

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

Complaint no.	:	2185 of 2021
Date of filing:		22.04.2021
Date of order	:	27.05.2025

Pranav Saran
R/O: A-11, Geetanjali Enclave, New Delhi-110017

Complainant

Versus

M/s Advance India Projects Limited
Regd. office: AIPL Joy street, Sector 66, Golf Course
Extn Road, Gurugram, Haryana-122001

Respondent

CORAM:	
Shri. Arun Kumar	Chairperson
Shri. Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

APPEARANCE WHEN ARGUED:	
Sh. Dhruv Lamba (Advocate)	Complainant
Sh. Rahul Thareja (Advocate)	Respondent

ORDER

- The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

		(As per statement of account dated 15.02.2021 on page no.04 of application for assured return dated 23.12.2021)
13.	Amount paid	Rs.1,35,48,039.63/- (As per statement of account dated 15.02.2021 on page no.04 of application for assured return dated 23.12.2021)
14.	Application for grant of OC	17.07.2020 (As per page no. 84 of reply)
15.	Occupation certificate	28.09.2020 (As per page no. 84 of reply)
16.	Intimation of constructive possession	03.10.2020 (As per page 86 of the reply)
17.	Legal notice by complainant objecting constructive possession of the unit	01.12.2020 (Pg. 121 of the complaint)
18.	Pre- termination letter	16.01.2021 (As per page no. 136 of complaint)
19.	Assured return clause	Clause 32 of unit buyer agreement: 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 ₹99,704/- per month by way of assured return to the allottee from 13th May, 2016 or date of execution of agreement till date of possession of unit.</i> [As per page no. 93 of complaint]

B. Facts of the complaint

3. The complainants have submitted as under:

- a. The respondent company announced the launch of "AIPL Joystreet" Project in the year 2008. The complainant while searching for a retail outlet was lured by the sales representatives of the company to buy a retail outlet in their project namely "AIPL Joystreet" project at Sector 66, Gurugram Haryana. The Respondent claimed that they have taken all due approvals, sanctions and government



site. Even after making all payments as per the demand letters sent by the respondent, did not get the possession as per the time specified in the unit buyer agreement.

- f. That the respondent vide letter reference no JOY/RET/0138 issues the complainant 12 postdated cheques against the assured returns so guaranteed under the unit buyers agreement vide letter dated 25th April 2017. The project "Joystreet AIPL" is registered under RERA. The registration no. of the project is 157 of 2017.
- g. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction was going on at such a slow pace, but to no avail.
- h. That the complainant received a letter from the respondent party dated 30th November 2019 wherein the respondent claimed various frivolous reasons for remitting the assured return as per the terms of the BBA citing the NGT ban on construction. However, it is pertinent to note that the complainant had already paid more than 90% of the total sale consideration on time. Conversely, the respondent company was unable to live up to its terms of the BBA.
- i. That the respondent issued a letter on 20th March 2020 notifying the complainant that the super area of his allotment had been decreased by 16.72 sq. ft. Thus, reducing his super area from 1083 sq. ft. to 1066.93 sq. ft. It is pertinent to note that the said communication carries no clarification as to whether the appropriate authority ever granted the requisite permission to change the super area.

common area maintenance charges, infrastructure augmentation charges, electric switch in station and deposit charges and sewage/storm water /water connection charge, electric meter charge, registration charges, which were not payable by the complainants.

- o. The complainant made a total payment of ₹1,35,48,039/- against a total consideration of ₹1,44,57,842/- towards the total basic sale price (hereinafter referred to as the BSP), development charges (hereinafter referred to as the EDC)/infrastructure development charges (hereinafter referred to as the IDC), IFMS, PLC, of the unit from 2018 onwards. The complainant opted for down payment plan and made payments promptly and in a timely manner as and when the demand letters were raised by the respondent and thereafter, the respondent.
- p. That the complainant issued a notice to the respondent against the illegal demands claimed by the respondent in the garb of the notice of offer of possession. The complainant after losing all the hope from the respondent company, after being mentally tortured and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- q. The Complainant has been offered the "Constructive Possession" of the unit measuring 1083.65 sq. ft. whereas he had booked a unit with an area of 1066.93 sq. ft. and that too for "physical possession" of the unit. The complainant wishes to draw your kind attention to the discussions the complainant had with the respondent at the time of booking when it was clearly specified that what the complainant needs is a physical possession to which you had agreed as well.



- for a revised offer of possession with the exact amount that is payable by the complainant as per the agreed terms and conditions at the time of booking the unit.
- v. The grievance of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the company M/s Advance India Projects Limited in regard to the unit offered to the complainant including few demands which are not as per the commitment made at the time of booking of the Unit to the complainant and hence are unjustified and illegal. It appears that the unit buyer's agreement has not been intentionally provided to the complainant in spite of complainant's repeated request as possibly the respondent is aware of the fact that the delivery schedule has to be mentioned in the unit buyer's agreement.
- w. There is no second thought to the fact that the complainant has paid total payment of ₹1,35,48,039/- as per details attached with the statement of accounts. That the grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the company M/s Advance India Project Limited with regard to the unit offered to them.
- x. Even after taking ₹1,35,48,039/- as the payments, the builder, after a delay of considerable amount of time with no possible date of delivery, no unit buyer's agreement has now offered the constructive possession, whereas the complainant has opted for the physical possession. As per Clause 45 of the unit buyer's agreement the company was to hand over the possession of the said unit within a

- f. Direct the respondents to pay the interest so accrued on the entire amount paid by the complainant at the prescribed rate for every month of delay, as the complainant had booked a unit in a complex based on the brochure and not a stand-alone unit.
- g. Direct the respondent to obtain the renewal of the license and subsequently obtaining the occupation certificate.
- h. Direct the respondent, not to cancel the allotment of the unit.
- i. It is most respectfully prayed that this Hon'ble Authority be pleased to take suo moto action for initiating proceedings Under Section 59 for not getting the project registered as the same being registerable.
- j. Direct the Respondent, to provide the details required to be disclosed by the promoter under Rule 4(1)(a) of the HRERA Rules.
- k. Direct the Respondent to provide the details of land and license cost actually incurred by Respondents (along with all supporting documents) in terms of the Rule 4 of HRERA Rules.
- l. Direct the Respondent to deposit an amount equivalent to seventy percent of the amount already realized and to be realized (including towards overdoes, unsold inventory and construction which is yet to be completed) by it from the Allottees of the Respondent Units in a separate bank account as per RERA Regulations which shall be used solely for its construction and development of the said project in compliance with the provisions of Section 4(2)(I)(D) of RERA Act & Rule 4 of HRERA Rules.
- m. Direct the Respondent to produce the complete books of accounts and the complete record so that your good office could validate and get the same audited/ investigated by an independent agency to verify and

- a. That the complainant, after checking the veracity of the project namely, 'AIPL Joystreet', Sector 66, Gurugram had applied for allotment of a unit vide the Booking Application Form. The complainant agreed to be bound by the terms and conditions of the documents executed by him. That based on it, the respondent allotted to the complainant Unit no. 039 having tentative super area of 1083.65 sq. ft. for a sale consideration of Rs. 1,25,82,260/- (exclusive of the registration charges, stamp duty, service tax and other charges). The complainant and the respondent executed the Unit Buyer's Agreement on 08.06.2016 and the complainant agreed to be bound by the same.
- b. That the complainant was aware from the very inception that the unit has been booked by him not for the purpose of self-occupation and use by the Applicant but for the purpose of leasing out to third parties along with combined units as larger area. The complainant gave rights to the respondent to lease out the unit along with other combined unit as a larger area and that the complainant would not object to the same. The respondent had the authority to negotiate and finalize the leasing arrangement in terms of the unit and the complainant had agreed to execute the documents as and when necessary and desired by the respondent in this connection. The relevant clauses i.e., Clause 41 of Schedule 1 of the Booking Application Form and Clause 33 of the Agreement are as under: -

"41. The Applicant has clearly understood that the Unit is not for the purpose of self-occupation and use by the Applicant and is for the purpose of leasing to third parties along with combined units as larger area. The Applicant has given unfettered rights to the Company to lease out the Unit along with other combined units as a larger area on the terms and conditions that the Company would

wrong on account of severe slump in the real estate market and the complainant now wants to unnecessarily harass, pressurize and blackmail the respondent by filing such baseless, false and frivolous complaint. Such malafide tactics of the complainant cannot be allowed to succeed.

7. 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.

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

E. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

10. 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

F.V. Direct the respondent to pay the balance amount due to the complainant from the respondents on account of the interest, as per the guidelines laid in the RERA, 2016.

F.VI. Direct the respondents to pay the interest so accrued on the entire amount paid by the complainant at the prescribed rate for every month of delay, as the complainant had booked a unit in a complex based on the brochure and not a stand-alone unit.

13. In the present matter the authority observed that the buyers' agreement was executed inter se parties on 08.06.2016. Clause 45 provides for the handing over of possession of the subject unit within 42 months with a further grace period of six months from 1st January 2016. The period of 42 months expires on 01.01.2020. As far as grace period of six months is concerned the same is allowed being unqualified. Therefore, the due date of possession comes out to be 01.06.2020. As per the documents available on record the respondent offered the possession of the unit on 03.10.2020 after obtaining OC from the competent authority on 28.09.2020.
14. Before adjudicating upon the relief of delay possession charges it would be relevant to give observation upon the validity of the offer of possession dated 03.10.2020. The complainants in the present matter have pleaded that the respondent offered the constructive offer of possession although as per BBA but the clauses of the said BBA were arbitrary, illegal and are in violation of provisions of the Act, 2016. On the contrary the respondent, contended that the arrangement between the parties was to transfer the constructive possession of the unit and the same was mutually agreed between the parties in application form and thereafter in the BBA.
15. The authority herein observes that the complainants were very well aware of the fact that the said unit was not for the purpose of self-

is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. 01.06.2020 till offer of possession plus two months i.e., till 03.12.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules after adjustment of assured return already paid by the respondent.

F.VII. Direct the respondent, not to cancel the allotment of the unit

18. In view of the findings deliberated above the said relief stands redundant.

F.VIII. Direct the respondent to obtain the renewal of the license and subsequently obtaining the occupation certificate.

F.IX. It is most respectfully prayed that this Hon'ble Authority be pleased to take suo moto action for initiating proceedings Under Section 59 for not getting the project registered as the same being registerable.

F.X. Direct the Respondent, to provide the details required to be disclosed by the promoter under Rule 4(1)(a) of the HRERA Rules.

F.XI. Direct the Respondent to provide the details of land and license cost actually incurred by Respondents (along with all supporting documents) in terms of the Rule 4 of HRERA Rules.

F.XII. Direct the Respondent to deposit an amount equivalent to seventy percent of the amount already realized and to be realized (including towards overdoes, unsold inventory and construction which is yet to be completed) by it from the Allottees of the Respondent Units in a separate bank account as per RERA Regulations which shall be used solely for its construction and development of the said project in compliance with the provisions of Section 4(2)(l)(D) of RERA Act & Rule 4 of HRERA Rules.

F.XIII. Direct the Respondent to produce the complete books of accounts and the complete record so that your good office could validate and get the same audited/ investigated by an independent agency to verify and ensure that the entire consideration amount paid/ payable by the buyers of the project is used solely for the construction and development of the project in compliance with the provisions of Rule 4 of HRERA Rules.

F.XIV. Direct the Respondent to re - infuse requisite money in the separate bank account/ dedicated development account required for completing the project in compliance with the Provisions of Rule 4 of HRERA Rules.

F.XV. Direct the Respondent to deposit entire EDC amount payable to DTCP into the Dedicated Development Account designated under RERA Regulations so that the timely payments of the installment to DTCP could be ensured under the provisions of Haryana Development and Regulation of Urban Area Rules, 1976 read with Section 11 (4) (g) of RERA Act.



HARERA
GURUGRAM

Complaint no. 2185 of 2021

21. Complaint stands disposed of.
22. File be consigned to registry.

(Ashok Sangwan)
Member

V.I. 3
(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025



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