

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

Complaint no.: 919 of 2024
Date of decision: 26.03.2025

1. Ved Prakash Arya
 2. Sudha Arya
- Both R/o:-** 330, Block-C, Triveni Heights,
Sector-16B, Dwarka.

Complainants

Versus

1. M/s Advance India Projects Limited.
Registered Office at: The Masterpiece,
Golf Course Road, Sector-54, Gurugram,
Haryana-122002.
2. R C Sood and Co Private Limited
Registered address: 10th Floor, Eros Corporate
Tower, Nehru Place, New Delhi-110019.

**Respondent
no. 1**

**Respondent
no.2**

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Complainant in person
Along with Anshul Rai (Advocate)
Harshit Batra (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/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 allottees 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.No.	Particulars	Details
1.	Name of project	"AIPL Joy Gallery"
2.	Location of project	Sector-66, Village-Badshahpur, Gurugram, Haryana.
3.	Nature of project	Retail Shop
4.	RERA Registered	Registered Vide registration no. 20 of 2020. Dated: 17.08.2020
5.	DTCP License	License No. 197 of 2008 dated-05.12.2008.
6.	Allotment letter	17.11.2023 (As on page no. 58 of complaint)
7.	Unit no.	FL-0004, Floor-Ground (As on page no. 35 of complaint)
8.	Unit area	159sq.ft. [Carpet Area] (As on page no. 35 of complaint)

9.	Agreement to sell	Annexed but not executed
10.	Possession clause	Not available
11.	Due date	17.11.2026
12.	Total sale consideration	Rs.1,34,46,000/- (As per allotment letter on page no. 59 of complaint)
13.	Amount paid	Rs.1,02,01,348/- (As per S.O.A dated 18.05.2024 on page no. 115 of reply)
14.	Occupation certificate	09.05.2024 (As on page no. 106 of reply)
15.	Offer of possession	18.05.2024 (As on page no. 109 of reply)

B. Facts of the complaint:

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

- I. That in the year 2023, the respondents approached the complainant with an offer for sale of a retail unit for commercial use in their project "AIPL Joy Gallery" situated at Revenue Estate of Village Badshahpur, Sector 66, Sub Tehsil Badshahpur, Distt. Gurugram, alongwith an offer to pay specified monthly assured returns from the date of receipt of advance amount till the date of application of occupation certificate for the unit. At the time of the proposal it was further assured that apart from the payment schedule, no extra payment under any head would be claimed by the promoters.
- II. That the perusal of payment plan shows that on payment of advance amount, assured return @ 10% would be paid annually and the same

could be claimed monthly. Further, the sale consideration of the unit as per the payment plan was Rs.1,31,58,000/- (BSP, PLC & Parking) plus Rs.2,82,240/- (other charges i.e. DC & IFMS). It was assured that no extra amount in addition to the amount indicated above would be payable and the same would include taxes etc.

- III. That relying upon the assurances given by the respondents, the complainants applied for a unit in the project vide application dated 24.07.2023. It is submitted that for allotment of the retail unit the complainants have paid an amount of more than Rs.1,00,00,000/- as against the sale consideration of Rs.1,31,58,000/-. However, the respondents failed to pay the assured returns as promised. The detail of payment made by the complainants is as follows:

S No.	Date of Payment/ Cheque No.	Date Receipt	of Amount paid
1.	09.07.2023/491163	21.07.2023	Rs. 1,00,000/-
2.	20.07.2023/491164	24.07.2023	Rs. 4,00,000/-
3.	21.08.2023/ SBIN123233910877	21.08.2023	Rs.86,86,175/-
4.	21.08.2023/ SBIN123233907633	21.08.2023	Rs.9,24,896/-
5.	20.10.2023	02.11.2023	Rs. 90,277/-
		Total	Rs. 1,02,01,348

- IV. That even after the receiving an amount of more than 1 crore the respondents failed to communicate with respect to the further process including issuance of allotment letter, agreement to sell etc. and failed to pay the assured returns as promised.
- V. That only after repeated efforts, the respondents vide email dated 15.11.2023 forwarded the draft of an "agreement to sell" to the

complainants. That the respondents thereafter issued the allotment letter dated 17.11.2023 confirming the allotment of the commercial unit no. FL-0004 on ground floor having super area admeasuring 360 sq.ft.

- VI. That vide allotment letter dated 17.11.2023, the respondents confirmed the receipt of Rs.1,02,01,348/- including all taxes. It is submitted that the allotment letter clearly specified that the allottee shall be entitle to get assured returns upon making timely payments. Further, the allotment letter duly indicated that the sale consideration for the retail unit would be Rs.1,34,46,000/- and the same would include basic sale price, development charges, IFMS, preferential location charges.
- VII. That on 23.11.2023, the respondents further sent an e-mail and sent an addendum to the Agreement to sell along with the challan for registration of agreement. That the respondent via the draft agreement to sell and the addendum to agreement to sell duly admitted payment of assured return to the complainants as per clause 3.1 of the agreement.
- VIII. It is submitted that the respondents are liable to pay the assured return is further evident from their e-mail dated 01.12.2023, wherein, the respondents had proposed that upon payment of further advance amount, the allottees would be entitled to assured return @ 13% p.a.
- IX. That the complainants indicated the additions / modifications with respect to the clauses in the agreement as well as the addendum which were not acceptable to them vide email dated 25.12.2023.

However the respondents vide email dated 27.12.2023, indicated that the clauses and terms of the agreement cannot be changed.

- X. That on account of failure on the part of the respondents to modify the agreement clauses as per the assurances made during the offer as well as on account of failure to pay the assured return, the complainants again requested for payment of assured return and acceptance of modify agreement. That the respondents informed the complainants that they have applied for occupation certificate in January 2024, however as per the agreed terms settled at the time of booking the retail shop, the respondents failed to pay the minimum guaranteed amount from the date of application of occupation certificate.
- XI. That as per the brochure / advertisement, allotment letter as well as the agreement to sell and addendum clearly shows that the promoter had duly promised the complainants to pay assured return on payment of the substantial amount towards sale consideration of the retail unit and it was on the such assurances that the complainants paid the substantial sale consideration to the respondents. The relevant portion of the clause 3.1 is reproduce herein below:

*"3.1 Subject of Clause 3.2 herein below and the Allottee making the due payments as per the agreed Payment Plan as per Schedule 'A', the Promoter has agreed to pay **Rs. 74,477.00 (Rupees Seventy Four Thousand Four Hundred Seventy Seven Only)** per month by way of assured return to the Allottee from 28.08.23 or the succeeding day from the date of receipt & realization of **Rs. 1,07,01,040.64 (Rupees One Crore Seven Lakhs One Thousand Forty and Paise Sixty Four Only)** (including taxes) ("Assured Return") from the Allottee and credited to the bank account of the Promoter, and the same shall be accumulated till the date of filing of application for grant of Occupancy Certificate for the Unit/Project with DGTCP by the Promoter. The Assured Return shall be inclusive of all Taxes and Cesses whatsoever payable or due on the Assured Return. All*

payments made to the Allottee shall be subject to applicable tax deduction at source as per the provisions of Income Tax Act, 1961 and amended from time to time."

- XII. That the respondents are at least liable to pay an amount of Rs.74,474/- per month by way of assured return to the complainant from 22.08.2023 as admitted by them and non-payment of the said amount till date, amounts to unfair trade practice. The total amount payable on account of assured return is Rs.3,27,698/-. Further, as per the agreement to sell, the assured return were to be paid from 22.08.2024, therefore, for non-payment of the said amount the respondent are liable to pay compounded interest @10% from the date it became due till the actual date of payment.
- XIII. It is submitted that the respondents have allegedly applied for occupation certificate on 02.01.2024, therefore, as per the agreed terms, the respondents are bound to pay minimum guaranteed amount of Rs.72,000/- per month for 18 months. The said amount had been calculated @ Rs.2,000/- per sq. ft. for 360 sq. ft. of commercial space allotted. It is submitted that the complainants are therefore entitled to an amount of Rs.72,000/- from 02.01.2024 for 18 months as against the commercial space allotted to the complainants. It is therefore submitted that the complainants are entitled to minimum guaranteed amount of Rs.72,000/- from 02.01.2024 for 18 months alongwith interest @10% for the time period for which the payment has not been made till the actual date of payment and non-payment of the same would amount to unfair trade practice.

C. Relief sought by the complainants:

4. The complainants have filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
 - ii. Direct the respondents to pay the minimum assured amount of Rs.74,474/- per month from 22.08.2023 till 02.01.2024 (alleged date of application for grant of occupancy certificate) alongwith compounded interest @10% from the date the payment became due till the actual date of payment.
 - iii. Direct the respondents to pay minimum guaranteed amount of Rs.72,000/- per month from 02.01.2024 for 18 months alongwith interest @10% for the time period for which the payment has not been made till the actual date of payment.
 - iv. Direct the respondents to consider the corrections/modification suggested by the complainant and modify the clauses as suggested by the complainant and also modify the clauses in terms of the Act.
 - v. Direct the respondents to pay a compensation of Rs.2,00,000/- to the complainant for harassment and mental agony.
 - vi. Direct the respondents to pay Rs.1,00,000/- as litigation expenses to the complainants.
5. On the date of hearing, the Authority explained to the respondent /promoter about 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.
6. Vide proceedings dated 29.01.2025, the counsel for the complainants submitted that the complainants wishes to withdraw from the project and sought a liberty to file an amendment application. The complainants

were granted a liberty to file the same within a period of one week. On 04.02.2025, an application for amendment of relief has been filed by the complainants. The complainants are now seeking the following relief(s):-

- i. Grant liberty to the complainants to withdraw from the subject project and direct the respondents to initiate complete refund (without any deduction) of the amount paid by the complainants with an interest at the rate of 15% from the date of each payment till the actual date of refund within the appropriate timeline provided in the rule 16 of the Haryana Real Estate Rules, 2017.

D. Reply by respondent no.1 :

7. The respondent no.1 has contested the present complaint on the following grounds:
 - I. That at the outset, it is pertinent to note that the "Performa" indicates that the complaint has been registered only in name of Mr. Ved Prakash Arya and co-purchaser, Ms. Sudha Arya has not been made a party to the present complainant. Thus this amounts to non-joinder of necessary party and the present complaint deserves to be out rightly dismissed on this ground alone.
 - II. That the complainants, being interested in the real estate development of the respondent no. 1, known as "AIPL Joy Gallery" located at Sector 66, Village Badshahpur, Gurugram, Haryana booked a unit on 24.07.2023. That the complainants are not "allottees" but investors who had booked the unit as a speculative investment in order to gain the benefit of assured returns.
 - III. That at this stage, it is pertinent to note that a draft of the Agreement to be executed was initially provided to the complainants, along with the booking form only and the same was agreed by the complainants

as well. The relevant part of the Booking form evidencing the same is reiterated as under:

"... I/We clearly understand that the allotment of the Unit by the Company pursuant to this Application Form shall be purely provisional till Agreement for Sale as per the format shared with me by the Company is executed by the Company in my/our favour....."

- IV. Further, it needs to be categorically noted that since the very beginning, the intention of the complainants has been *ex facie* and *prima facie* clear to earn investment return from the purchase of the unit, as noted in clause (j) of the Application form, as reiterated hereunder:

" (j) 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..."

- V. That the sole intention of booking was to lease the unit and with that understanding, an offer was made by the complainants by filing the Application Form, upon the acceptance of which, an allotment of a provisional retail shop unit bearing no. FL-0004, Ground Floor having a tentative carpet area of 159 sq. ft. (approx.) and super area of 360 sq. ft. (approx.), located on ground floor was made vide provisional allotment letter dated 17.11.2023.
- VI. That upon the non-delivery of the executed agreement, the respondent again sent copies of draft of Agreement for Sale and also addendum, vide mail dated 15.11.2023, to be signed and executed by the complainants. That the complainants for reasons best known to themselves did not come forward to execute the Agreement for Sale. That despite constant follow ups, the complainants failed to sign and execute the Agreement for Sale and Addendum. And as an afterthought sought unlawful modification of terms of the draft

Agreement for Sale and Addendum. That the respondent duly informed the complainants that the draft agreement for sale shared is as per the format prescribed by HRERA Rules, 2017 and is the standard format signed by all the allottees in the project. Thus the terms of the draft Agreement for Sale cannot be modified as per the whims and fancies of the complainants.

- VII. That as per clause 3 of the Addendum, the respondent offered to pay assured return to the complainants. That the respondent, offered to pay assured return post receipt and realization of Rs.1,07,01,040.64/-. That the complainants with a greed to earn unjustly assured returns from the respondents have till date made a payment of Rs.1,02,01,348.42/- towards the sale consideration of the unit.
- VIII. That the complainants, on their own accord, whims and fancies, made payments after the booking of the unit, however, failed to execute the requisite agreements, despite multiple reminders. Further, the present complaint has been filed seeking assured return, however, the same was never agreed between the parties as the Agreement and the Addendum were never executed by the complainants. That the complainants cannot be allowed to take advantage of their own wrong.
- IX. That as far as the allotment letter is concerned, the same is subject to the execution of the Agreement. Moreover, the allotment letter also mentions 'Assured Returns. Additionally, no time period or rate of the assured returns were ever agreed in the allotment letter as well. That without prejudice to the above, it is most vehemently submitted that the complainants are praying for the relief of "Assured Returns"

which is beyond the jurisdiction that this Authority has been dressed with.

- X. That the respondent applied for grant of Occupation Certificate on 04.12.2023 and was duly granted the same by the competent authorities on 09.05.2024. Thereafter, on 18.05.2024, the respondent no. 1 duly offered possession of the unit. That the total demand of all charges including the stamp duty charges payable by the complainants is Rs.1,63,33,832.98/- out of which Rs.1,02,01,348.42/- has been paid by the complainants and hence, a default of Rs.60,32484.56 exists.
- XI. That the due date for offer of possession, as per the clause 5 of the draft Agreement was 13.05.2025. However, the respondent no. 1 has completed the development and offered the possession on 18.05.2024, i.e., a year before the expiry of the due date of possession.
8. 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 these undisputed documents and submission made by the parties.
- E. Jurisdiction of the authority:**
9. 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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.
11. 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. 2021-2022 (1) RCR (Civil), 357*** 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."

12. 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. Findings on the objections raised by the respondent

F.1 Objection regarding non joinder of necessary party.

13. The respondent-promoter has raised an objection contending that the complaint has been registered solely in the name of Mr. Ved Prakash Arya, and the co-allottee, Ms. Sudha Arya, has not been made a party to the complaint. It is claimed that this constitutes a non-joinder of a necessary party, rendering the complaint liable to be dismissed on this ground alone.
14. Upon perusal of "Performa - B" generated in relation to the present complaint and "Form CRA-I," which details the particulars of the complainants, it is evident that the co-allottee, Ms. Sudha Arya, is indeed a party to the complaint. Therefore, the objection raised by the respondent lacks merit.

F.II. Objection regarding complainants are investors and not allottees.

15. The respondent has taken a stand that the complainants are investors and not allottees, 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 observes that the Act is enacted to protect the interest of consumers of the real estate sector. 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. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyers and have paid total price of **Rs.1,02,01,348/-** to the promoter towards purchase of an unit in the project of the promoter. 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;"

16. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter, it is crystal clear that they are allottees as the subject unit is 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". The Maharashtra Real Estate Appellate Tribunal in its order dated

29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors and are not entitled to the protection of this Act stands rejected.

G. Findings on the reliefs sought by the complainants

G.I. Grant liberty to the complainants to withdraw from the subject project and direct the respondents to initiate complete refund (without any deduction) of the amount paid by the complainants with an interest at the rate of 15% from the date of each payment till the actual date of refund within the appropriate timeline provided in the rule 16 of the Haryana Real Estate Rules, 2017.

17. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act 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)

18. The complainants submitted an application for the provisional allotment of a retail shop in the project "AIPL Joy Gallery," located at Sector-66, Gurugram. An allotment letter was issued in favor of the complainants on 17.11.2023, and they were allotted a shop bearing No. FL-0004 on the Ground Floor, with a carpet area of 159 sq. ft., for a sale consideration of Rs. 1,34,46,000/- within the respondent's project.
19. The Agreement to Sell was not executed between the complainants and the respondent, as certain clauses in the draft agreement were not acceptable to the complainants. Through an email dated 25.12.2023, the complainants communicated their proposed additions and modifications to the agreement.
20. In the absence of an executed Agreement to Sell, the due date for possession is determined based on the precedent set in *M/s. Fortune Infrastructure & Anr. Vs. Trevor D'Lima & Others*, where a period of three years was deemed a reasonable timeframe. Accordingly, the due date for handing over possession of the unit is calculated as 17.11.2026.
21. The respondent obtained the Occupation Certificate from the competent authority for the project on 09.05.2024, and the offer of possession was made to the complainants on 18.05.2024. The complainants have paid a sum of Rs. 1,02,01,348/- out of the total sale consideration of Rs. 1,34,46,000/-.
22. Vide proceedings dated 05.03.2025, the counsel for the complainants submitted that the respondent violated Section 13 of the Act by

demanding more than 10% of the sale consideration without executing the Agreement to sell.

23. The counsel for the respondent submitted that after receiving the Occupation Certificate on 09.05.2024, the respondent offered possession of the unit to the complainants on 18.05.2024. The unit stands completed and after the completion of the unit, the complainants are not seeking refund of the amount paid by them. Therefore, the refund is liable to be made after forfeiture of the earnest money.
24. After considering the documents on record and the submissions made by the parties, the Authority observes that the respondent obtained the Occupation Certificate for the complainants' unit on 09.05.2024. The due date for possession, calculated as three years from the date of the allotment letter, is 17.11.2026. The Occupation Certificate was obtained well before this stipulated date, and the offer of possession was extended to the complainants on 18.05.2024. The complainants did not indicate any intention to withdraw from the project prior to the offer of possession. Through the present complaint, they sought interest for delayed possession, and subsequently, via an application for amendment of relief, they expressed their desire to withdraw from the project on 04.02.2025, requesting a refund of the amount paid. The right under Sections 18(1) and 19(4) of the Act arises only when the promoter fails to complete the project or is unable to deliver possession of the unit in accordance with the terms of the Agreement to Sell or within the specified timeline. In this case, the promoter has made significant investments to complete the project and has offered possession of the allotted unit well before the due date.

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale.
26. In case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that the allottee has to make intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready then he impliedly agrees to continue with the project.
27. In the present case, the unit was allotted to the complainants through an allotment letter dated 17.11.2023, with the due date for possession being 17.11.2026. The Occupation Certificate was obtained on 09.05.2024, and the offer of possession was made on 18.05.2024. The Authority observes that the complainants did not express any intention to withdraw from the project prior to filing the application for amendment of relief on 04.02.2025. Thus, by filing the said application for amendment of relief, the complainants are deemed to have voluntarily surrendered the unit.
28. Therefore, in this case, refund can only be granted 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"

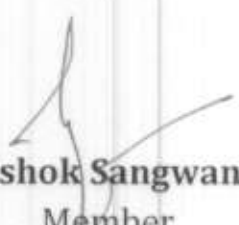
29. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the paid-up amount of Rs.1,02,01,348/- after deducting 10% of the sale consideration of Rs.1,34,46,000/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal 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 surrender i.e., 04.02.2025 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the Authority:

30. 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) of the Act.
- i. The respondents/promoter are directed to refund the paid-up amount of Rs.1,02,01,348/-, after deducting 10% of the sale consideration being earnest money along with interest on such balance amount at the rate of 11.10% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules,

- 2017, from the date of surrender i.e., 04.02.2025 till its actual realization.
- 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.
31. Complaint stands disposed of.
32. File be consigned to the registry.

Dated: 26.03.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

