

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

Date of filing of complaint: 12.07.2023

Date of decision: 09.07.2025

NAME OF THE BUILDERS		WELLWORTH PROJECT DEVELOPERS PRIVATE LIMITED AND ADVANCE INDIA PROJECT LIMITED	
PROJECT NAME		"AIPL Joy Central" at sector 65, Gurugram, Haryana	
Sr. No.	Case No.	Case title	Appearance
1.	CR/3005/2023	Manjit Singh Pahal, Veena Rani Pahal and Jagjit Singh Pahal Vs. Wellworth Project Developers Private Limited & Advance India Project Limited	Ms. Priyanka Agarwal, Advocate Mr. Dhruv Rohatgi, Advocate
2.	CR/3006/2023	Veena Rani Pahal and Harsh Pahal Vs. Wellworth Project Developers Private Limited & Advance India Project Limited	Ms. Priyanka Agarwal, Advocate Mr. Dhruv Rohatgi, Advocate

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "AIPL Joy Central" situated at Sector-65, Gurugram being developed by the same respondent-promoters i.e., "Wellworth Project Developers Private Limited and Advance India Projects Limited". The terms and conditions of the buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with assured returns, delayed possession charges and execution of conveyance deed.
3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, assured returns clause and relief sought are given below:

Project Name and Location	"AIPL Joy Central" at Sector - 65, Gurugram, Haryana
Project area	3.987 acres
DTCP License No. and validity	249 of 2007 issued on 02.11.2007 valid up to 01.11.2024
RERA Registered or Not Registered	Registered Registration no. 183 of 2017 dated 14.09.2017 valid upto 31.12.2022
Possession Clause	44. Force Majeure ".....Subject to the aforesaid and subject to the allottee 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 Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to handover the possession of the Unit to the Allottee within a period of 54(fifty-four) months with a further grace period of 6 (six) months, from 1 September, 2017."
Occupation certificate	24.12.2021

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession/Pre-Termination Letter/ Cancellation Letter
1.	CR/3005/2023 Manjit Singh Pahal, Veena Rani Pahal and Jagjit Singh Pahal Vs. Wellworth Project Developers Private Limited & Advance India Project Limited DOF: 12.07.2023 Reply: 12.03.2024	0062A, Ground Floor *Re-numbered to GF-75 vide letter dated 20.05.2020 Super Area 346 sq. ft. Carpet Area 150.13 sq. ft. (Page no. 91 of complaint and page no. 128 of reply)	14.07.2017 (Page no. 55 of complaint and page no. 77 of reply)	TSC-Rs. 87,16,778/- AP-Rs. 38,65,931.78/- (Both as per SOA dated 16.03.2024 at page 141 of reply)	16.03.2023 (Constructive Possession) (Page no. 109 of complaint and page no. 134 of reply) Pre termination letter dated 25.04.2023 (Page no. 128 of complaint) *Cancelled on 30.09.2024 i.e., during the pendency of the present complaint before the Authority.
2.	CR/3006/2023 Veena Rani Pahal and Harsh Pahal Vs. Wellworth Project Developers Private Limited & Advance India Project Limited DOF: 12.07.2023 Reply: 12.03.2024	0062, Ground Floor *Re-numbered to GF-096 vide letter dated 20.05.2020 Super Area 669.72 sq. ft. Carpet Area 299.19 sq. ft. (Page no. 93 of complaint and page no. 124 of reply)	05.10.2017 (Page no. 57 of complaint and page no. 72 of reply)	TSC-Rs. 1,78,31,698/- AP-Rs. 78,49,892/- (Both as per SOA dated 29.02.2024 at page 139 of reply)	16.03.2023 (Constructive Possession) (Page no. 111 of complaint and page no. 130 of reply) Pre termination letter dated 25.04.2023 (Page no. 145 of complaint) *Cancelled on 30.09.2024 i.e., during the pendency of the present complaint before the Authority.

The complainants have sought the following relief(s):

1. Direct the respondent to quash the pre termination of the shop.
2. Direct the respondent to adjust the unpaid assured returns and delayed possession charges in the demand.



3. Direct the respondent to handover the possession of the shop.
4. Direct the respondent to immediately quash the illegal charges and delay interest in offer of possession.
5. Direct the respondent to immediately revise the account statement after quashing the illegal charges and delay interest in offer of possession and adjustment of assured return and DPC.
6. Direct the respondent to execute conveyance deed in favour of the complainants.
7. Direct the respondent to register the project in the name of AIPL.
8. Direct the respondent to stop the further sale and collection of money and future sale in the project till the outcome of enquiry or future thereon.
9. To issue show cause notice and impose heavy penalty for violation of terms of the RERA Act.
10. To revoke the registration certificate of the respondent.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
TSC	Total sale consideration
AP	Amount paid by the allottee/s

4. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/3005/2023 titled as "Manjit Singh Pahal, Veena Rani Pahal and Jagjit Singh Pahal Vs. Wellworth Project Developers Private Limited and Advance India Project Limited"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

5. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/3005/2023 titled as "Manjit Singh Pahal, Veena Rani Pahal and Jagjit Singh Pahal Vs. Wellworth Project Developers Private Limited and Advance India Project Limited"

Sr. No.	Particulars	Details
1.	Name of the project	"AIPL Joy Central", Sector 65, Gurugram, Haryana.
2.	Nature of the project	Commercial (Retail Shop)
3.	RERA Registered/not registered	Registered Registration no. 183 of 2017 dated 14.09.2017 valid upto 31.12.2022



4.	DTCP License no.	249 of 2007 dated 02.11.2007 valid upto 01.11.2024
5.	Name of licensee	Wellworth Project Developers Pvt. Ltd.
6.	Application Form	31.12.2016 (Page no. 46 of reply)
7.	Allotment letter	13.07.2017 (Page no. 46 of complaint and page no. 74 of reply)
8.	Builder buyer agreement executed on	14.07.2017 (Page no. 55 of complaint and page no. 77 of reply)
9.	Unit no.	0062A, Ground Floor (Retail Shop) *Re-numbered to GF-75 vide letter dated 20.05.2020 (Page no. 91 of complaint and page no. 128 of reply)
10.	Unit Area	346 sq. ft. Super Area 150.13 sq. ft. Carpet Area (Page no. 91 of complaint and page no. 128 of reply)
11.	Assured Returns Clause	32. Assured Return <i>"Where the Allottee has opted for payment plan as per Annexure-A attached herewith and accordingly, the Company has agreed to pay Rs.31,246/- (Rupees Thirty-One Thousand Two Hundred and Forty-Six only) per month by way of assured return to the allottee from 27.04.2017 till the date of issue of Notice of Offer of possession of the Unit. The return shall be inclusive of all taxes whatsoever payable or due on the return."</i> (Emphasis supplied)
12.	Possession clause	44. Force Majeure <i>".....Subject to the aforesaid and subject to the allottee 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 Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to handover the possession of the Unit to the Allottee within a period of 54(fifty-four)</i>



		<i>months with a further grace period of 6 (six) months, from 1 September, 2017."</i> <i>(Emphasis supplied)</i>
13.	Due date of possession	01.03.2023 (Calculated in accordance with clause 44 of the buyer's agreement i.e., within 54 months along with unqualified grace period of six months from 01.09.2017, which comes out to be 01.09.2022 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)
14.	Total sale consideration	Rs. 87,16,778/- (As per SOA dated 16.03.2024 at page no. 141 of reply)
15.	Total amount paid by the complainant	Rs. 38,65,931.78/- (As per SOA dated 16.03.2024 at page no. 141 of reply)
16.	Letter inviting objections for revision in building plans	21.11.2019 (Page no. 124 of reply)
17.	Update on Assured Returns	06.07.2020 ".....we wish to inform you that for the period starting post "Lockdown Period" i.e., 22 March 2020 till 15 June 2020 (including stabilization period): a) The monthly Return payable to you per month shall be divided into 2 parts of 50% each as Part-I AR and Part-II AR. b) Payment of Part-I AR: i. Part-I AR shall be due every month from the succeeding date of the Lockdown Period (AR Restart Date) ii. 45 days period from the AR Restart Date shall be period for payment of Part-I AR. The cumulative Part-I AR of the moratorium Period shall be paid in 4 equal instalments along with the assured return of 4 months starting from the end of the Period. iii. The payment of assured return as per the monthly payment cycle shall resume from 46th day from the AR Restart Date."

		(Page no. 129 of reply)
18.	Pre-Termination Letter and its reply	18.05.2021 (Page no. 94 of complaint and 144 of reply- To remit the outstanding dues of Rs. 36,17,229/-)
19.	Reply to Pre-Termination Letter	25.04.2023 received on 21.05.2021 (Page no. 144 of reply)
20.	Occupation certificate	24.12.2021 (Page no. 131 of reply)
21.	Letter sent by respondent to complainant informing about lease of subject unit	18.01.2023 (Page no. 147 of reply)
22.	Offer of possession	16.03.2023 (Constructive Possession) (Page no. 109 of complaint and page no. 134 of reply)
23.	Reminders sent by respondent to clear outstanding dues	06.04.2023 (Reminder for offer of possession), 06.05.2021, 11.04.2021, Final intimation letter dated 29.06.2017, 21.06.2017 (Page no. 140; 116 to 120 of reply)
24.	Pre-Termination Letter	E-mail dated 25.04.2023 (Page no. 128 of complaint)
25.	Cancellation Letter	30.09.2024

B. Facts of the complaint

6. The complainants have made following submissions in the complaint:
 - a) That the respondents advertised their project intensively and complainants booked a shop admeasuring 349 sq. ft. in the project AIPL Joy Central, Sector 65, Gurugram on 05.12.2016 along with booking amount of Rs.1,50,000/-. At the time of booking, the complainants opted for development linked plan.
 - b) That the respondent was issued allotment letter on 13.07.2017 after commencement of the RERA Act. Thereafter, the buyer's agreement was executed between M/s AIPL and complainants on 14.07.2017 just to create a false belief that they will deliver the shop and give assured return in time

bound manner. The said agreement was not in the prescribed format as mentioned in the RERA Act.

- c) That the total value of the unit was Rs.87,92,357/- exclusive of taxes and inclusive of IFMS out of which the complainants paid Rs.38,65,931/-.
- d) That as per clause 32 of the buyer's agreement, the respondent committed to pay assured return amounting to Rs.31,246/- per month from 27.04.2017 till offer of possession. As per clause 33 of the buyer's agreement the promoter is liable to make leasing arrangement for buyer and not to charge maintenance from its allottees.
- e) That the respondent paid the committed assured return till 05.11.2019 after that the promoter continuously paid the lesser amount till 20.04.2021 after that the promoter either did not pay or paid lesser amount to complainants till March 2020 as per AIPL's own volition and giving no clarity to the complainants and keeping them in dark.
- f) That as per the buyer's agreement clause 1.2, the promoter was liable to offer the possession on or before 01.03.2021 but till 2021 super structure of the building was not completed.
- g) That the respondent sent a letter to the complainants and did not disclosed about the revision of building plans and informed that there will just be change in numbering and now the unit allotted to the complainants would be called GF-75 in place of 0062A/GF. The complainants believed the word of the respondent and had not opposed the change of unit. The respondent had not shared any information regarding size, change in layout and location of the unit.
- h) That the respondent raised second demand which was due on completion of the super structure on 10.04.2021 but invoicing date was mentioned in demand dated 26.03.2021. Demand letter did not contained statement of

accounts, and a single-page demand letter was received mentioning the amount to be paid, which was not clear to the complainants. The AIPL unilaterally stopped assured return payment with no communication of the same given to the complainants.

- i) That the respondent sent demand letter on 11.04.2021 after receiving the reminder letter that the complainants requested to adjust the assured return which was pending from 2019 to till date. The respondent tactfully denied the proposal and sent a pre-termination letter dated 18.05.2021 to the complainants.
- j) That the complainants sent a letter to the respondent on 26.05.2021 and requested to withdraw the pre-termination letter. In August 2021 the complainants met the Director of the company, Mr. Inderjeet Singh in AIPL office and were ensured resolution in 3-4 days by scheduling another meeting. Thereafter, there was no communication from AIPL for long time until August 2022.
- k) That in February 2022, the complainants contacted AIPL, CFO, Mr. Anup from senior management and requested him to resolve issues but their requests were ignored. The respondent sent a letter dated 18.01.2023 about the new leasing arrangement.
- l) That the respondent offered possession on 16.03.2023 and raised further demand. The said demand was fully loaded with biased other charges and delayed interest without adjusting assured return which were not paid to the complainants. The complainants wrote an e-mail dated 29.03.2023 and raised issues regarding biased charges on offer of possession. Thereafter, a pre-termination letter was received by e-mail on 25.04.2023 and same was opposed by the complainants through multiple e-mails.

C. Relief sought by the complainants

7. The complainants have sought the following relief(s):

- I. Direct the respondent to quash the pre termination of the shop.
 - II. Direct the respondent to adjust the unpaid assured returns and delayed possession charges in the demand.
 - III. Direct the respondent to handover the possession of the shop.
 - IV. Direct the respondent to immediately quash the illegal charges and delay interest in offer of possession.
 - V. Direct the respondent to immediately revise the account statement after quashing the illegal charges and delay interest in offer of possession and adjustment of assured return and DPC.
 - VI. Direct the respondent to execute conveyance deed in favour of the complainants.
 - VII. Direct the respondent to register the project in the name of AIPL.
 - VIII. Direct the respondent to stop the further sale and collection of money and future sale in the project till the outcome of enquiry or future thereon.
 - IX. To issue show cause notice and impose heavy penalty for violation of terms of the RERA Act.
 - X. To revoke the registration certificate of the respondent.
8. 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

9. The respondents have contested the complaint on the following grounds.
- a) 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 buyer's agreement.

- b) That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The respondent had already offered possession of the unit in question to the complainants, who have failed to complete all the formalities and take possession of the unit, and as such, the respondent had complied with all its obligations under the agreement to sell.
- c) That the complainants are not an "Allottee" but an investor who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.
- d) That the complainants had approached the respondent and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing number "0062A, Ground Floor, admeasuring 349 sq. ft. situated in the project developed by the respondent, known as "AIPL Joy Central" at Sector 65, Gurugram, Haryana. Thereafter the complainants, vide application form DATED 31.12.2016, applied to the respondent for provisional allotment of a unit bearing number 0062A, Ground Floor, in the said project.
- e) That the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent 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.
- f) That at this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms. That in

the present case, the complainants purchased the unit only on the categorical understanding that the unit shall not be for physical possession.

- g) That pursuant to the execution of the application form, the respondent provisionally allotted unit no. GF/0062A in the said project vide provisional allotment letter dated 13.07.2017. That the unit allotted was provisional and subject to change as was categorically agreed between the parties.
- h) That the buyer's agreement was executed between the parties on 14.07.2017. The said agreement was duly signed by the complainants after properly understanding each and every clause contained in the agreement. The complainants were neither forced nor influenced by the respondents to sign the said agreement.
- i) That in the present case, the complainants have miserably failed to abide by the terms and conditions of the buyer's agreement and defaulted in remitting timely instalments. The respondent was constrained to issue payment reminder letters to the complainants. It was further conveyed by the respondent to the complainants that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.
- j) That the complainants as per their own decision and after fully understanding their obligations opted for flexi payment plan as per the buyer's agreement. The respondent developer raised all the demands as per the payment plan opted for by the complainant. However, the complainant defaulted in making timely payments, for which the respondent developer issued reminder letters and also made repeated follow-ups.
- k) That no payment has been made by the respondents since 2017. The last payment forwarded by the respondents dates back to April 2017. Despite default by the complainant in fulfilling their obligations, the respondents did

not default and completed the construction of the project without having regular payment of monies by the complainant. 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, 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 complainant.

- l) That the respondent was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour, etc being circumstances beyond the control of the respondent and force majeure circumstances, that the construction was severely affected during this period and the same was rightfully intimated to the complainant by the letter dated 30.11.2019. Despite all these factors, the respondent completed the construction within the stipulated time and offered the possession before the agreed due date of delivery.
- m) That there was a change in area allotted to the complainants and unit area was altered from 32.42 sq. mtrs. to 32.14 sq. mtrs., which was in terms of clause 10 of the buyer's agreement. Further, the unit numbering was also changed and unit no. 0062A on ground floor allotted to the complainants was re-numbered as GF-75. The said facts were duly intimated to the complainants vide letter dated 20.05.2020. The payment of assured returns was subject to force majeure conditions and applicable laws, orders, notifications, etc, affecting the construction of the project and for such period, assured returns were not to become due and payable by the

promoter and the promoter was not liable to pay assured return for such period.

- n) That till June 2019, the assured returns were given through cheques and post June 2019, the electronic clearing services were made mandatory. After the implementation of the BUDS Act, the payment of assured returns were impacted. After banning of the assured returns from the BUDS Act, there exists no liability of the respondents to pay the assured returns.
- o) That the respondents had applied for occupation certificate on 09.05.2021. The occupation certificate was thereafter issued in favour of the respondents on 24.12.2021.
- p) That upon the receipt of the occupancy certificate the respondents issued letter of offer of possession dated 16.03.2023 to the complainants. The respondents vide the said notice of offer of possession advised and requested the complainants to clear the outstanding dues including delayed payment charges and to complete the necessary formalities/documentation necessary for constructive handover of the unit in question to the complainants. Further, the respondent sent a reminder letter for offer of possession dated 06.04.2023 to the complainants.
- q) That the total sale consideration of the unit is Rs. 96,84,657/- plus stamp duty and registration charges, etc. The balance sale consideration amount of Rs. 56,37,061.60/- is still outstanding, which in spite of respondent's reminders has not been paid.
- r) That the respondent was constrained to issue a pre-termination letter dated 18.05.2021 calling upon the complainants to clear the outstanding dues, complete necessary facilities and register the conveyance deed, but to no avail. The respondent again issued a pre-termination letter dated 25.04.2023.

- s) That the respondent vide its letter dated 18.01.2023 intimated the complainants that it had entered into a letter of intent with Light Beam Logistics Solutions Private Limited for operation and management of retail store under the brand "Asics".
- t) That it is submitted that this Hon'ble Authority has no jurisdiction to deal with the cases pertaining to Assured returns and leasing. The Act is entirely silent on the same. The legislature intended to bring the jurisdiction of the Act to extend to leasing arrangements, the same would have been incorporated. Thus, the respondent cannot pay the assured returns to the complainants by any stretch of imagination in view of the prevailing laws.
- u) That the complainant shall be directed to file pursue the complaint before the civil court for any dispute arises from the agreement in the form of investment agreement and lease agreement. The respondent vide its letter dated 18.01.2023, intimated the complainants that it had entered into a letter of intent Light Beam Logistics Solutions Private Limited for operation and management of retail store under the brand "Asics". Without prejudice to the above-mentioned, the relief sought by the complainants cannot be justified.
10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. 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

12. 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 purposes 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 a complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

13. 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.

14. 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 the respondents.

F.I Objection regarding delay due to force majeure circumstances.

15. It is contended on behalf of respondents that due to various circumstances beyond its control, it could not speed up the construction of the project,

resulting in delays such as various orders passed by NGT and Hon'ble Supreme Court. All the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other Authorities cannot be taken as an excuse for delay as it is a well-settled principle that a person cannot take benefit of his own wrong.

16. It is observed that the respondents were liable to complete the construction of the project, and the possession of the said unit was to be handed over by 01.09.2022 and is claiming benefit of lockdown amid covid-19. In view of notification no. 9/3-2020 dated 26.05.2020, the Authority has allowed six months' relaxation due to covid-19 and thus with same relaxation, even if due date for this project is considered as 01.09.2022 + 6 months, possession was to be handed over by 01.03.2023, but the respondents have failed to handover possession even within this extended period. Hence, all the pleas advanced in this regard, except for that of Covid-19 for which relaxation of 6 months is allowed by the authority are devoid of merits.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to quash the pre termination of the shop.

17. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will affect the result of the other relief and the same being interconnected.

18. The factual matrix of the case reveals that the complainants applied for booking a unit in the project of the respondents, namely, "AIPL Joy Central", situated at Sector-65, Gurugram vide application form dated 31.12.2016. Thereafter, the respondents issued allotment letter dated 13.07.2017



wherein the complainants were allotted a unit bearing no. 0062A situated on ground floor, admeasuring 349 sq. ft. for a basic sale consideration of ₹85,21,533/-. Thereafter on 14.07.2017, the buyer's agreement was executed between the parties. Further vide letter dated 20.05.2020 the unit earlier allotted to the complainants was renumbered as GF-75 and further super area of the unit was revised to 346 sq. ft. in terms of clause 10 of the buyer's agreement executed between the parties.

19. The complainants agreed to pay the instalments as per the flexi payment plan annexed with the allotment letter dated 13.07.2017. The complainants had paid an amount of ₹38,65,931.78/- against the sale consideration of the unit as per the statement of account dated 16.03.2024. The due date of possession is to be calculated as per clause 44 of the buyer's agreement executed between the parties on 14.07.2017. The relevant clause is reiterated as under:

44. Force Majeure

".....Subject to the aforesaid and subject to the allottee 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 Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to handover the possession of the Unit to the Allottee within a period of 54 (fifty-four) months with a further grace period of 6 (six) months, from 1 September, 2017."

(Emphasis supplied)

20. Thus, clause 44 of the buyer's agreement obligates the respondents to complete the construction of the said unit and hand over possession of the unit within a period of 54 months with an unqualified grace period of 6 month from 01.09.2017. The said period of 60 months (54 months + 6 months) expires on 01.09.2022. Accordingly, the due date of possession comes out to be 01.09.2022. Further as per **HARERA notification no. 9/3-**

2020 dated 26.05.2020, an extension of 6 months is granted for the projects having a completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 01.09.2022 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to the outbreak of Covid-19. As such the due date for handing over of possession comes out to be 01.03.2023.

21. The respondents contended that the complainants are defaulters, having failed to adhere to the agreed payment schedule. It was submitted that multiple reminders and final opportunities were extended to the complainants, and upon their continued default, the allotment was cancelled vide letter dated 30.09.2024.
22. On the other hand, the complainant-allottees challenged the validity of the cancellation letter dated 30.09.2024 primarily on the ground that the demand raised by the respondents on 26.03.2021 was premature, as it was contingent upon the completion of the superstructure i.e., on 10.04.2021, which had not been achieved at the time; thus, the demand dated 26.03.2021 is alleged to be invalid.
23. The Authority observes that as per the payment plan agreed between the parties the complainants were obligated to pay the due amount on completion of superstructure. The plea of the complainants for invalidating the demand raised by the respondents on completion of superstructure without actually completing the super structure 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. Secondly, the subject unit is situated in the retail block for which

the OC has already been obtained by the respondents from the competent authority on 24.12.2021, which implies that the superstructure of the retail block is complete in all respect. Therefore, the said demand dated 26.03.2021 is valid.

24. The authority before illustrating upon the relief sought by the complainants shall observe whether the cancellation letter dated 30.09.2024 issued by the respondents is valid or not?
25. 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	₹ 95,694/-
2.	Within 5 months of booking (less of booking amount)	40.00%	₹ 33,12,919/-
3.	On completion of super structure- Retail Block	40.00%	₹ 34,08,613/-
4.	On offer of possession	20.00%	₹ 19,75,131/-

26. It is matter of record that the complainants booked the aforesaid unit under the above-mentioned payment plan and paid an amount of ₹38,65,931.78/- towards the sale consideration of ₹87,16,778/- which constitutes 42.05% of the sale consideration and have paid the last payment on 30.06.2017.
27. It is pertinent to mention here that the respondents raised the demand of ₹37,62,952.70/-, instalment due on completion of super structure on 26.03.2021 and the allottees were under obligation to make payments towards consideration of allotted unit as per payment plan annexed with allotment letter dated 13.07.2017 as per section 19(6) and 19(7) of Act of 2016. The respondents after giving reminders dated 11.04.2021, 06.05.2021 and 18.05.2021 for making payment for outstanding dues as per payment plan, finally cancelled the subject unit vide letter dated 30.09.2024. Despite issuance of aforesaid numerous reminders, the complainants have failed to

clear the outstanding dues. The respondents have given sufficient opportunity to the complainants before proceeding with termination of allotted unit. Thereafter, the respondents 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-75 booked in our project "AIPL 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 ₹36,17,229.00 /- (Rupees Thirty- Six Lakhs Seventeen Thousand Two Hundred and Twenty-Nine 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."*

(Emphasis supplied)

28. Further, as per clause 24 of the application form dated 31.12.2016, the respondents have 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....."

(Emphasis supplied)

29. 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 respondents have 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.
30. Thereafter, the respondents issued demand letters and further, issued pre-termination letters to the complainants. The respondents cancelled the unit of the complainants after giving adequate demands notices. Thus, the ***cancellation in respect of the subject unit is valid*** and the relief sought by the complainants is hereby declined as the complainant-allottees have violated the provisions of Section 19(6) and (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 complainants after certain deductions as prescribed under law.
31. Now, the second issue for consideration arises as to whether after cancellation the balance amount after deduction of earnest money of the basic sale consideration of the unit has been sent to the claimants or not. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of

section 74 of Contract Act 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such there is hardly any actual damage. The National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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."

(Emphasis supplied)

32. Thus, keeping in view the law laid down by the Hon'ble Apex court and provisions of Regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondents can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondents are directed to refund the amount received from the

complainants after deducting 10% of the basis sale consideration and return the remaining amount 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 i.e., 30.09.2024 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules, 2017.

- G.II Direct the respondent to adjust the unpaid assured returns and delayed possession charges in the demand.**
- G.III Direct the respondent to handover the possession of the shop.**
- G.IV Direct the respondent to immediately quash the illegal charges and delay interest in offer of possession.**
- G.V Direct the respondent to immediately revise the account statement after quashing the illegal charges and delay interest in offer of possession and adjustment of assured return and DPC.**
- G.VI Direct the respondent to execute conveyance deed in favor of the complainants.**
- G.VII Direct the respondent to register the project in the name of AIPL.**
- G.VIII Direct the respondent to stop the further sale and collection of money and future sale in the project till the outcome of enquiry or future thereon.**
- G.IX To issue show cause notice and impose heavy penalty for violation of terms of the RERA Act.**
- G.X To revoke the registration certificate of the respondent.**

33. In view of above-mentioned findings of the Authority, all the aforesaid relief(s) sought by the complainants become redundant.

H. Directions of the authority

34. 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. Cancellation is valid. No case of delay possession charges is made out. The respondents are directed to refund the paid-up amount**



after deducting the earnest money which shall not exceed the 10% of the basic sale consideration along with interest at the prescribed rate, i.e., 11.10% per annum from the date of cancellation, i.e., 30.09.2024 till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017, ibid. The amount already paid by the respondents to the complainants, if any may be adjusted from the refundable amount and shall return the balance amount to the complainants.

II. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

36. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

37. Files be consigned to the registry.

Dated: 09.07.2025

HARERA
GURUGRAM

Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram