BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**3507 of 2024**
Date of complaint	:	**19.07.2024**
Date of Decision	:	**07.03.2025**

1. Kapil Maheshwari
2. Shweta Maheshwari

R/o: BG-193, Scheme no. 74 C, Vijay Nagar, Near Mahamaya Gas Agency, Indore, Madhya Pradesh. **Complainants**

Versus

1. M/s Advance India Projects Pvt. Ltd.

Office at: AIPL Business Club, 5th Floor, Golf Course Extension Road, Sector-62, Gurgaon.

2. R.C. Sood & Co. Pvt. Ltd.

Address: 10th floor, Eros Corporate Tower, Nehru Place, New Delhi-110019 **Respondents**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Shri Khush Kakra (Advocate) **Complainants**
Shri Dhruv Rohtagi (Advocate) **Respondents**

ORDER

1. The present complaint has been filed by the complainants/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 provisions of the Act or the

Rules and regulations made there under or to the allottees 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 complainants, 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 of the project	"Aipl Joy Gallery", Sector- 66, Gurgaon
2.	Nature of project	Commercial Colony
3.	RERA registered/not registered	Registered vide no. 20 of 2020 dated 17.08.2020 valid upto 13.05.2025
4.	DTPC License no.	197 of 2008 dated 05.12.2008
	Validity status	04.12.2026
	Name of licensee	RJS Finance & Investment Pvt. Ltd.
	Licensed area	4.418 acres
5.	Shop no.	0089, Ground Floor [pg. 54 of complaint]
6.	Unit area admeasuring	1122 sq. ft. of super area [pg. 54 of complaint]
7.	Allotment letter	23.11.2020 [pg. 47 of complaint]
8.	Date of builder buyer agreement	03.01.2022 [pg. 51 of complaint]

9.	Possession clause	7. Possession of the Said Unit: 7.1 Schedule for possession of the Said Unit-The Promoter agrees and understands that timely delivery of possession of the Said Unit to the Allottee and the Common Area is the essence of the Agreement. The Allottee hereby agrees that wherever 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.
10.	Due date of possession	03.01.2025 [Calculated as per ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]***
11.	Total sale consideration	₹ 2,68,18,520/- [as per payment plan on pg. 91 of complaint] ₹ 3,32,03,777/- [as per account statement dated 18.05.2024 at pg. 94 of complaint]
12.	Amount paid by the complainants	₹ 2,99,11,078/- [as per account statement at pg. 94 of complaint]

13.	Reminders for payment	16.03.2023, 26.03.2023, 05.04.2023, 23.01.2024, 02.02.2024 (page 103-105 of reply)
14.	Pre termination letter	13.02.2024 (page 110 of complaint)
15.	Reminders for payment	12.03.2024, 11.04.2024
16.	Occupation certificate	09.05.2024 (Page 107 of reply)
17.	Notice For offer of constructive Possession	18.05.2024 (page 118 of complaint)
18.	Email by complainants regarding various charges	26.05.2024 (Page 132 of complaint)
19.	Reminders for payment	04.06.2024, 11.06.2024, 02.07.2024
20.	Assured return paid from 25.042023 upto September 2023	Rs. 10,97,925/- (excluding TDS as per calculation sheet at page 100 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

I. That in November 2020, based on various representations made by the respondents the complainants paid an amount of Rs. 10,00,000/- towards the booking for the commercial space and consequently, the respondents allotted the retail shop bearing unit no. 0089, Ground floor, having 1122.02 sq. ft. of super area in the project vide allotment letter dated 23.11.2020.

II. That the respondents kept following the payment plan which was annexed to the allotment letter and the complainants complied with all the payment demands as and when raised by the respondents. The agreement for sale was executed between the parties on 03.01.2022.

III. That the agreement contained various one-sided & arbitrary clauses which were unjustifiably favouring the respondents.

IV. That the complainants were complying with the payment demands as when raised by the respondents believing that the payment demands are raised on achieving of respective milestones.

V. However, the true colours of the respondents were evident when upon scrutiny it was revealed that the respondents raised a payment demand of Rs. 10,979,681/- without having reached the appropriate milestone. Consequently, the complainants sent emails to the respondents addressing their issues/ queries with respect to the inappropriate demand raised without reaching the milestone of 'completion of superstructure of the retail part'. However, the same was of no avail as instead of giving any concrete response the respondents kept raising the payment demand.

VI. That the complainants and the respondents were in regular touch, as the complainants kept inquiring about the construction status of the unit and the project. Further, the complainants also had followed-up with the respondents to release the assured returns which the complainants were obligated to receive from the respondents and the same were duly paid by the respondents to the complainants.

VII. That the respondents raised a payment on reaching the milestone of 'on application of the occupancy certificate' however, to the utter shock of the complainants on perusal of the statement of account it

was revealed that the respondents had unilaterally & unjustifiably deducted the assured returns owed to the complainants against the alleged delay in making the payment raised against the milestone of 'completion of superstructure of the retail part'. As a consequence of such arbitrary, illegal and malicious actions of the part of the respondents, the complainants were constrained to write emails seeking detailed explanations of such deduction when the failure was on the part of respondents to achieve the milestone against which the assured returns of the complainants were deducted as penalty. However, the respondents instead of giving reasonable justification, had threatened the complainants of cancelling their unit.

VIII. That the respondents issued a pre-termination letter dated 13.02.2024 to the complainants. As such, under protest, the complainants were left with no other recourse but to make the payment of Rs. 1,18,59,344/-.

IX. That the respondents sent a notice of offer of constructive possession dated 18.05.2024, wherein the complainants were invited to accept just the constructive possession by making the full and final payment, which should have been raised only in case the complete possession of the unit would have been offered by the respondents to the complainants, however instead to acting in the manner so mentioned, the respondents over and above this had imposed several unwarranted charges with any prior intimation, upon the complainants.

X. That the complainants being puzzled with the frivolous overhead charges raised by the respondents and other issues pertaining to the right of the complainants over the unit, was constrained to send an

email dated 26.05.2024 addressing all the issues in detail including but not limited to handing over the complete possession with rights, tittle and interest and sought for explanation of the arbitrary charges.

C. Relief sought by the complainants:

4. The complainants sought following relief(s).

i. Direct the respondents to pay interest @ 10.50% p.a. on the amount deposited by the complainants with the respondents w.e.f. the date of delivery promised in the agreement till date of actual handover of physical possession of unit complete in all respects in favour of the complainants.

ii. Direct the respondents to waive off the complete amount of interest levied on the complainants for delay in making payments till the actual handover of physical possession of unit complete in all respects in favour of the complainants.

iii. Direct the respondents to waive of all the arbitrary costs imposed over and above the amount mentioned in the agreement for sale dated 03.01.2022.

iv. Direct the respondents to pay a sum of Rs. 5,00,000/- to the complainants towards compensation for mental agony caused by the respondents.

v. Direct the respondents to pay a sum of Rs. 2,00,000/- to the complainants towards litigation cost.

5. 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 respondents.

6. The respondents vide reply dated 27.11.2024 contested the complaint on the following grounds: -

I. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an

erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement for sale dated 03.01.2022, as shall be evident from the submissions made in the following paras of the present reply.

II. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants, have failed to make payments within time.

III. That the complainants are not "Allottees" but are Investors who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.

IV. That the the complainants, wanted to sell the unit in question at a profit, but did not have adequate funds to pay the outstanding dues, against the unit and hence, defaulted in the payments. As such, the complainants under no circumstances are entitled to any relief and the allotment is liable to be terminated. The respondents, in terms of clause 9.3 of the agreement to sell dated 03.01.2022, is entitled to forfeit the earnest money, brokerage charges and any other marketing costs of the unit in question from the complainants, since no fault has been attributed to the respondent no.1.

V. That the complainants had approached the respondent no.1 through one M/s Shivali Associates and expressed an interest in booking an apartment in the commercial colony developed by the respondents and booked the unit in question, bearing number 0089, ground floor admeasuring 1122 sq. ft. situated in the project developed by the respondent no.1, known as "AIPL Joy Gallery" at Sector 66, Gurugram, Haryana. That the complainants vide application form applied to the respondent no.1 for provisional allotment of a unit bearing number

0089 in the project. The complainants prior to approaching the respondent no.1, had conducted extensive and independent enquiries regarding the project and it was only after the complainants was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent no.1 to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent no.1. The complainants consciously and willfully opted for flexi payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent no.1 that they shall remit every installment on time as per the payment schedule.

VI. That the booking was categorically, willingly and voluntarily made by the complainants with an understanding of the same being for leasing purposes and not self-use, as can be noted in clause (k) and (4) of the application form.

VII. That along with the application form, the respondent no.1 also shared a draft copy of the agreement for sale to the complainants, for their reference, so that the same can be executed by them. However, for reasons best known to them, the complainants protracted from the execution of the agreement for sale and delayed the execution thereof.

VIII. That the respondent no.1 had to send multiple reminders to the complainants for the execution of the agreement for sale in respect of the unit, however, there was complete ignorance and silence on the part of the complainants on the execution thereof.

IX. That pursuant to the agreed terms and conditions as discussed between the parties, the agreement for sale was finally executed between the parties on 03.01.2022.

X. That the respondent no.1 started making payment of assured returns to the complainants, which remain fully paid.

XI. That it needs to be highlighted and noted that all throughout this time, the complainants neither contested of not having received a copy of the buyer's agreement, nor objected to any of the terms or conditions of the allotment or the buyer's agreement. The pleas of any payment being beyond the terms of the agreement are false and frivolous. The complainants are estopped from raising such frivolous pleas, after a lapse of over 4 years of the date of booking, more so, when the entire arrangement between the parties already stood captured in the application form signed by the complainants, way back in 2020. Thus, it is evident that such pleas raised by the complainants, in the present complaint are untenable, frivolous, and objectionable.

XII. That in terms of clause 5, 7, 9, 10, 19 and 20 of the agreement to sell dated 03.01.2022, the respondent no.1 assured to give constructive possession of the unit to the complainants by 13.05.2025, subject to the allottees/ complainants, honouring its part of the obligations under the contract.

XIII. That the respondent no.1 as a good practice, vide letter dated 18.01.2023, intimated to the complainants on the construction update and specifically requested the complainants to be ready with an amount of Rs. 1,09,77,460/- as part of instalment payable on completion of the retail super structure. Thus, on 01.03.2023, the

respondent no.1 raised a demand on achieving the milestone of completion of the retail super structure, on the complainants.

XIV. That the complainants failed to abide by the terms and conditions of the agreement for sale and defaulted in remitting timely instalments and the respondent no. l was constrained to issue reminder letters dated 16.03.2023, 26.03.2023 and 05.04.2023, to the complainants for payment of the instalment. Ultimately, the said demand was paid by the complainants after much delay on 20.04.2023.

XV. That pursuant thereto, the respondent no.1 completed the construction of the unit in question and applied for the grant of occupancy certificate on 04.12.2023, with the competent authority, which was granted on 09.05.2024.

XVI. That pursuant to the application for the grant of occupancy certificate, the respondent no.1, in terms of the payment plan opted by the complainants, raised a demand of achieving this milestone and sought payment from the complainants on 06.01.2024. However, the complainants, miserably failed to discharge his obligation of payment. The respondent no. 1 thereafter issued reminders to the complainants for payment of the said demand on 23.01.2024, 02.02.2024, 12.03.2024 and 11.04.2024.

XVII. The respondent no.1 also issued a pre-termination letter dated 13.02.2024, calling upon the complainants to clear the outstanding payments, failing which the allotment could be terminated by the respondent no.1. Ultimately, the said demand was cleared by the complainants after much delay in separate instalments, lastly on 17.04.2024.

XVIII. That upon completion of the development works and after the receipt of the occupation certificate dated 09.05.2024, the respondent no. 1, issued the offer of constructive possession dated 18.05.2024 to the complainants, within the agreed timelines and as per the agreed terms of the agreement for sale dated 03.01.2022.

XIX. That when the payments were not forthcoming, the respondent no.1 issued several reminders dated 04.06.2024, 11.06.2024 and 02.07.2024 to the complainants, calling upon them to make the payments of the outstanding dues against the offer of possession.

XX. That the complainants have miserably failed to pay the said amounts to the respondent no. 1. It was an obligation of the complainants to make the payments against the unit, however, the complainants have gravely defaulted in the same. The principal amount demanded against the said unit was Rs. 3,00,22,802/- out of which Rs.2,99,11,078/-stands paid by the complainants against the unit. However, against the Other dues of Rs. 31,80,975/-, no amount has been paid by the complainants and in order to evade their liability, they have chosen to file the present complaint, which is devoid of any merits.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the complainants.

E. Jurisdiction of the authority

7. The respondents in its reply has raised an objection that the Authority has no jurisdiction to adjudicate the matter. The authority has complete

territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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) 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.*

10. 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.

F. Findings on the objections raised by respondent

F.I Objection regarding the complainant being investor.

11. The respondent/promoter has taken a stand that the complainants are the investors and not consumer, 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. The authority observed that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. 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;"*

12. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondents to pay interest @ 10.50% p.a. on the amount deposited by the complainants with the respondents w.e.f. the date of delivery promised in the agreement till date of actual handover of physical possession of unit complete in all respects in favour of the complainants.

13. In the present complaint complainants booked a unit in the project of the respondent/promoter namely, AIPL, Joy Gallery, situated at sector-66, Gurugram. The complainants were allotted a unit bearing no. 0089 on ground floor admeasuring 1122 sq. ft. vide allotment letter dated 23.11.2020. Thereafter on 03.01.2022 the builder buyer agreement was executed between the parties.

14. The complainants pleaded that they are seeking physical possession of the unit and challenging the clauses mentioned in BBA regarding constructive possession and lease. Moreover, the respondents cannot put the unit on lease without their consent. On the contrary respondent no. 1 contented that at the time of booking of the unit complainants were fully aware of the fact that unit in question was not for self-use and for the purpose of leasing out to third party.

15. On the documents submitted and pleadings made by both the parties, the authority observes that as per clause k of the application form and clause 7.1. of the buyer's agreement dated 03.01.2022 executed inter se parties, the complainants herein have agreed that wherever 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 relevant clause of the agreement is reproduced for ready reference:

*"(k) I/We agree and confirm that possession of the Unit **shall always mean constructive/symbolic/notional possession of the Unit and not physical handover of the Unit to me/us**. I/We hereby confirm that the Company has in no way made any representation or warranty to me/us that the Company shall offer/handover physical possession of the Unit to me/us except where specifically agreed by the Company in writing.*

7. Possession of the Said Unit:

7.1 Schedule for possession of the Said Unit-The Promoter agrees and understands that timely delivery of possession of the Said Unit to the Allottee and the Common Area is the essence of the Agreement.

*The Allottee hereby agrees that wherever 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."*

16. In view of the aforesaid clauses, the authority observes that the respondents was obligated to offer the constructive possession of the subject unit to the complainants.

17. Further, the authority observes that the complainants were very well aware of the fact that the said unit was not for the purpose of self-occupation rather is to be put on lease as clear from clause 1 of application form and clause 19 of the agreement. Further nowhere in the agreement it is specifically mentioned that the respondents shall handover the actual physical possession of the unit rather the terminology used is handing over of possession. The relevant clauses are produced herein below for the ready reference:

"(I) I/We have represented to the Company that the investment proposed to be made by me/us in the Unit is solely with an intent and purpose to lease the Unit.....I/We shall grant the Lease Grant Right in favour of the Company at the time of execution of the Agreement for Sale, and the Company shall be fully

authorized to negotiate and finalize the leasing arrangement in respect of the Unit, individually or in combination with other adjoining units (whether horizontally or vertically).....

19. LEASING ARRANGEMENT

*The Allottee hereby grants unconditional, unequivocal and irrevocable right and request the Promoter to put the Said Unit, individually and/or in combination with other units by way of merging it as part of the larger area whether horizontally and/or vertically, on lease/leave and license, for and on behalf of the Allottee ("**Lease Grant Right**"), from the date of signing of this Agreement till such time the Promoter communicates in writing its unwillingness to exercise the said Lease Grant Right ("**Lease Grant Right Tenure**")...."*

18. Accordingly, the physical possession was never the intent of the respondents. As per record, the respondents has issued notice for offer of constructive possession on 18.05.2024 after obtaining the occupation certificate dated 09.05.2024 from the competent authority. Therefore, the constructive possession of the unit dated 18.05.2024 is valid. Further, the respondents is also liable to put the subject unit on lease as per the leasing arrangement in terms of clause 19 of the buyer's agreement dated 03.01.2022.

19. The complainants in the present matter are seeking delay possession charges. The relevant clause for handing over of possession is clause 7 of the agreement to sale dated 03.01.2022 however, the said clause does not prescribe the time period for completion of construction of the project/unit. Therefore, the due date is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as ***Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)*** wherein the Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by*

them, along with compensation. Although we are aware of the fact that ***when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*** In view of the above-mentioned reasoning, the date of signing of BBA dated 03.01.2022, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 03.01.2025. The respondent company has obtained the occupation certificate dated 09.05.2024 from the competent authority and thereafter, issued notice for offer of constructive possession on 18.05.2024. The respondents has offered the possession of the subject unit before the expiry of due date of handing over possession.

20. In view of the above findings, no delay in handing over the possession of the subject unit on part of respondents are established and accordingly, no case of delay possession charges is made out.

G.II Direct the respondents to waive off the complete amount of interest levied on the complainants for delay in making payments till the actual handover of physical possession of unit complete in all respects in favour of the complainants.

21. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter 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.

G.III Direct the respondents to waive of all the arbitrary costs imposed over and above the amount mentioned in the agreement for sale dated 03.01.2022.

22. The complainants have pleaded that the respondents vide offer for constructive possession dated 18.05.2024 have charged various illegal charges on account of Electricity Switch in Station & Deposit Charges, Infrastructure Augmentation Charges, Electric Meter Charges, Labour Cess, Mall Operations & Marketing Charges, Sinking fund, Common Area & Maintenance Charges.

23. The authority observes that the respondents has issued an offer for constructive possession dated 18.05.2024 which is annexed at page 118 of complaint. The respondents while issuing the said offer of possession has raised several demands such as Electricity Switch in Station & Deposit Charges, Infrastructure Augmentation Charges, Electric Meter Charges, Labour Cess, Mall Operations & Marketing Charges, Sinking fund, Common Area & Maintenance Charges. All the demands are dealt accordingly below:

- **Electricity Switch in Station & Deposit Charges, Infrastructure Augmentation Charges, Electric Meter Charges**

24. The authority is of the view that to know the validity of such charges, agreement to sale dated 03.01.2022 is relevant. Clause 1 of the agreement to sale provides for a breakup of total price further clause 1(iv) deals with the said charges and are reproduced below for ready reference:

> *(iv) The Total Price of the Said Unit does not include Taxes and Cesses (except Goods and Services Tax), other charges, including but not limited to enhanced EDC, enhanced IDC,* ***infrastructure augmentation charges,*** *stamp duty, registration charges and other incidental and legal charges for registration of this Agreement and Conveyance Deed, cost of land, development and energization of switching station, the costs/charges/deposits that may be required for electricity connection, water, sewerage,* ***electric connection deposit, electric & water meter deposit****, gas pipeline deposit, gas pipeline charges, multi dwelling unit charges, RFID tag charges, access control charges, intercom charges, payments for any additional equipment for common use, etc., which are not*

confirmed/quantifiable/has not been quantified o the date of booking/this agreement, shall be payable by the Allottee as and when demanded by the Promoter.

25. The authority is of the view that as per the above mentioned clause of the agreement dated 03.01.2022 the allottee had agreed to pay the charges. Hence, the complainants/allottee are liable to pay for the same.

- **Labour cess**

26. The complainants have pleaded that respondents are charging an amount on account of labour cess i.e., ₹ 26,479/- which is illegal. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited wherein it was held that since labour cess is to be paid by the respondents, as such no labour cess should be charged by the respondents. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondents and it is the respondent/builder who is solely responsible for the disbursement of said amount.

- **Sinking Fund**

27. The complainants have pleaded that respondents are charging an amount on account of sinking fund i.e., ₹ 2,78,032/- which is illegal. The

authority is of the view that clause 11.4 of the agreement to sale is relevant and is reproduced below for ready reference:

> *11.4 As and when, any plant & machinery within the Project Complex including but not limited to lifts, DG sets, Electric Sub-station, Electric Switching Station, pumps, fire-fighting equipment, or any other plant or equipment of capital nature, etc, require replacement, up-gradation, additions, etc., the cost thereof hall be contributed by the Allottee on pro rata basis i.e., to the Super Area of the Said Unit to the total Super Area of the Project or alternatively the Promoter/maintenance agency/association of the allottees shall have the option to meet these costs from IBMS deposited by the Allottee. The Promoter/maintenance agency/association of allottees shall have the sole authority to decide the necessity of such replacement, up gradation, addition, etc., including its timing or cost thereof.* ***The Allottee shall also make contribution to the sinking fund, if any in the Project.***

28. The authority is of the view that as per the above mentioned clause of the agreement dated 03.01.2022 the allottee had agreed to pay the said charge. Hence, the complainants/allottee are liable to pay for the same.

- **Common area & maintenance charges**

29. The complainants have pleaded that respondents are charging an amount on account of common area maintenance charges i.e., ₹ 2,85,975/- which is illegal. The authority is of the view that clause 11.2 of the agreement to sale is relevant and is reproduced below for ready reference:

> *11.2 The maintenance charges shall be recovered on such estimated basis which may also include the overhead cost on monthly intervals as may be decided by the Promoter/Maintenance agency and adjusted against the actual audited expenses as determined at the end of every financial year, and any surplus/deficit thereof shall be carried forward and adjusted in the maintenance bills of the subsequent month/financial year. The estimates of the Promoter/maintenance agency shall be final and binding on the Alottee. The Allottee hereby agree and undertakes to pay the maintenance bills on or before due date as intimated by the Promoter/maintenance agency. It is clearly understood by the Allottee that the payment of maintenance charges is over and above the Total Price of the Said Unit.*

30. The authority is of the view that as per the above mentioned clause of the agreement dated 03.01.2022 the allottee had agreed to pay the said charge. Hence, the complainants/allottee are liable to pay for the same.

- **Mall Operations & Marketing Charges**

31. The complainants have pleaded that respondents are charging an amount on account of mall operations & marketing charges i.e., ₹ 3,97,188/- which is illegal. The authority is of the considerate view that the respondents shall not charge anything from the complainants, which is not the part of the buyer's agreement. After perusal of documents on record it came into knowledge of authority that in the agreement to sale it is nowhere mentioned about charges related to mall operations & marketing charges. Hence, the respondents cannot charge the same.

G.IV Direct the respondents to pay a sum of Rs. 5,00,000/- to the complainants towards compensation for mental agony caused by the respondents.

G.V Direct the respondents to pay a sum of Rs. 2,00,000/- to the complainants towards litigation cost.

32. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has 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. Therefore, the complainants are

advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

33. 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. No delay in handing over the possession of the subject unit on part of respondents is established and accordingly, no case of delay possession charges is made out.

    ii. The respondents shall not charge anything from the complainants, which is not the part of the buyer's agreement.

34. Complaint as well as applications, if any, stands disposed off accordingly.

35. File be consigned to registry.

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

Dated: 07.03.2025