration of the unit is Rs. 35,33,685/- and the complainant has paid an amount of Rs. 31,93,195/-. No buyer's agreement was executed between the parties. As per the application form

the respondent was supposed to handover the possession of the unit on or before December 2022.

32. Two demand letter were sent by the respondent following which a pre termination letter was sent on 22.04.2020 and the unit of the complainant was cancelled on 10.07.2020. But as per the reply, the complainant approached the respondent and requested it to restore the allotment and the same was accepted by the respondent. Further the complainant made a payment of Rs.6,36,566/- on 05.08.2020 and Rs. 45,553/- on 19.08.2020. Therefore, as per the facts emanating hereinabove proves that the cancellation done by the respondent is hereby set aside by the act of respondent by accepting the remaining payment.

33. It is an admitted fact that no buyer's agreement was executed between the parties. So, the due date for completion of the project and handing over possession of the allotted unit is being taken from clause j of the application form which comes out to be December 2022.

34. That in the present case occupation certificate has been obtained by the respondent on 24.12.2021 and no possession has been offered till date to the complainant. The complainant has filed the present complaint for the relief of refund on 22.04.2021 i.e., before the due date and before when the occupation certificate was obtained by the respondent. The respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount accordingly.

35. The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, provides as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

36. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the balance amount along with interest at the rate of 11% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., 22.04.2021 till the actual date of refund of the amount after adjustment of assured return already paid within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

37. The Authority also observed that there is a clear cut violation of Section 13 of the Act, 2016 as the respondent has accepted almost 90% (as alleged by the respondent) payment of the unit prior to execution of BBA and on the last date of hearing also, the respondent was directed to show cause as to why penalty should not be imposed for violation of Section 13 of the Act,

2016 for which no satisfactory reply has been filed till date, hence, a token penalty of Rs. 1,00,000/- was being imposed upon the respondent as per the section 61 of the Act, 2016.

F.II Direct the respondent to compensate for the loss or injury in deficiency of service for Rs. 15,00,000/- , Rs.1,00,000/- for litigation cost , Rs. 35,00,000/- as the complainant was deprived of the benefit of the escalation of the price.

38. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses.

G. Directions of the Authority:

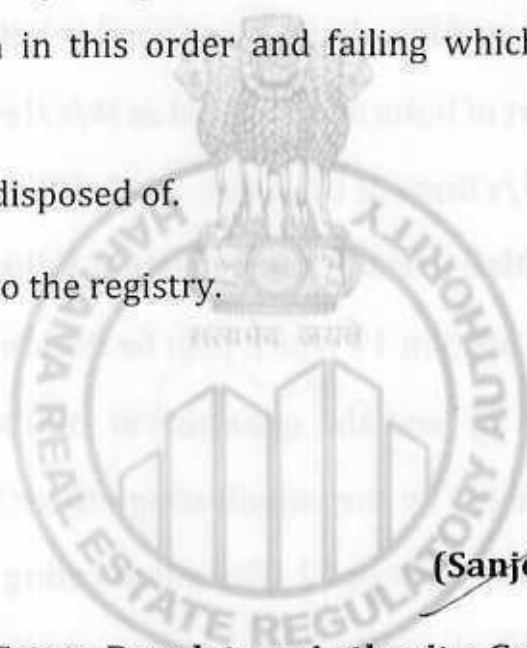
39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to pay the penalty of Rs. 1,00,000/- under Section 61 of the Act within 30 days from the date of this order.

- ii) The respondent-promoter is directed to refund the paid-up amount of Rs. 31,93,195/- after deducting 10% of the sale consideration of the unit being earnest money after adjusting the amount already credited in the account of the complainant, if any along with interest @ 11% p.a. on the refundable amount, from the date of surrender i.e., 22.04.2021 till the actual date of refund of the amount after adjustment of assured return already paid.
- iii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

40. Complaint stands disposed of.

41. File be consigned to the registry.



(Signature)
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2024

HARERA
GURUGRAM