

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

**Date of order:** 13.05.2025

NAME OF THE BUILDER		ADVANCE INDIA PROJECTS LTD. & anr.	
PROJECT NAME		AIPL JOY GALLERY	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/180/2025	Krishan Gopal & Krishan Kanta Goyal V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.	Sh. Sanjeev Sharma Sh. Venket Rao
2.	CR/181/2025	Mahesh Kumar Malik & Harpreet Malik V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.	Sh. Sanjeev Sharma Sh. Venket Rao
3.	CR/182/2025	Meena Oberoi & Sindhi Dry Fruits Impex V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.	Sh. Sanjeev Sharma Sh. Venket Rao
4.	CR/184/2025	Naresh Kataria & Sapna Kataria & Kavita Kataria V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.	Sh. Sanjeev Sharma Sh. Venket Rao
5.	CR/185/2025	Upjit Singh Mac V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.	Sh. Sanjeev Sharma Sh. Venket Rao
6.	CR/186/2025	Varun Gupta V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.	Sh. Sanjeev Sharma Sh. Venket Rao

**CORAM:**

Shri. Arun Kumar  
Shri. Vijay Kumar Goyal  
Shri. Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**ORDER**



1. This order shall dispose of all the 6 complaints titled as above filed before this authority in Form CRA 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 projects, namely, 'AIPL Joy Gallery' being developed by the same respondent promoters i.e., M/s Advance India Projects Ltd. & ors.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"AIPL Joy Gallery", Sector 66, Gurugram, Haryana.
<p><b>Clause 5</b></p> <p><i>The promoter shall abide by the time schedule for completing the said Unit/Project, handing over the possession of the said unit to the allottee (which for the purpose of this agreement shall mean issuance of notice of offer of possession of the unit by the promoter to the allottee) and the common area to the association of allottees or the governmental authority, as the case may be, as provided under rule 2(1)(f) of the Rules or <b>as disclosed at the time of registration of the project with the authority i.e., 13.05.2025</b> (including extension granted by RERA by invoking "Force Majeure" clause) or such other extended period as may be intimated and approved by the authority from time to time. The completion of the project shall mean grant of occupation certificate for the said unit/project. It is agreed between the parties that for that purpose of this agreement "handing over the possession of the said unit" shall mean issuance of notice of offer of possession of the unit by the promoter to the allottee.</i></p>	



<b>Due date of possession</b>	13.05.2025					
<b>Occupation certificate</b>	09.05.2024 [pg. 117 of reply]					
<b>Comp no.</b>	CR/180/2025	CR/181/2025	CR/182/2025	CR/184/2025	CR/185/2025	CR/186/2025
<b>Unit no.</b>	090, Ground floor	0088, Ground floor	078, Ground floor	0005, Ground floor	0104, Ground floor	086, Ground floor
<b>Allotment letter</b>	04.01.2021	22.12.2020	23.01.2021	19.04.2021	15.12.2020	03.11.2020
<b>Date of buyer's agreement</b>	13.03.2023	15.02.2021	20.03.2023	20.03.2023	18.09.2024	22.08.2024
<b>Addendum to BBA</b>	13.03.2023	NA	20.03.2023	20.03.2023	18.09.2024	22.08.2024
<b>AR clause</b>	3.1	NA	3.1	3.1	3.1	3.1
<b>Sale consideration</b>	₹2,48,03,664/-	₹1,92,31,779/-	₹1,11,97,443/-	₹2,74,77,488/-	₹3,16,99,848/-	₹2,08,67,757/-
<b>Total amount paid</b>	₹2,49,04,627/-	₹1,97,19,857/-	₹1,12,48,939/-	₹2,71,15,483/-	₹3,12,39,425/-	₹2,38,72,225/-
<b>Offer of constructive possession</b>	18.05.2024	18.05.2024	03.06.2024	18.05.2024	18.05.2024	18.05.2024
<b>Assured return paid</b>	₹4,99,796/-	₹8,63,234/-	₹8,63,234/-	₹8,19,779/-	₹8,37,205/-	₹14,22,260/-
<b>Assured return paid till</b>	Dec 2023	Dec 2023	Dec 2023	Dec 2023	Dec 2023	Dec 2023

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead



case **CR/180/2025 titled as Krishan Gopal & Krishan Kanta Goyal V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, and other reliefs sought by the complainants.

**A. Unit and project related details**

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

**CR/180/2025 titled as Krishan Gopal & Krishan Kanta Goyal V/s Advance India Projects Ltd. & RC Sood & Co. Pvt. Ltd.**

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joy Gallery", Sector-66, Gurgaon
2.	Nature of project	Commercial colony
3.	<b>RERA registered/not registered</b>	RC/REP/HARERA/GGM/404/136/2020/20 dated 17.08.2020
4.	<b>DTPC License no.</b>	197 of 2008 dated 05.12.2008
5.	Unit no.	090 on Ground floor [pg. 56 of complaint]
6.	Unit area admeasuring	522 sq. ft. [Super area] [pg. 56 of complaint]
7.	Allotment letter	04.01.2021 [pg. 42 of complaint]
8.	Date of registered builder buyer agreement	13.03.2023 [pg. 51 of complaint]
9.	Total sale consideration	₹2,48,03,664/- [TSC] [pg. 56 of complaint]
10.	Addendum to agreement to sale for AR	13.03.2023 [pg. 81 of complaint]
11.	Assured return clause	Clause 3.1





		₹81,483/- p.m. from the date of receipt of ₹1,29,78,010/- till the date of filling of application for grant of OC
12.	Amount paid by the complainant	₹2,49,04,627/- [As per SOA dated 26.12.2024 at pg. 96 of complaint]
13.	Possession clause	<b>Clause 5</b> <i>The promoter shall abide by the time schedule for completing the said Unit/Project, handing over the possession of the said unit to the allottee (which for the purpose of this agreement shall mean issuance of notice of offer of possession of the unit by the promoter to the allottee) and the common area to the association of allottees or the governmental authority, as the case may be, as provided under rule 2(1)(f) of the Rules or as disclosed at the time of registration of the project with the authority i.e., 13.05.2025 (including extension granted by RERA by invoking "Force Majeure" clause) or such other extended period as may be intimated and approved by the authority from time to time. The completion of the project shall mean grant of occupation certificate for the said unit/project. It is agreed between the parties that for that purpose of this agreement "handing over the possession of the said unit" shall mean issuance of notice of offer of possession of the unit by the promoter to the allottee.</i>
14.	Due date of possession	<b>13.05.2025</b>
15.	Application for OC	<b>23.08.2023</b> <b>[pg. 116 of reply]</b>
16.	Occupation certificate	09.05.2024 <b>[pg. 117 of reply]</b>
17.	Offer of constructive possession	18.05.2024 <b>[pg. 99 of complaint]</b>
18.	AR paid	₹4,99,769/- till Dec 2023

**B. Facts of the complaint**



7. The complainants have submitted as under:

- a. That in December 2019, based on various representations made by the Respondents with the respect to the Commercial Space in the Project namely 'AIPL Joy Gallery' situated at Sector-66, Gurgaon, Haryana ("Project") of the Respondents and based on the assurances given by the Respondents and its representatives, the Complainants paid an amount of Rs. 5,00,000/-. Subsequently, in December 2020, the Complainants paid an additional amount of Rs.15,26,738/-, bringing the total payment to Rs. 20,26,738/- towards the booking of commercial space and consequently, the Respondents allotted the Retail Shop bearing Unit No. 0090, Ground Floor, having 1119.03 sq. ft of super Area in the Project ("Unit") vide allotment letter dated 04.01.2021 ("Allotment Letter"). It is noteworthy to mention herein that the allotment was made two years after the booking amount was received by the Respondent. It is pertinent to mention that the Complainants opted for construction-linked payment plan, and as per the payment plan provided by the Respondents the total consideration for the said Unit was Rs. 2,22,58,029/-.
- b. That the Respondent kept following the payment plan which was annexed to the Allotment Letter and the Complainants complied with all the payment demands as and when raised by the Respondents. It is pertinent to state that the same rhythm followed for almost two (2) years and during this duration the Complainants kept rigorously following-up with the Respondents for execution of the Agreement for Sale of the Unit. After a silence on the said issue by the Respondents, ultimately the Agreement for Sale was executed





between the parties on 13.03.2023 ("Agreement") solely on assurances of the Respondents that this Agreement is a mere formality and is crafted in a specified manner which is permissible by law and at this juncture, it is pertinent to mention that these assurances were given solely to falsely convince the Complainants in believing that the Agreement is not one-sided but is crafted keeping in the intricacies of law.

- c. That it apposite to state herein that the Agreement contained various one-sided & arbitrary clauses which were unjustifiably favoring the Respondents going to the extent of creating a better right/title over the Unit of the Respondents than the Complainants despite there being total abidance by the Complainants of the payment plan situated in the Agreement and the Allotment Letter.
- d. That the Complainants were complying with the payment demands as when raised by the Respondents believing that the payment demands are raised on achieving of the respective milestones only. However, the true colors of the Respondents were evident when upon scrutiny it was revealed that the Respondents were raising payment demands without having reached the appropriate milestone. Consequently, the Complainants sent emails to the Respondents addressing their issues/queries with respect to the inappropriate demand raised without reaching the construction milestones. However, the same was of no avail as instead of giving any concrete response the Respondents kept raising the payment demand. As such, the Complainants were not left with any other option but to comply with such frivolous demands.



- e. The Complainants and the Respondents were in regular touch, as the Complainants kept inquiring about the construction status of the Unit and the Project. Further, the Complainants also had followed-up with the Respondents to release the assured returns which the Complainants were obligated to receive from the Respondents and the same were duly paid by the Respondents to the Complainants.
- f. That the Respondents raised a payment demand on reaching the milestone of 'On Application of the Occupancy Certificate' however, to the utter shock of the Complainants, it was discovered that the Respondents had made these demands without completing the requisite construction milestone. The project was far from completion, making the application for the occupancy certificate impossible.
- g. As a result of these arbitrary, illegal, and malicious demands raised by the Respondents, the Complainants were compelled to write emails seeking detailed explanations concerning the frivolous demands raised by the Respondents. It is apparent to highlight herein the fact that the construction milestone was not achieved by the Respondent and even then, the Respondents in order to usurp the hard-earned money of the Complainants has resorted to raise these frivolous demands. Subsequently, the Complainants raised their grievances concerning the same by way of email communications, however the Respondents instead of resorting to provide a response justifying the demands has proceeded to not to answer it and has proceeded to threaten the Complainants with the cancellation of their Unit. Faced with such coercion, the



Complainants were left with no option but to make the payment under duress.

- h. That the Respondents sent a Notice of Offer of Constructive Possession dated 18.05.2024, wherein the Complainants were invited to accept just the constructive possession by making the full and final payment, which should have been raised only in case the complete possession of the Unit would have been offered by the Respondents to the Complainant, however instead to acting in the manner so mentioned, the Respondents over and above this had imposed several unwarranted charges with any prior intimation, upon the Complainants. At this juncture, it is apposite to bring to the kind consideration of this Hon'ble Authority that the Respondents have levied interest of Rs. 4,70,320/- on the alleged delay in payments by the Complainant. That the Complainant was constrained to withhold the payments raised by the Respondents as the same were raised by the Respondents without achieving the milestones in accordance with the construction linked payment plan. The Complainants raised questions about the such absurd charges raised by the Respondents, however, the same fell onto the deaf ears of the Respondents.
- i. That the Complainants being puzzled with the frivolous overhead charges raised by the Respondents and other issues pertaining to the right of the Complainants over the Unit, was constrained to send emails to the Respondents addressing all the issues in detail including but not limited to handing over the complete possession with rights, tittle and interest and sought for explanation of the



arbitrary charges mentioned in aforesaid paragraphs which were levied upon the Complainants. However, till date there is no reply from the end of the Respondents to the email of the Complainants and the Respondents have made all the possible efforts to break all sorts of professional means of communication with the Complainants and thereby leaving the Complainants in hanging to make a thoughtful call with respect to proceeding ahead in the transaction by paying the last payment demand as the malicious conduct of the Respondents makes it clear that there right over the Unit has been made limited by giving force to the Agreement.

- j. That the Complainants have approached this Hon'ble Authority seeking for the possession of the Unit, waiver of arbitrary charges and other interim reliefs. Furthermore, the Project is registered with this Hon'ble Authority and hence, the present complaint falls within the jurisdiction of this Hon'ble Authority.
- k. It is submitted that the Respondents have failed to offer a possession with rights, interest and title of the Unit to the Complainants. Furthermore, the Respondents have levied various forms of unwarranted and exorbitant overhead costs. Over and above this, the Respondents despite innumerable follow-ups have inordinately failed to give any explanation for imposing such costs. The Complainants feel cheated because it is apparent that the promises made by the Respondents were nothing but false and dishonest as the Complainants have made almost the entire payment as per the payment plan but now at the time of raising the final tranche the Respondents have chosen to act in contrast of the



promises made which was to give the complete possession with rights, interest and title and these actions of the Respondents are based on the Agreement which is clearly one-sided & arbitrary. Hence, it will be appropriate to state that the Respondents stand in violation of Section 11(4)(a), Section 17 and various other provisions of the Act.

**C. Relief sought by the complainant:**

8. The complainant has sought following relief(s):

- a. Direct the respondent to handover the physical possession of the commercial space complete in all respects.
- b. Direct the respondent to lease the commercial space in furtherance of clause 5 of the addendum agreement dated 13.03.2023.
- c. Direct the respondents to pay interest of @10.50% per annum on the amount deposited by the complainants with the respondents with effect from the date of delivery promised in the agreement for sale executed on 13.03.2023, till the date of actual handover of physical possession of unit, complete in all respects in the favour of the complainants.
- d. Direct the respondents to waive off the complete amount of interest levied (if any) on the complainants for delay in making the payments for the period from the date of delivery promised in the agreement for sale executed on 13.03.2023, till the actual handover of physical possession of unit to the complainants, complete in all respects, in the favour of the complainants.
- e. Direct the respondents to waive off/ adjust/ refund all the arbitrary costs imposed, over and above the amount mentioned in the



agreement for sale executed on 13.03.2023 such as electrical switch in station charges & deposit charges, infrastructure augmentation charges, electric meter charges, labour cess and sinking fund, mall operation & marketing charges.

- f. Direct the respondent, to pay a sum of ₹5,00,000/- to the complainants towards compensation for mental agony caused by the respondents.
  - g. Direct the respondents, to pay a sum of ₹2,00,000/- to the complainants towards litigation costs.
9. On the date of hearing, the authority explained to the respondent /promoters 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**

10. The respondent has contested the complaint on the following grounds:
- a. That the instant Reply is being filed on behalf of the Advance India Projects Ltd. (hereinafter referred to as the "Respondent No.1") through its Authorized Signatory Mr. Ankush Yadav, who is duly authorized to act on behalf of the Respondent vide Board Resolution dated 28.09.2024. That at the outset, it is relevant to state that Respondent is a real estate company engaged in the business of the development and construction of real estate projects and is one of the reputed names in the real estate sector in the National Capital Region (NCR) and largely recognized in the real estate sector for its successful Projects.



- b. That the Complainants with an intention of earning a lease rental invested in the instant Project and submitted an Application Form dated 19.12.2020 requesting the Respondent No.1 to allot a Unit bearing No. 0090 admeasuring 1119.03 sq. ft. Super Area approximately, on the Ground Floor (hereinafter referred to as the "Subject Unit/Unit") in the in the Project "AIPL Joy Gallery" situated at Sector 66, Village Badshapur, Gurugram (hereinafter referred to as the "Project");
- c. Considering the request of the Complainants, the Subject Unit was allotted to the Complainants vide Allotment Letter 04.01.2021. That post issuance of the Allotment Letter it was the Respondent No.1 who kept requesting the Complainants to execute the Agreement for Sale. That the Respondent No.1 has specifically sent Emails dated 04.01.2021 (i.e., on the date of issuance of the Allotment letter), 05.04.2021, 02.07.2021, 22.05.2022, 26.11.2022, 27.12.2022 and 04.03.2023 requesting the Complainants to execute the Agreement for Sale. However, the Complainants completely ignored the said emails.
- d. Thereafter, after much persuasion by the Respondent No.1, the Agreement for Sale dated 13.03.2023 (hereinafter referred to as the "AFS") was executed between the Complainants and the Respondents and the same was registered before the Sub-Registrar, Badshahpur. An Addendum to the Agreement for Sale dated 13.03.2023 was also executed between the Complainants and the Respondents, recording the Lease Grant Rights in favour of the



Respondent No.1 and other terms and conditions with respect to constructive possession of the subject Unit.

- e. Application for grant of Occupation Certificate was submitted before the Competent Authority on 23.08.2023 and the same was granted on 09.05.2024. That upon receipt of Occupation Certificate the Respondent No.1 issued a Notice of Offer of Constructive Possession dated 18.05.2024, wherein Respondent No.1 apprised the Complainants about the receipt of the Occupation Certificate and requested the Complainants to complete the requisite formalities for handover of 'Constructive Possession' of the unit and execution of Conveyance Deed;
- f. That the present Complaint has been preferred by the Complainants before the Ld. Authority on frivolous and unsustainable grounds and the Complainant has not approached the Ld. Authority with clean hands and is trying to suppress the material facts relevant to this matter. The Complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the Respondent with malicious intent and with the sole purpose of extracting unlawful gains from the Respondent. The instant complaint is not maintainable in the eyes of the law, is devoid of merits and is fit to be dismissed in limine.
- g. The Respondent seeks to raise the following objections/submissions, each of which has been taken in the alternative and are without prejudice to the other. 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 allegation made by the Complainants in the complaint.

- h. It is important to bring it to the knowledge of the Ld. Authority that the present Complaint is an utter abuse of the process of law as the reliefs sought by the Complainants are not maintainable. That details as to how the reliefs sought by the Complainants are not maintainable are provided in the ensuing paragraphs. Aforementioned Relief are not maintainable: It is most humbly submitted that the aforementioned reliefs are not maintainable solely on the ground that as per contractual terms and conditions, mutually agreed between the Complainants and the Respondents, the Unit was booked solely for leasing purposes and not for self-use, hence handing over of the physical possession was never the intent between the parties. In fact, this intent was abundantly clarified and agreed to by the Complainants at the stage of booking itself and further at the time of execution of the Agreement for Sale and Addendum thereof. Also, because the Complainants themselves have entrusted the Respondent No.1 with the Leasing Rights of the Units.
- i. It is pertinent to mention herein that the Complainants are investors who had approached the Respondent No.1 for investing in one of the Project of the Respondent No.1 to earn maximum returns on their investment by way of receiving assured return and lease rental benefits. That the Complainants specifically informed the Respondent No.1 that they didn't have the requisite knowledge of leasing the unit to bigger brands, therefore they are looking for a Developer who could get their unit leased out on behalf of the



Complainants. That adhering to the request of the Complainants, the Respondent No.1 apprised the Complainants about all the Projects of the Respondent No.1 in Gurugram.

- j. That the Complainants after due consideration, wilfully intimated to the Respondent No. 1 about their desire to invest in the Project "AIPL Joy Gallery" situated at Sector 66, Village Badshapur, Gurugram. That the Complainants after a detailed perusal of all the information about the Project with respect to Project Land, RERA approvals, submitted an Application Form dated 19.12.2020, for booking a Unit bearing No. 90, on the Ground Floor of the Project.
- k. That from a mere perusal of the aforementioned terms and conditions of the Booking Application and Addendum Agreement, it is evident that the Complainants have invested in the instant Project with the sole motive of earning lease rental by getting the subject Unit leased through Respondent No.1. That it was never agreed between the Complainants and the Respondent No.1 that the physical possession of the Subject Unit shall be handed over to the Complainants or the Complainants shall lease out the subject Unit by themselves. That the whole idea behind the leasing of the Subject Unit through the Respondent No.1 was that the subject Unit should be leased out along with other Units of the Project thereby generating lease rental for all the Allottees of the Project who by themselves could not get big brands to take their units on lease.
- l. It is reiterated herein that the arrangement between the parties was to transfer the constructive possession of the Subject Unit and the same was categorically acknowledged in Application Form and re-



confirmed between the Parties by executing the Addendum Agreement. It is pertinent to mention herein that no protest in this regard has ever been raised by the Complainants and the same was willingly and voluntarily agreed between the Parties. That it is an entrenched principle of law that a lease may be limited to take effect either immediately or from a future date. That by virtue of such an understanding, the Complainants/ allottee enjoys the right of the lessor and hence, enjoys the constructive possession of the Unit, after the offer of possession.

- m. It is noted herein that a lessor is always considered to part with the physical possession of the property and stay in constructive possession through the lessee. That such a relationship is valid and has been recognized in law at various occasions.
- n. That without prejudice to the objections raised in the present Reply and without admitting the averments made in the Complaint under Reply, it is most humbly submitted that since the Complainants themselves have approached the Respondent No.1 for investing in the Project to earn lease rental by authorizing the Respondent No. 1 to lease out the Subject Unit on behalf of the Complainants and it was agreed at the stage of booking of the Unit itself that the physical possession cannot be handed over to the Complainants as the Units were specifically for leasing purposes and not for self-use. Therefore, the Complainants at this juncture cannot back out from the agreed terms and conditions of the entire transaction which is specifically recorded in the Addendum Agreement.





- o. That from a mere perusal of the aforementioned submissions, it is evident that physical possession of the subject Unit and leasing the Unit by themselves was never the intent of the Complainants. Therefore, the reliefs of the Complainants wherein they are seeking physical possession and declaration of lease right in their favour are not maintainable and the present Complaint under reply is liable to be dismissed. That as per Clause 7.2 of the AFS, it was mutually agreed that post obtaining the Occupation Certificate by 13.05.2025 or as extended by the RERA Authority, the Respondent No.1 shall send the Notice of Offer of Possession of the Unit within 3 months from the date of approval of Occupation Certificate. That as per the agreed terms and conditions of the AFS, the due date in the present case is 13.08.2025 i.e., three months from the date of 13.05.2025.
- p. It is pertinent to mention herein that Respondent No.1 had applied for the issuance of the Occupation Certificate on 23.08.2023 before the Competent Authority, and the same was issued on 09.05.2024. That the Respondent No.1, post receipt of the Occupation Certificate and as per the agreed terms and conditions between the Parties, offered the constructive possession of the subject Unit on 18.05.2024. Therefore, it is evident that the constructive possession of the subject Unit was offered way before the due date as agreed under the AFS.
- q. That the Complainants vide the present Complaint is seeking delayed possession interest. However, it is noted herein that as per provisions of Section 18 of the RERA Act, 2016 the delayed possession interest can only be claimed if the Promoter/Developer



fails to complete or is unable to give possession of the unit in accordance with the terms and conditions of the agreement executed between the parties.

- r. Furthermore, it is an established position of law that in order to claim delayed possession interest, it is necessary that the Promoter fails to complete the project and fails to hand over the possession of the unit by the date specified in the Agreement to Sale. That from a mere perusal of the supra case, it is clear that the delayed possession interest can only be granted in cases where the promoter fails to complete the unit or fails to handover the possession. However, it is reiterated herein that since the unit of the Complainants was already completed and the Occupation Certificate was also obtained by the Respondent No.1 before the due date, therefore, in view of the provisions of Section 18 the relief of delayed possession interest claimed by the Complainants before the Ld. Authority is not maintainable. Therefore, keeping in view the legislative intent behind enacting Section 18 of the RERA Act, 2016 the present Complaint is liable to be dismissed due to its maintainability.
- s. It is pertinent to mention herein that in the present matter, it was agreed between the Complainants and the Respondents that the Complainants shall make the timely payment of the instalments. That it was categorically agreed under Clause 9.3 (a) of the Complainants shall be considered under a condition of default if the Complainants fail to make payment demands raised by the Respondent No.1. It is noted herein that the Complainants are habitual defaulters who have not paid the instalment on the due





date, therefore, the Respondent No. 1 was constrained to issue multiple reminder letters to the Complainants on the achievement of respective milestone.

- t. It is not out of place to mention herein that the Complainants were under obligation to pay an amount of ₹1,09,51,392.45/- on the achievement of milestone "On Completion of Retail Super Structure". Though the Complainants were well aware about payments from the stage of booking itself, the Respondent No.1 being a responsible developer, especially because the payment of the Complainants was above Rs. One Crore, vide its Letter dated 18.01.2023 informed the Complainants that the construction of the Project was ongoing on as scheduled and the instalment due on the milestone "On Completion of Retail Super Structure" will be raised in coming months. Therefore, the Respondent No.1 requested the Complainants to be ready with ₹1,09,51,272/- which was to be paid by the Complainants upon the issuance of said Demand Letter.
- u. That the Complainants, despite receiving the aforementioned Reminder Letters miserably failed to pay the outstanding dues on time. That the same is violation of Section 19 (6) of the RERA Act, 2016 which lays the duty on the Allottee to make necessary payments pertaining to the allotment of the Unit as per the payment schedule agreed under the Agreement. That the Complainants in the present matter are raising false and frivolous allegations that the demands were not raised by the Respondent No.1 on the achievement of the respective milestone. It is most humbly submitted that the Complainants are raising false and frivolous



allegations with a malafide intention of extracting illegitimate benefits from the Respondents.

- v. It is reiterated herein that as per the agreed terms and conditions of the AFS, the due date in the present case is 13.08.2025, that the Respondent No.1 has applied for the grant of the Occupation Certificate on 23.08.2023 and the same was issued by the Competent Authority on 09.05.2024. Thereafter, the constructive possession of the Unit was offered to the Complainants on 18.05.2024. It is most humbly submitted that since the Occupation Certificate was granted way before the due date of possession, therefore, it is evident that the demands letters issued by the Respondent No.1 are raised on the achievement of respective milestones. It is pertinent to mention herein that it was agreed between the Complainants and the Respondent No.1 that the Respondent No.1 shall pay the Complainants an amount of ₹81,483.57/- as an Assured Return.
- w. That the Respondent No.1 as per the agreed terms and conditions, paid an amount of ₹4,99,769/- as Assured Return to the Complainants. However, the Complainants with a malafide intention did not disclose the amount which was received by the Complainants as an Assured Return. That from a mere perusal of the aforementioned submissions, it is abundantly clear that the Complainants are doing nothing more than intentionally raising frivolous and misleading allegations against the Respondents in order to extort monies and make unlawful gains.
11. 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 those undisputed documents and submissions made by the parties.

12. Written submissions filed by the parties are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

**E. Jurisdiction of the authority**

13. 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**

14. 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**

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

**Section 11(4) (a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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)** 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.

16. 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 relief sought by the complainant.**

**F.I.** Direct the respondents to pay interest of @10.50% per annum on the amount deposited by the complainants with the respondents with effect from the date of delivery promised in the agreement for sale executed on 13.03.2023, till the date of actual handover of physical possession of unit, complete in all respects in the favour of the complainants.

**F.II.** Direct the respondents to waive off the complete amount of interest levied (if any) on the complainants for delay in making the payments for the period from the date of delivery promised in the agreement for sale executed on 13.03.2023, till the actual handover of physical possession of unit to the complainants, complete in all respects, in the favour of the complainants.

**F.III.** Direct the respondent to handover the physical possession of the commercial space complete in all respects.

17. In the present matter the authority observed that the buyers' agreement executed between the allottee & respondent entered into buyers' agreement on 13.03.2023. Clause 5 provides for the handing over of possession of the subject unit by 13.05.2025. Accordingly, the due date of handing over of possession of the subject unit comes out to be 13.05.2025. As per the documents available on record the respondent offered the possession of the unit on 18.05.2024 after obtaining OC from the competent authority on 09.05.2024.
18. The complainants in the present matter have pleaded that the respondent offered the constructive offer of possession whereas the respondent as per the BBA was obligated to offer the actual physical possession of the



unit. On the contrary the respondent, contended that as per clause 5 of the addendum agreement dated 13.03.2023 there was a leasing arrangement between the parties and moreover as per application form it was clearly written in clause k & clause 6 of the addendum agreement that possession of the said unit shall always mean constructive possession of the unit and not physical handover of the unit.

19. The authority herein observes that the complainants were very well aware of the fact that the said unit was not for the purpose of physical handover rather is to be put on lease as clear from clause k of application form and 5 & 6 of the addendum agreement. Further nowhere in the agreement it is specifically mentioned that the respondent shall handover the actual physical possession of the unit rather the terminology used is handing over of possession.
20. Accordingly, the physical possession was never the intent of the respondent and therefore, the constructive possession of the unit dated 18.05.2024 is valid. In view of the above findings no delay in handing over the possession of the subject unit on part of respondent is established and accordingly no case of delay possession charges is made out.

**F.IV. Direct the respondent to lease the commercial space in furtherance of clause 5 of the addendum agreement dated 13.03.2023.**

21. Upon perusal of the documents available on record, it is observed that on 13.03.2023, the respondent executed addendum agreement with the complainant regarding the leasing arrangement between the parties. This correspondence establishes the respondent's obligation to pay lease rentals in relation to the subject unit. Furthermore, Clause 5 of the addendum agreement, annexed with the complaint, specifically outlines



the respondent's liability to pay lease rentals. The clause 5 of the addendum agreement is reproduced below for the ready reference:

*"The Allottee hereby grants unconditional, unequivocal and irrevocable right and request the Promoter to put the Said Unit, individually and/or in combination with other units by way of merging it as part of the larger area whether horizontally and/or vertically, on lease/leave and license or otherwise, for and on behalf of the Allottee ("Lease Grant Right"), **from the date of signing of this Addendum till such time the Promoter communicates in writing its unwillingness to exercise the said Lease Grant Right "Lease Grant Right Tenure"**, and based on the request of the Allottee and representations and covenants of the Allottee captured herein, the Promoter has accepted the Lease Grant Right. Notwithstanding anything contained herein in this Clause, the Allottee hereby agrees and confirms that the Lease Grant Right granted in favour of the Promoter shall not in any manner relieve or discharge the Allottee from its obligation to pay the maintenance charges and the Allottee shall continue to comply with its obligation to pay the maintenance charges as per the terms of the Agreement. The Allottee has clearly understood the general risks involved in giving the Said Unit on lease and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Promoter"*

22. The Authority finds that the aforementioned clause of the addendum agreement creates a binding obligation on the respondent to pay the agreed lease rentals to the complainant. Therefore, the respondent is liable to honour the terms of the addendum agreement and pay the lease rentals as stipulated, in accordance with the binding provisions of the agreement. Non-compliance with this obligation shall attract necessary legal consequences under the applicable provisions of the Haryana Real Estate (Regulation and Development) Act, 2016.

**F.IV. Direct the respondents to waive off/ adjust/ refund all the arbitrary costs imposed, over and above the amount mentioned in the agreement for sale executed on 13.03.2023 such as electrical switch in station charges & deposit charges, ETC.**



23. The respondent shall not charge anything which is not the part of the BBA.

**F.V. Direct the respondent, to pay a sum of ₹5,00,000/- to the complainants towards compensation for mental agony caused by the respondents.**

**F.VI. Direct the respondents, to pay a sum of ₹2,00,000/- to the complainants towards litigation costs.**

24. The complainant is also seeking relief w.r.t. litigation expense. It is observed that the Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

**G. Directions of the authority**

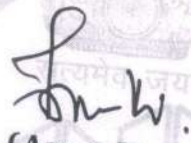
25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is liable to honour the terms of the addendum agreement and pay the lease rentals as stipulated, in accordance with the binding provisions of the agreement. Non-compliance with this obligation shall attract necessary legal consequences under the applicable provisions of the Haryana Real Estate (Regulation and Development) Act, 2016.



- b. The respondent shall not charge anything which is not the part of the BBA.
26. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
27. True certified copies of this order be placed on the case file of each matter.
28. Files be consigned to registry.

  
(Ashok Sangwan)  
Member

  
(Arun Kumar)  
Chairperson

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2025

**HARERA**  
GURUGRAM