



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

Complaint no.	:	3229 of 2023
Order Reserve on:		20.12.2024
Order Pronounced on:		14.02.2025

Navinder Singh Narula Address : - H. no. N-61, Lane W-17N, South Avenue, Sainik Farm, New Delhi.	Complainant
Versus	
M/s Advance India Projects Limited Office at: - AIPL Business Club, 5 th Floor, Golf Course Extension Road, Medawas, Sector-62, Gurugram- 122002	Respondent
CORAM:	
Shri Arun Kumar	Chairman
APPEARANCE:	
Sh. Rahul Yadav	Advocate for the complainant
Sh. Dhruv Rohtagi	Advocate for the respondent

ORDER

1. The present complaint dated 12.07.2023 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. N.	Particulars	Details
1.	Name and location of the project	"AIPL Joy Gallery" at Sector 66, Gurugram
2.	Nature of the project	Commercial Project
3.	Project area	4.418 acres
4.	DTCP license no.	197 of 2008 dated 05.12.2008 valid upto 04.12.2024
5.	Name of licensee	RJS Finance & Investment Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 20 of 2020 issued on 17.08.2020 valid upto 13.05.2025
7.	Retail shop space bearing no.	0038, Ground Floor (page no. 22 of complaint)
8.	Unit area admeasuring (super area)	128.35 sq. ft. (page no. 22 of complaint)
9.	Date of agreement for sale	28.02.2022 (page no. 19 of complaint)
10.	Possession clause	5. Time is Essence: <i>The Promoter shall abide by the time schedule for completing the Said Unit/Project, handing over the possession of the Said Unit to the Allottee by 13 May 2025 as disclosed at the time of registration of the Project with the</i>



		<p><i>Authority or such extended period as may be intimated and approved by Authority from time to time.</i></p> <p>7.Possession of the said unit</p> <p><i>The Promoter agrees and understands that timely delivery of the possession of the Said Unit to the Allottee and the Common areas is the essence of the Agreement.</i></p> <p><i>The Allottee hereby agrees that whenever the reference is made for possession of the Said Unit in this Agreement or any other document with reference to the Said Unit, it shall always mean constructive/symbolic/notional possession of the Said Unit and not physical handover of the Said Unit to the Allottee. The Allottee hereby confirms that the Promoter has in no way made any representation or warranty to the Allottee that the Promoter shall offer/handover physical possession of the Said Unit to the Allottee except where specifically agreed by the Promoter in writing with the Allottee.</i></p>
11.	Due date of possession	13.05.2025
12.	Total sale consideration	Rs. 1,21,35,906/- (as per the payment plan on page no. 59 of complaint)
13.	Amount paid by the complainant	Rs. 45,18,700/- (As per termination letter at page 70 of complaint)
14.	Complainant requested for refund	19.05.2023 (complainant visited for refund)

		22.05.2023 (requested for some time to make payment) 30.05.2023(demanded refund through mail) (page 69 of complaint)
15.	Pre termination letter	10.05.2023 (Page 78 of reply)
16.	Intimation of Termination	26.05.2023 (page no. 70 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. That relying on the promise complainant booked a shop bearing unit no. 0038, ground floor admeasuring 288 sq. ft. in aforesaid project of the respondent for total sale consideration of Rs. 1,21,35,906/- which includes BSP, car parking, IFMS, club membership, EDC, IDC, PLC, GST, etc.
5. That the complainant paid a sum of Rs. 5,00,000/- to the respondent at the time of booking and the respondent issued a receipt of the same on 13.10.2021 and an application form was signed.
6. That the allotment letter dated 06.12.2021 was issued by the respondent to the complainant and further an agreement for sale was executed and registered between the complainants and respondent on 28.02.2022.

7. That subsequently the complainant paid a sum of Rs. 5,00,000/- on 26.06.2021 through RTGS, the complainant further paid a sum of Rs. 5,00,000/- on 04.09.2021, Rs. 5,00,000/- on 25.09.2021, Rs. 5,00,000/- on 01.10.2021, Rs. 1,54,494/- on 02.10.2021, Rs. 45,187/- on 07.10.2021 and a sum of Rs. 13,19,019/- through RTGS on 28.03.2022 to the respondent as per the demands raised by the respondent. That in Total the complainant has paid a sum of Rs. 45,18,700/- to the respondent for the shop so booked by him.
8. That as per the payment plan opted by the complainant, the complainant was required to pay a sum of Rs.45,18,700/- before the completion of retail super structure. The above amount was duly paid by the complainant to the respondent.
9. That the complainant was further required to pay a sum of Rs. 43,99,234/- on the completion of the retail super structure along with the taxes. The super structure of the project has not been completed by the respondent. The respondent has raised the demand for the payment of Rs. 49,27,075/- which is contrary to the payment plan so opted by the complainant.
10. That the complainant confronted the illegal demand with the respondent but of no use and at last the complainant wanted to pay the amount so demanded by the respondent by availing Loan facility from a financial institution but couldn't avail the same as the project of the respondent was not registered with any bank and lastly requested the respondent on 19.05.2023 to cancel the unit of the complainant as per RERA guidelines and to refund the excess amount of the complainant.
11. That the respondent has issued a termination letter dated 26.05.2023 whereby the unit of the complainant was terminated by the respondent

but the amount so deducted by the respondent is against the rules and guidelines of RERA Act and are arbitrary in nature.

12. That the complainant vide his mail dated 30.05.2023 have raised his concern about the arbitrary refund calculations done by the respondent but of no effect. The complainant has time and again asked the respondent to abide by the RERA Act and to cancel and refund the amount of the complainant as per the Act.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s)

I. Direct the respondent to refund the amount paid by the complainant after deductions as per the RERA Act along with interest at the prescribed rate i.e., SBI highest MCLR plus 2% from the respective date of payments.

14. On the date of hearing, the authority explained to the respondent /promoter on the contravention 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

15. The respondent contested the complaint and the submission made therein, in brief is as under: -

16. That the complainant had approached the respondent and expressed an interest in booking unit in the commercial project developed by the respondent and booked a unit, bearing number FF/057, first floor in the project developed by the respondent, known as "AIPL Joy Street" at Sector 66, Gurugram, Haryana.

17. That the complainant failed to abide by the terms of the allotment and defaulted in the payment of due instalments, due to which the allotment

of the complainant was terminated vide intimation of termination dated 28.05.2019.

18. That upon the persistent requests of the complainant and as a bonafide gesture, the respondent transferred the amount paid by the complainant against the unit no. FF/057, first floor in the project developed by the respondent, known as "AIPL Joy Street" at Sector 66, Gurugram, Haryana to another booking of the complainant in the present project in question, i.e. unit no. 0038, having carpet area of 11.92 sq. mtr. on ground floor, along with 01 parking space in the project "AIPL Joy Gallery".
19. That the respondent issued an allotment letter dated 06.12.2021 to the complainant, allotting him a retail shop of 288.22 sq. ft. on the ground floor, for basic sale price of Rs. 31,470/- per sq. ft. plus other charges, as contained therein.
20. That thereafter, the buyer's agreement was executed interse parties on 28.02.2022. The complainant failed to abide by the terms and conditions of the buyer's agreement and defaulted in remitting timely installments. The respondent was constrained to issue reminders to the complainant. The delay in making the payments is evidenced from the various payment reminders and demand letters. The respondent had categorically notified the complainant that he had defaulted in remittance of the amounts due and payable by him. Further as per clause 5 of the buyer's agreement, the possession of the unit in question was proposed to be handed over by 13.05.2025. Hence, the present complaint is pre-mature.
21. That in terms of the payment plan, the complainant was raised another demand for a sum of Rs. 49,27,075/-. However, despite several reminders, the complainant failed to honor its commitment and failed to remit the installment within the time.

22. That the complainant in order to mislead the respondent, deliberately and consciously issued a cheque of Rs. 25,00,000/- as part payment of its instalment. To the utter shock and surprise, the said Cheque, upon presentation was dishonoured by the banker with remarks "Funds Insufficient". The respondent herein issued a legal demand notice dated 01.06.2023 on the complainant to clear the outstanding dues.
23. That the respondent had already given sufficient opportunities to the complainant to come forward and clear his dues. As a last resort, a pre-termination letter dated 10.05.2023 was also issued to the complainant.
24. That since the complainant, despite availing numerous opportunities, could not clear the outstanding dues, the allotment of the complainant was cancelled vide intimation of termination letter dated 26.05.2023.
25. That the respondent has acted strictly in accordance with the terms and conditions of the agreement between the parties. There is no default or lapse on the part of the respondent.
26. 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 submissions made by the parties.

E. Jurisdiction of the authority

27. 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

28. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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

29. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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.

I. **Direct the respondent to refund the amount paid by the complainant after deductions as per the RERA Act along with interest at the prescribed rate i.e., SBI highest MCLR plus 2% from the respective date of payments.**

30. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

“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.-

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

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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 him in respect of that apartment, plot, building, as 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:

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)

31. The complainant herein had entered into an agreement with the respondent company for the booking of a unit in the project known as "AIPL Joy Gallery," located at Sector 66, Gurugram. The complainant was allocated a unit, bearing number 0038, situated on the ground floor, with an area of 128.35 sq. ft. The agreement to sell concerning the said unit was executed between the complainant and the respondent on 28.02.2022, for a total sale consideration of ₹1,21,35,906/- out of which the complainant has made a payment of ₹45,18,700/-.

32. Clause 5 of the agreement to sale provides for handing over of possession and is reproduced below:

5. Time is Essence:

*The Promoter shall abide by the time schedule for completing the Said Unit/Project, handing over the possession of the Said Unit to the Allottee by **13 May 2025** as disclosed at the time of registration of the Project with the Authority or such extended period as may be intimated and approved by Authority from time to time.*

33. Accordingly, the due date of possession comes out to be 13.05.2025.

Moreover, the complainant has stated that he has requested the respondent for refund of its paid up amount on 19.05.2023 by visiting the office of the respondent. Subsequently, owing to the non-payment of the outstanding dues, the respondent proceeded with the cancellation of the unit on 26.05.2023.

34. The authority observes that the due date for handing over of possession of the unit is 13.05.2025 and as per the payment plan agreed between

the parties, respondent started raising payments vide letter dated 16.03.2023. However, the complainant defaulted in making payment and the respondent issue reminder letters dated 26.03.2023, 05.04.2023 and pre-termination letter dated 10.05.2023 requesting the complainant to comply with his obligation. However, despite repeated follow ups and communications and even after the issuance of the pre-termination letter dated 10.05.2023, the complainant failed to act and comply with their contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 26.05.2023.

35. So, in such a situation, the cancellation of the unit is considered as valid due to non-payment of outstanding dues by the complainant. Thus, he is not entitled to refund of the complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 45,18,700/- after deducting 10% of the basic sale consideration being earnest money along with an interest @11.10% p.a. (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 on the refundable amount, from the date of cancellation i.e., 26.05.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

- I. 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. The respondent is directed to refund the paid-up amount of Rs. 45,18,700/- after deducting 10% as earnest money of the basic sale consideration with the interest at the prescribed rate i.e., 11.10% on the balance amount, from the date of termination/cancellation i.e., 26.05.2023 till date of actual refund.
 - ii. 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.

37. Complaint stands disposed of.

38. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.02.2025