



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

Complaint no. : 316 of 2022
First date of hearing: 23.02.2022
Date of decision : 21.01.2025

1. Mrs. Deepak Makol
2. Mr. Abhinav Makol

Regd. Address: C-309, Vidyut Apartment, 81,
Patparganj, IP Extension, Delhi-110092

Complainants

Versus

1. M/s Advance India Projects Ltd.
Regd. office: The Masterpiece, Golf Course
Road, Sector-54, Gurugram 122002 (Haryana)
2. M/s Wellworth Project Developers Pvt. Ltd.
Regd. Address: 3, Munirka Marg, Vasant Vihar,
New Delhi-110019

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Sh. Rishabh Bajaj (Advocate)
Sh. Harshit Batra (Advocate)
None

Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2

ORDER

1. The present complaint dated 24.01.2022 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 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 Central"
2.	Project location	Sector 65, Gurugram
3.	Project type	Commercial complex
4.	Application dated	03.03.2017 [As per page no. 46 of reply]
5.	Allotment letter	11.05.2017 [As per page no. 53 of reply]
6.	Unit No.	0066, Ground Floor [As per page no. 53 of reply]
7.	Renumbering of unit no. on 01.04.2020	GF-77 [As per page no. 75 of reply]
8.	Unit Area	1197 sq. ft. (super area) [As per page no. 53 of reply]



9.	Date of agreement for sale	Not executed
10.	Possession clause	Clause 40 of application form <i>Subject to the aforesaid and subject to the applicant not being in default under any part of this agreement including but not limited to the timely payment of the total price and also subject to the applicant having complied with all formalities or documentation as prescribed by the company, the company endeavours to hand over the possession of the unit to the applicant within a period of 48 (forty eights) months, with a further grace period of 6 (six) months, from date of commencement of the excavation work at the project site and this date shall be duly communicated by the company to the applicant.</i>
11.	Date of start of excavation	01.09.2018 [As alleged by respondent on page no. 08 of reply]
12.	Due date of possession	01.03.2023 [48 months calculated from date of start of excavation i.e., 01.09.2018 + 6 months grace period allowed being unqualified]
13.	Total sale consideration	Rs. 3,30,82,686/- [As per payment plan on pg. 54 of reply]
14.	Amount paid	Rs. 98,06,824/-



		[As per statement of account dated 21.03.2022 on pg. 84 of reply]
15.	Occupation certificate	24.12.2021 [As per page no. 66 of reply]
16.	Offer of possession	Not offered
17.	Demand letter and reminders dated	15.06.2017 , 11.04.2021, 06.05.2021 [As per page no. 80-82 of reply]
18.	Pre termination letter	18.05.2021 [As per page no.82 of reply]
19.	Termination letter dated	01.07.2021 [As per page no. 83 of reply]

B. Facts of the complaint

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

- a. That the respondent is a company engaged in the business of construction of real estate projects and represented that it is developing a class "A" mixed use commercial project by the name of "JOY CENTRAL", spread over 4 acres, having ground plus 22 floors development, located in sector-65, golf course extension road, Gurugram, Haryana.
- b. That the respondent claimed that it has all the requisite permissions from the concerned government departments, to develop the project and the same will have a grand 450 feet frontage on the main 84 meters wide sector road.

- c. That relying upon the assurances of the respondent, the complainants booked a retail shop bearing unit no.0066, measuring 1197 sq. ft., on the ground floor, facing the 84-meter front sector with one covered car parking in the afore stated project of the respondent, vide KYC Form dated: 24.02.2017. Extra PLC of Rs.5,059 per sq. feet and covered car parking charges of Rs.5,00,000 were separately mentioned in the KYC Form filled up at the time of initial booking and payment on 24.02.2017. The same was later deliberately and insistingly included in the basic sale price (BSP) by Advance India Projects Ltd (AIPL) at the time of executing the application form dated 30.04.2017, after collecting Rs. 28,08,186/- from the complainants.
- d. After collecting Rs.28,08,186/- from the complainants, the respondent insisted the complainants to execute the application form on 03.05.2017 with respondents' unilateral terms and conditions. Almost 10% of the sale consideration i.e. a sum of Rs.28,08,186 was already collected by the respondent even before executing the application form on 03.05.2017.
- e. As per the terms stipulated in the application form, the basic sale price (BSP) of the shop was Rs.26,862 per square feet with development charges (DC) @ Rs.676 per square feet and interest free maintenance security (IFMS) deposit @ Rs.100 per square feet. Thus, the total amount per square feet amounted to Rs.27,638 and calculated for the shop area of 1197 square feet, the total amount payable came to Rs.3,30,82,686/-. The payment plan opted by the complainants was a possession linked payment plan.

f. The complainants till the time of execution of the application form dated 30.04.2017, had paid the following amounts to the respondent:

- i. Rs.5,00,000 vide cheque no.035569 dated 17.02.2017 drawn on ICICI Bank.
- ii. Rs.5,00,000 vide cheque no.208340 dated 09.03.2017 drawn on State Bank of India.
- iii. Rs.5,00,000 vide cheque no.208341 dated 09.03.2017 drawn on State Bank of India.
- iv. Rs.9,00,000 vide cheque no.208353 dated 03.05.2017 drawn on State Bank of India.
- v. Rs.4,08,186 vide cheque no.208354 dated 03.05.2017 drawn on State Bank of India.

g. That the afore stated booking was made through M/s Urban Plus Infrabuild Pvt. Ltd., a channel partner / agent of the respondent. That the booking amount for the shop had been paid to the respondent in February 2017, upon which the respondent had handed over a duly signed copy of the layout plan, showing the shop no.66 facing the main 84-meter sector road. The said shop no.66 was reserved by the respondent for the complainants on 02.03.2017, which was subject to clearance of 10% of sale consideration i.e. a sum of Rs.28,08,186, which was paid on 03.05.2017.

h. That upon making the payment of 10% of the sale consideration i.e. Rs.28,08,186, the respondent again issued an updated layout plan of the ground floor of the project on 03.05.2017, again showing the shop no.66 of the complainants measuring 1197 sq.

fts. facing the main 84 mtrs. sector road. Upon receiving the afore stated amount of Rs.28,08,186, the respondent issued a termination letter dated: 10.05.2017 to arm twist and scare the respondents.

i. That upon the complainant raising strict objection against the same and meeting the officials of the respondent personally, next day the respondent issued an allotment letter dated 11.05.2017. The said allotment letter clearly stipulated a payment of 28.50% of the BSP as well as DC within 120 days of the booking and a further 47.25% on completion of super structure and balance 24.25% on offer of possession.

j. Further payments were made to the respondent as under:

- i. Rs.7,38,000 vide cheque no.035061 dated 26.06.2017 drawn on State Bank of India.
- ii. Rs.9,90,000 vide cheque no.035058 dated 26.06.2017 drawn on State Bank of India.
- iii. Rs.9,90,000 vide cheque no.035059 dated 26.06.2017 drawn on State Bank of India.
- iv. Rs.9,90,000 vide cheque no.035060 dated 26.06.2017 drawn on State Bank of India.
- v. Rs.31,92,569 vide cheque no.033666 dated 20.06.2017 drawn on ICICI bank. TDS payment along with interest for Rs.1,01,012/- (TDS Rs.98,069 + Rs.2,943 - Interest) in addition to the above payment was also made on 12.08.2017.

k. Since the project had a super structure consisting of ground + 22 floors, the stage of completion of super structure would have arisen only on laying of the slab of the 22nd floor of the tower in

which the shop booked by the complainants was located. First, at the time of booking itself, the respondent vide its email dated 07.03.2017 agreed and consented to remove the clause from the builder buyer agreement with respect to the respondent having leasing right with respect to the shop. This email dated 07.03.2017 was sent by the respondent at the time of initial booking to confirm in writing that the leasing rights of the booked retail shop will remain with the complainants. This was agreed between the respondent and the complainants at the time of initial booking itself and it formed the basis of booking the shop by the complainants in the respondent's subject project.

- l. The respondent also vide its e-mail dated 03.05.2017, agreed and consented to remove the clause with respect to the respondent having leasing right with respect to the shop from the builder buyer agreement. This email dated 03.05.2017 was sent by the respondent at the time of execution of application form to again confirm in writing that the leasing rights of the booked retail shop will remain with the complainants. The same is also confirmed not applicable on page no: 22 – point no: 43 of the application form.
- m. That despite consenting to remove the clause in the unit buyer's agreement pertaining to the leasing rights, the respondent again dated 25.09.2017 shared a unit buyers' agreement, without removing / amending clause 33 thereof pertaining to leasing rights. The unit buyer's agreement again contained a ground floor layout plan, in which shop no.66 booked by the complainants was shown as facing the main 84 mtrs. sector road.

- n. That it would be pertinent to mention here that the shop no.66 had been booked by the complainants on the specific assurance and representation that the same is facing the main 84 mtrs. wide sector road and has entrance from both sides. The complainants had agreed and also paid preferential location charges (PLC) for the said shop and had been seeking bifurcation of the BSP and the PLC's. A copy of the e-mails dated 23.06.2017, 20.04.2019 and 09.07.2019 written by the complainants regarding bifurcation of BSP and PLC are annexed. Emails dated 10.11.2017 and 24.01.2018 were also written to M/s Urban Plus Infrabuild Pvt. Ltd., channel partner / agent of the respondent to arrange to provide the bifurcation of BSP and PLCs from the respondent.
- o. M/s Urban Plus Infrabuild Pvt. Ltd., channel partner / agent of the respondent also confirmed vide their email dated 29.06.2017 to provide the bifurcation of BSP and PLCs from the respondent.
- p. **Bifurcation (BSP includes the following PLC's):**
- i. PLC of 17% of Rs. 22,995/- (basic price without discount) i.e., Rs. 3,909/- per sq. ft. - For ground floor shop facing main front 84-meter-wide sector road.
 - ii. PLC of 5% of Rs. 22,995/- (basic price without discount) i.e., Rs. 1,150/- per sq. ft. - For ground floor shop with two side/double entrance (one facing the front 84meter sector road and the other at the back opening in the corridor leading to the courtyard/ atrium) of the above booked retail shop.
 - iii. Rs. 5,00,000/- For 01 number covered car parking exclusively allocated to the complainants in the basement of the subject project.

- q. That the complainants had been repeatedly calling upon the respondent to give the bifurcation of the PLC; amend the unit buyers agreement; etc. and had specifically stated that change in location, size and dimension of the booked shop shall not be acceptable. The respondent vide its e-mail dated 06.09.2019, specifically confirmed that there is no change in the layout and called upon the complainants to come for a personal meeting in the last week of October, 2019. Since the respondent did not respond to the issues raised by the complainants, the complainants sent further reminders, to which the respondent vide e-mail dated 11.12.2019, agreed to personally meet the complainants on 12.12.2019.
- r. That after the personal meeting held between the complainants and the respondent, the respondent vide e-mail dated 20.12.2019 confirmed that the leasing rights of the unit are reserved with the complainants and also sent a statement of account, confirming that the principal amount demanded has been duly paid i.e. a sum of Rs.98,06,824/-. Since the respondent had not shared the duly amended unit buyers' agreement the complainants sent a reminder mail to the respondent. The respondent vide e-mail dated 31.03.2020 sought a day's time, for sharing the duly amended unit buyers' agreement.
- s. That to the utter shock and surprise of the complainants instead of sharing the amended agreement as assured, the respondent vide letter dated 01.04.2020, changed the number of the shop from 0066 to GF-77, without informing in any manner that the location remains the same or attaching therewith any layout plan,

specifying the location of the shop number GF-77, now proposed to be allotted.

- t. That the respondent thereafter vide e-mail dated 03.04.2020, shared agreement for sale to be executed, which was neither in conformity with the RERA Act nor the terms agreed between the parties. The number of the shop had been changed from 0066 to GF-77 and neither was the location of the shop specified in the said agreement nor any ground floor layout plan was annexed.
- u. That despite consenting to remove the clause in the unit buyer's agreement pertaining to the leasing rights on several occasions, the respondent again did not remove / amend clause 21 thereof pertaining to leasing rights in this second unit buyer agreement as well. in this second unit buyer agreement, the respondent with malafide intensions also mentioned in point no: 05, point no: 07 and at other places in this agreement copy that constructive possession and not physical possession will be provided by the respondent to the complainants.
- v. The respondent further vide e-mail dated 06.04.2020 confirmed that the leasing rights of the shop are solely with the complainants, and they shall have the rights to lease the shop as per their discretion but refused to change the same in the unit buyer agreement and insisted to keep the same with them. This was being done by the respondent, taking advantage of the fact that the entire country was facing a lockdown, in view of the raging Covid-19 pandemic.
- w. That the complainants have been repeatedly calling upon the respondent to add the updated ground floor layout plan to show

the location of the shop no.0066 (renumbered as GF-77) in the unit buyer agreement sent by them but the respondent with malafide and dishonest intent, has not added the same till date. Instead of responding to the issues raised by the complainants, the respondent made a telephonic call stating that it shall be demanding further payment. As per the construction update given by the respondent itself on 01.04.2021, only 3 to 4 floors out of the total 23 floors had been constructed, that too only an unfinished super structure. As per the payment plan specified by the respondent, the complainants were liable to pay further payment only upon completion of the entire super structure i.e. ground floor + 22 floors. Upon the mere laying of slab of 3 to 4 floors, neither the entire super structure can be said to have been completed nor the respondent is entitled to demand any further payment from the complainants. The complainants vide email dated 08.04.2021 brought the said facts to the notice of the respondent.

- x. That despite the above, the respondent vide its letter dated 11.04.2021, falsely claimed that the super structure had been completed and that too of shop no.GF-77 and demanded a further sum of Rs.1,74,44,011.87/-. This again was being done, during the period the Covid-19 pandemic had again created havoc, and the country was again facing a lockdown. The complainants vide response dated 21.04.2021 brought the afore stated facts to the notice of the respondent and called upon the respondent to address the issues raised by the complainants. That instead of responding to the issues raised by the complainants, the

respondent again vide letter dated 06.05.2021, reiterated its earlier demand contained in its earlier letter dated 11.04.2021. The complainants again vide e-mails dated 17.05.2021 and 18.05.2021 called upon the respondent to address the issues raised by the complainants and withdraw their incorrect demand. The respondent issued a pre-termination letter dated 18.05.2021. The complainants received a call on 07.06.2021 from the respondent, requesting the complainants to come for a personal meeting, whereupon the complainants vide e-mail dated 12.06.2021 called upon the respondent to treat the pre-termination letter dated 18.05.2021 as withdrawn. The respondent also issued an e-mail dated 14.06.2021 calling upon the complainants to fix an appointment for a personal meeting.

- y. That in furtherance to its illegal acts, the respondent issued a termination letter dated 01.07.2021, claiming to have forfeited an amount of Rs.74,49,879.68 (Approx. 75 Lacs - 75%) from the payment made by the complainants. The respondent, after using the complainants paid money of Rs.98,06,824 (Approx. 98 Lacs) for 4 years, have deducted Rs.74,49,879.68 (Approx. 75 Lacs - 75%) of the same and wrote to refund only Rs.23,56,944.32 (Approx. 24 Lacs - 25%). That the complainants met the officials of the respondent personally on 06.07.2021 and 08.07.2021 to resolve the issue but the respondent failed to offer any legitimate or appropriate response.
- z. That the entire action of the respondent is illegal and unlawful. the respondent after receiving around a sum of Rs.98 lacs from the complainants has turned dishonest and has committed breach of

the terms agreed upon and is now intent upon dishonestly forfeiting the money paid by the complainants. That the complainant no.1 is a 70-year-old lady, having invested her lifelong savings in the said shop, for the better future of her son the complainant no.2 and to have a source of income for the remaining years of her life. The complainant no.2 was travelling overseas and due to the Covid-19 pandemic, is unable to return to India at present and hence has appointed his father as his attorney, for the purpose of filing the present complaint. That the demand letter and termination letter issued by the respondent are illegal and non-est in the eyes of law and are liable to be quashed and set aside. That the respondent had failed to deliver the possession of the retail shop no. 66, 1197 sq. ft., ground floor, situated in AIPL Joy Central, Gurugram, Haryana to the complainants within the specific time period and has committed defaults of the terms agreed upon. The complainants have filed this complaint seeking direction of the authority to compel the respondent AIPL to deliver the possession of the shop booked by the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the respondent to complete the construction and hand over the possession of the retail shop bearing unit no.0066, measuring 1197 sq. ft., on the ground floor, facing the 84meter front sector road with one covered car parking in the afore stated project of the respondent, booked vide KYC form dated: 24.02.2017 and

application form dated 30.04.2017 and as shown in the layout plans, within a fixed time period.

- b. Direct the respondent to pay penalty / damages for the delay in handing over the possession of the shop.
 - c. Direct the respondent to execute the agreement, as per the terms agreed upon and in consonance with the guidelines and rules laid down by the RERA Act and give the leasing rights to the complainants.
 - d. Declare the termination letter dated 01.07.2021 as null and void.
 - e. Hold that the complainants are liable to pay further amounts to the respondent only on completion of the super structure i.e., upon laying of the slab of the roof of the 22nd floor of the tower in which the shop in question is located.
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 respondent no. 1.

6. The respondent no. 1 has contested the complaint on the following grounds.
- a. That at the very outset, it must be noted that all the averments, submissions and contentions made by the complainants in the complaint are denied unless specifically admitted to hereunder. That the respondent no.1 does not accept the alleged facts, grounds or reliefs sought, etc. and denies all and every contention/submission/etc. made in lieu of the same. That nothing in the complaint, as alleged, is liable to be used against the

respondent no.1 being deceived as acceptance or acquiescence unless has been specifically and categorically admitted to hereunder. The respondent no. 1 herein seeks to raise the following preliminary objections, each of which have been taken in the alternative and is without prejudice to others. Nothing contained in the preliminary objections and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be a direct and tacit admission of any of the averments/allegations.

- b. It is imperative to note that Advance India Projects Limited is respondent no.1, as per the proforma-B dated 22.01.2022 generated by the complainants. Hence, Advance India Projects Limited, the answering respondent, is being regarded as respondent no.1 throughout this reply.
- c. That the complainants have filed the present compliant with oblique motive of harassing the respondent developer and to extort illegitimate money while making absolutely false and baseless allegations against the respondent no. 1. That the complainants herein have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainants have not approached this Hon'ble Authority with clean hands and have suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
- d. That the primary relief sought in the complaint is to complete the construction and handover the possession of the retail shop. That

due date of delivery of possession was 48 months from the date of commencement of construction (excavation), which is 01.09.2018 along with a grace period of 6 months, thus, the subjective due date of possession turns out to be **01.03.2023**. That no delay, due to the fault of the respondent has been caused.

- e. That the complainant wrongly demands possession of the unit in question when in fact, the power to grant possession and interest for delay period can only be exercised "if the promoter fails to complete or is unable to give the possession" as per section 18(1).

That the due date of possession has not been passed yet. For the proviso of 18(1) to be operative for grant of interest, Section 18(1) has to be satisfied, which, has not been done in the present case.

That it must be categorically noted that the present complaint amounts to misuse of the process of law and should not be entertained, in any circumstance whatsoever. That entertaining the present complaint, it shall set a wrong precedent for the *malafide* allottees who seek to earn monies under the garb of premature complaints.

- f. That in **Neetu Soni. vs. Imperia Wishfield Pvt. Ltd. (01.02.2019 - RERA Haryana) C. No. 1076 of 2018; MANU/RR/0147/2019**, an issue before this Hon. Authority was: "*Whether the respondent has failed to provide possession of the unit in question without any reasonable justification?*" The Authority dismissed the complaint being premature.

- g. That the present complaint has been filed without any affidavit on behalf of the complainants which is an essence of any complaint

for verifying the facts and allegation made under the complaint in absence of which no complaint can be admitted for adjudication.

h. That as there is no affidavit verifying the contentions of the complaints; thus, the complaint of the complainants is not tenable in the eyes of the law and the facts mentioned under the complaint cannot be relied upon, thus the present complaint is liable to be dismissed outrightly. It is submitted that the affidavit is of an utmost vital requirement to be filed in support of the alleged facts advanced allegation made in the complaint. As defined under section 3 (c) of the General Clauses Act, 1897 which states that an affidavit shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

i. That around September, 2017, the complainants herein, learned about the commercial project launched by the respondent no. 1, titled as '**AIPL JOY CENTRAL**' (*herein referred to as '**Project**'*) situated at Sector 65, Gurgaon and contacted a real estate agent "Urban Plus" to know the more details of the said project. The complainants further inquired about the specification and veracity of the project and were completely satisfied with every proposal, development and state of the project.

j. That after having dire interest in the project constructed by the respondent no. 1, the complainants herein decided to invest in the project. The complainants voluntarily, with free will and full consent booked a commercial space in the aforesaid project and duly signed the application form on 30.04.2017. It is imperative to mention here that the application form was fully read and understood by the complainants, only after which, the same was

executed. That the complainants, willingly and voluntarily executed the application form thereby categorically agreeing to the terms and conditions of the same. That on 11.05.2017, allotment letter for the office space of the complainants was issued whereby the complainants were intimated about tentative units no. 0066 admeasuring 1197 sq. ft. with amount payable of basic sale price (BSP) Rs. 26,862/- per sq. ft.

k. That thereafter, the complainants were sent a copy of the buyer's agreement, to be executed between the parties on 25.09.2017, however, the due process was not followed by the complainants, and they miserably failed in execution of the agreement. The complainants instead of signing the said agreement for the purpose of execution, raised various vague objections (as can be ascertained from emails annexed with the complaint) with the intention to delay the execution of the agreement and payment of outstanding dues. The respondent time and again assured the complainants for revision in the agreement and further asked the complainants to visit the office of the respondent for the purpose of execution of the agreement. However, the complainant kept on sending e-mails and never turned up for executing the agreement, even after the queries of the complainants had been resolved.

l. That it is pertinent to note at this juncture that it was the obligation of the complainants to execute the agreement and that the respondent company had the right to cancel the allotment of the complainant upon failure of the complainant to execute the required documents in respect of the unit in terms of clause 22 of the application form.

m. That it needs to be noted that respondent no. 1 has always ensured to resolve all and every query of the complainants with respect to the agreement or otherwise in respect of the allotment. That a number of queries were raised by the complainant, all of which had been rightly replied by the respondent no. 1. That upon the queries being raised by the complainants, the respondent no. 1 conducted a meeting with them in order to ensure a quick redressal, which was attained, and all the queries and concerns of the complainants had been satisfied, as was also noted in the email dated 04.07.2017.

n. That it needs to be categorically noted that all the terms and conditions of the agreement was explained and the queries of the complainants with respect to the unit, project, revision, price, etc were extensively resolved and there did not remain any unresolved concern of the complainants.

o. However, even thereafter, the complainants kept raising further issues, which were already explained and settled, prima facie showing their lack of commitment to maintain a contractual relationship. That even thereafter, the issues of the complainants were again redressed. That in response to the objections raised by the complainants, the respondent no. 1, on 06.09.2019, answered all the issues of the complainants. The complainants were further asked to visit the office of the respondents for resolving other issues. Thereafter, the parties had undergone meetings to ensure the resolution of the complainants' concerns.

p. That thereafter, again on 03.04.2020, a copy of the agreement was shared with the complainants, who again failed to execute the

same and raised frivolous issues, delaying the execution of the agreement. That even thereafter, individual queries of the complainants were resolved, as can be noted in the email dated 01.04.2021. That despite a categorical resolution of the claims of the complainant, the complainants continued to make frivolous and baseless issues, all of which had been duly and extensively explained to the complainants through previous emails and meetings. That this prima facie shows that *malafide* intent and conduct of the complainants.

q. That as per clause 40 of the application form, the due date of delivery of possession was not absolute and subject to force majeure conditions. The subjective commitment period was 48 months from the date of commencement of construction (excavation), which is 01.09.2018 along with a grace period of 6 months, thus, the subjective due date of possession turns out to be **01.03.2023** That no delay, due to the fault of the respondent has been caused.

r. That at this juncture, it is pertinent to note that the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the

complainants and demanding the prices only as per the payment plan categorically and mutually agreed between the parties.

s. That despite the same, the respondent no. 1 completed the construction and received the occupancy certificate on 24.12.2021 for the retail units. The construction of the project is as evident from the construction updated as on February 2022.

t. That the respondent no. 1 has always ensured a *bona fide* conduct and fulfilled the terms and conditions of the application form, the applicable Act, and rules and regulations thereunder. Upon revision being made in the project, the respondent no. 1 has rightly invited objection/suggestions from the complainants vide letter dated 21.11.2019. Thereafter, on 21.05.2020, the respondent no. 1 issued a letter informing the complainants about the renumbering of unit number from "0066" to "GF-77".

u. That it needs to be categorically noted that it was the obligation of the complainants to make the due payments, as per the terms and conditions of the application form. That the due performance of the of all the obligations under the application form and more specifically the timely payment of the sale consideration and other applicable dues and charges under the payment plan agreed by the applicant shall be the essence of the application form.

v. That the respondent no. 1 has gone over and above its obligations as per the application form and has issued demand letters to the complainants and upon the non-payment of dues, the complainants have also been served with reminders. That despite the same, the complainants have failed to make the due payments as per the agreed payment plans. That thereafter, upon non-

payment of monies and thus the non-adherence of the terms and conditions of the application form, the complainant was first served with a pre-termination letter dated 18.05.2021. However, the requests for payment of monies against the unit fell on deaf ears of the complainants. That thereafter, upon non-payment of due amounts against the unit and the repeated and continuous breach of contractual obligation to make the due payment as per the payment plan, the unit was terminated vide letter dated 01.07.2021. The respondent no. 1 had the right to terminate the unit and forfeit the earnest money together with interest on delayed payments, brokerage if paid, etc.

- w. A list of the various demand letters and reminders, pre-termination and termination, sent as per the terms and conditions of the application form have been noted hereinbelow:

Date	Particular	Stage
12.05.2017	Demand	Within 60 days of booking
15.06.2017	Demand	Within 120 days of booking
26.03.2021	Demand	On Completion of Superstructure
11.04.2021	Reminder	On Completion of Superstructure
06.05.2021	Reminder	On Completion of Superstructure
18.05.2021	Pre-Termination Letter	For Outstanding dues
01.07.2021	Termination Letter	Due to non-payment of dues

- x. That the respondent has rightly and lawfully terminated the captioned unit as per the terms and conditions of the application

form. That the charges forfeited are valid and lawful. It was observed in **Radha Vasudevan and Ors. vs. Ocus Skyscrapers Realty Limited and Ors. (23.01.2019 - RERA Haryana) MANU/RR/0558/2019:**

"Alternatively, option may be given to the complainant, in case refund is to be given, then respondent shall be allowed to retain 10% of earnest money, along delay payment interest and brokerage and other taxes paid to government."

- y. That as noted above, after termination of the unit, the complainants have no right and lien over the unit and hence, the present complaint is baseless and cannot be entertained. **That it needs to be categorically noted that the complainants have not alleged any violation of section 11(5) of the RERA Act, 2016 and hence, there remains no right of complainants towards the unit.** That, as per the account statement dated 21.03.2022, the complainants have paid an amount of Rs. 98,06,824/- only against the unit. The payment plan reveals that the total sale consideration of the unit excluding taxes and other charges and stamp duty charges is Rs. 3,30,82,686/- out of which, a demand of Rs. 2,88,98,741.69/- had been raised hence, the complainant stands in default of Rs. 1,90,91,917.
- z. That the complainants herein, have suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Hon'ble Authority and in the interest of justice. Hence, the present complaint under reply is liable to be dismissed with cost

for wasting the precious time and resources of the Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

7. 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.
8. The respondent no. 2 failed to put in appearance before the authority and has also failed to file a reply. In view of the same, the matter is proceeded ex-parte against respondent no. 2 by the authority vide proceedings dated 06.08.2024.
9. The complainants & respondent have filed the written submissions which are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

E. Jurisdiction of the authority

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. 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

12. 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) 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.

13. 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. Observations of authority upon liability of respondent no. 1 or respondent no. 2 under section 18 of the Act, 2016.

14. The complainants in the present matter have made M/s Wellworth Project Developers Pvt. Ltd. as respondent no. 2. Though the authority vide proceedings dated 06.08.2024 has already proceeded ex-parte against respondent no. 2 but it is necessary to fix the liability under section 18 of the Act, 2016. The authority in the present matter observes that the allotment letter has been issued by respondent no. 1 only. Moreover, the receipts have also been issued to the complainants by respondent no. 1 and also the complainants in its complaint failed to



justify his claims against respondent no.2 specifically. Though the occupation certificate dated 24.12.2021 has been issued by the competent authority in favour of respondent no.1 in collaboration with respondent no. 2 but since the amount paid against the unit by the complainant has been made in favour of respondent no. 1 therefore, any liability to refund or pay delay possession charges under section 18 of the Act, 2016 if any, shall vest in favour of respondent no. 1 only.

G. Findings on the relief sought by the complainants.

G. I. Direct the respondent to complete the construction and hand over the possession of the retail shop bearing unit no.0066, measuring 1197 sq. ft., on the ground floor, facing the 84meter front sector road with one covered car parking in the afore stated project of the respondent, booked vide KYC Form dated: 24.02.2017 and application form dated 30.04.2017 and as shown in the layout plans, within a fixed time period.

G.II. Direct the respondent to pay penalty / damages for the delay in handing over the possession of the shop.

G.III. Declare the termination letter dated 01.07.2021 as null and void.

15. The complainants in the present matter jointly applied for the allotment of retail shop admeasuring 1197 sq. ft. approx. super area vide application form dated 30.04.2017. Thereafter, respondent no. 1 issued allotment letter dated 11.05.2017 wherein the complainants were allotted a unit bearing no. 0066, Ground floor admeasuring 1197 sq. ft. for a total sale consideration of ₹3,30,82,686/-. The complainants agreed to pay the instalments as per the possession linked payment plan annexed with the allotment letter dated 11.05.2017. The complainants had paid an amount of ₹98,06,824/- against the sale consideration of the unit as per the statement of account dated 21.03.2022. Since no BBA has been executed between the parties the due date of possession shall be calculated as per the possession clause



40 mentioned in the application form dated 30.04.2017. Clause 40 of the application form obligates the respondent no. 1 to complete the construction of the said unit and hand over possession of the unit within a period of 48 months from the date of excavation with a grace period of 6 months. The respondent in its reply, alleged that the date of start of excavation is 01.09.2018 therefore, the period of 48 months expires on 01.09.2022. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 01.03.2023.

16. The respondent no. 1 submitted that the complainants are defaulter and have failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 01.07.2021. The complainant allottee contended that the said cancellation letter dated 01.07.2021 is not valid for two reasons, firstly the demand raised by the respondent on 26.03.2021 was to be raised after completion of super structure of 21 floors whereas, the respondent raised the same without completing the construction of all 21 floors therefore the said demand letter dated 26.03.2021 is invalid. Secondly, the complainant further submits that the unit of the complainant was relocated by the respondent without any previous consent of the complainant.
17. The authority on 03.09.2024 appointed STP, HARERA to check whether the OC has been obtained or not and whether the location of the unit has been changed or it has been renumbered only. The LC submitted its report on 27.09.2024 wherein it is stated that the location of the subject unit has been changed from its original position.



The relevant para of the LC report dated 27.09.2024 is reproduced as under:

"The unit allotted to the complainant i.e., GF-0077 has been shifted towards the right side of the main entrance of the project."

18. The respondent stated at bar that due to the revised fire-fighting norms, an additional staircase was to be constructed in the building and therefore, the building plans were revised, though the location of the unit remained same. The authority herein observes that the location of the unit was slightly changed due to building of additional staircase as per new fire fighting norms for which the complainant may file for compensation under the relevant provision of the Act, 2016. Furthermore, the authority observes that as per the payment plan agreed between the parties the complainant was obligated to pay the due amount on completion of superstructure. The plea of the complainant for invalidating the demand raised by the respondent on completion of superstructure without actually completing the super structure of 21 floors is hereby declined by the authority for two-fold reasons. Firstly, there is no specific mention in the payment plan that the demand shall be raised after completion of super structure of 21 floors. Secondly, the subject unit is situated in the retail block for which the OC has already been obtained by the respondent from the competent authority on 24.12.2021, which implies that the superstructure of the retail block is complete in all respect. Also, the office block which contains 21 floors is separate from the retail block and therefore, the respondent is not obligated to raise the said demand upon completion of 21 floors of the office block. Therefore, the said demand dated 26.03.2021 is valid.

19. The authority before illustrating upon the relief sought by the complainants shall observe whether the cancellation letter dated 01.07.2021 issued by the respondent no. 1 is valid or not?
20. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

S. No	Payment Due	BSP (%)	Price
1.	On booking	Any	₹ 4,78,468/-
2.	Within 30 days of booking (less of booking amount)	8.00%	₹ 20,93,836/-
3.	Within 60 days of booking	8.00%	₹ 25,72,305/-
4.	Within 120 days of booking	12.50%	₹ 40,19,226/-
5.	On completion of super structure	47.25%	₹ 1,51,92,677/-
6.	On offer of possession	24.25%	₹ 77,97,299/-

21. It is matter of record that the complainants booked the aforesaid unit under the above-mentioned payment plan and paid an amount of ₹98,06,824/- towards total consideration of ₹3,30,82,686/- which constitutes 40.93% of the total sale consideration and have paid the last payment on 12.08.2017.
22. It is pertinent to mention here that the respondent raised the demand of ₹1,74,44,011/-, instalment due on completion of super structure on 26.03.2021, and the allottee is under obligation to make payments towards consideration of allotted unit as per payment plan annexed with allotment letter dated 11.05.2017 as per section 19(6) & 19(7) of Act of 2016. The respondent no. 1 after giving reminders dated 11.04.2021, 06.05.2021, 18.05.2021 for making payment for outstanding dues as per payment plan, finally cancelled the subject unit



vide letter dated 01.07.2021. Despite issuance of aforesaid numerous reminders, the complainant has failed to clear the outstanding dues. The respondent no. 1 has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. Thereafter, the respondent no. 1 issued pre termination notice dated 18.05.2021, and the relevant proportion of the said notice is reproduced as under: -

"This is with reference to Unit No. GF-77 booked in our project "ATPL Joy Central", Sector-65, Gurugram, Haryana. We would like to draw your kind attention to our Demand/Call Letters and Reminders as referred above and accordingly requested you to remit the outstanding dues of ₹1,74,44,012.00 /- (Rupees One Crore Seventy-Four Lakhs Forty-Four Thousand Twelve Only) (including taxes and excluding Interest) as per the indenture entered between both the parties. Despite the above-mentioned regular communications, we have still not received the outstanding amount from your end. Hence you failed to adhere to the terms and conditions of Application Form /nit Buyer's Agreement duly executed by you with us.

We, therefore, hereby, serve upon you this Pre-Termination Letter of your unit to remit the above-mentioned amount within 10 days of issuing this letter, failing which we shall be constrained to terminate/cancel your application/allotment of the above referred unit and further we shall forfeit the earnest money along with other non-refundable amounts in terms of the Application/Unit Buyers' Agreement. It is pertinent to mention here that after termination/cancellation of the unit, you shall be left with no right, title, interest and lien on the unit/project"

23. As per clause 24 of the application form dated 30.04.2017, the respondent/promoter has a right to cancel the unit in case the allottee makes default in making the payment. Clause 24 of the application form is reproduced as under for a ready reference:

"The Applicant agrees to comply with the terms and conditions of this Application and unit Buyer's Agreement, including timely payment of the consideration, failing which the Company shall have the right to cancel/terminate the Application/ Allotment/Unit Buyer's Agreement and forfeit the entire amount of Application Money/Earnest Money, interest

on delayed payment, brokerage if paid, etc The Applicant shall be left with no lien, right, title, interest or claim of any nature whatsoever in the Unit along with the parking spaces. It is understood by the Applicant that the Company is not required to send reminders/ notices to the Applicant and the Applicant is required to comply with all the obligations as set out in this Application and those to be set out in the Allotment Letter/Unit Buyer's Agreement....."

24. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default on part of the complainants including timely payment of consideration. Further, the respondent no. 1 has already obtained the occupation certificate for the project of the allotted unit on 24.12.2021 Despite the issuance of reminder letters, the complainants have failed to take possession of the subject unit and clear the outstanding dues.
25. Thereafter, the respondent no. 1/promoter issued demands letter and further, issued final note cum termination letter to the complainant. The respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.
26. The counsel for the respondent present on 21.01.2025 stated at bar that the respondent company is ready to refund the full amount paid by the complainant. Accordingly, the respondent no. 1/builder is directed to refund the amount received from the complainants along with interest at the rate of 11.10% (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 termination/cancellation 01.07.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

27. 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):
- The respondent no. 1 is directed to refund the deposited amount i.e., ₹98,06,824/- along with an interest @11.10% p.a. on the refundable amount, from the date of cancellation of unit (i.e., 01.07.2021) till the date of realization of payment.
 - 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.
28. Complaint stands disposed of.
29. File be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2025