

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

Complaint no. : 2966 of 2024
Date of complaint : 20.06.2024
Date of Decision : 04.07.2025

1. Sunil Kumar Jain
2. Anupam Jain

R/o: 502/23, Heritage City, M.G Road, Gurgaon,
Haryana.

Complainants

Versus

1. M/s Advance India Projects Pvt. Ltd.
Office at: AIPL Business Club, 5th Floor, Golf
Course Extension Road, Sector-62, Gurgaon.
2. M/s Landmark Apartments Pvt. Ltd.
Address: A-11, Chittranjan Park, New Delhi -
110019

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Bhriugu Dhami (Advocate)
Shri Dhruv Rohtagi (Advocate)

**Complainants
Respondent No. 1**

ORDER

1. The present complaint has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the

Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joystreet, Sector 66, Gurugram
2.	Project area	3.9562 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	07 of 2008 dated 21.01.2008 valid upto 20.01.2025 152 of 2008 dated 30.07.2008 valid upto 29.07.2025
5.	Name of licensee	Landmark Apartments Pvt Ltd
6.	RERA Registered/ not registered	157 of 2017 dated 28.08.2017
7.	RERA registration valid up to	31.12.2020
8.	Builder buyer agreement	04.08.2017 (page no. 122 of complaint)
9.	Unit no.	1001, 10 th Floor, Type- Service apartment (page no. 124 of complaint)
10.	Unit area admeasuring	775 sq. ft. (page no. 124 of complaint)
11.	Possession clause	7. Possession of the unit

		7.1 Schedule for possession of the unit- the Promoter agrees and understands that timely delivery of possession of the unit to the Allottee and the Common Areas to the association of allottees or the Governmental Authority, as the case may be, as provided under Rule 2(1) (f) of Rules, 2017 is the essence of the Agreement.
12.	Assured Return Clause	<p>32. Assured Return</p> <p>Where the Allottee has opted for Payment Plan as per Annexure-A attached herewith and accordingly, the Company has agreed to pay <u>Rs. 32,095/- per month by way of assured return to the Allottee from 15 June 2017 or the date of execution of agreement till the date of offer of possession of the unit.</u> The return shall be inclusive of all taxes whatsoever payable or due on the return.</p>
13.	<p>Addendum to BBA</p> <p>[Company has entered into cooperation agreement dated 25.05.2016 with JNB Mgt. and Bridgestreet Accomodations London Ltd. for operation and Mgt. of serviced apartments]</p>	<p>25.08.2017</p> <p>(page no. 194 of complaint)</p>

14.	Minimum Rental clause as per addendum	5. (a) The Company will pay to the Allottee <u>Rs. 50,100/- as Minimum Rental per month, as committed rental return, for upto 3 years from the date of Notice of Offer of Possession of the Unit.</u> In case the 'Revenue Share' calculation as per the audited report works out to a higher amount than the Minimum Rental, then in such case, the JNB and/or Brigestreet shall pay such higher 'Revenue Share' instead of the Company paying the 'Minimum Rental' mentioned herein above, in respect of the Unit, directly to the Allottee. [page no. 196 of complaint]
15.	Total sale consideration	Rs.76,72,500/- (as per payment plan at page 145 of complaint)
16.	Amount paid by the allottee	Rs. 78,68,166/- (as per account statement dated 06.10.2020 at page no. 117 of reply)
17.	Due date of possession	31.12.2020 (as per RERA registration certificate)

18.	Occupation certificate /Completion certificate	28.09.2020 [page no. 107 of reply]
19.	Offer of possession	05.10.2020 [page no. 111 of reply]
20.	Indemnity Bond cum undertaking regarding constructive possession	16.11.2021 [page o. 121 of reply]
21.	Conveyance deed	27.10.2022 [page no. 125 of reply]
22.	Leasing of unit letter	31.03.2023 [page no. 227 of complaint]
23.	Handover of possession	18.04.2023 [page no. 228 of complaint]
24.	Letters by respondent regarding waive off the post possession Minimum lease rental	09.09.2022, 28.03.2023 [page no. 169 and 170 of complaint]

B. Facts of the complaint:

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

- I. That the respondent company launched the project AIPL Joy Street at Sector 66, Gurugram, through extensive advertisements and presentations. The complainants submitted a booking application for one BHK studio unit in the project on 27.05.2017 with advance booking amount. This was followed by a detailed payment plan dated 30.06.2017. These payments included the basic sale price (BSP), car parking, external development charges (EDC), infrastructure development charges (IDC), power backup charges, an interest-free maintenance deposit, and other miscellaneous demands, reflecting the complainants' substantial financial commitment to the project.

- II. That the respondent changed the allotted unit from no. 920 on the 9th floor, measuring 775 sq. ft., to no. 1001 on the 10th floor, also measuring 775 sq. ft., as communicated in their e-mail dated 22.08.2017. Subsequently, without any formal intimation, the respondent unilaterally reduced the size of the unit from 775 sq. ft. to 709.70 sq. ft. vide offer of possession dated 05.10.2020.
- III. That the complainants on dated 19.11.2021 wrote an email to the respondent regarding the said change as well as reminder dated 05.12.2021. The said elimination of the area, made without the complainants' consent. The respondent actions constitute a breach of contract, and the respondents are liable to pay compensation for the resultant damages, harassment, and mental agony experienced by the complainants.
- IV. That at the inception of the project "AIPL Joy Street," the respondents designated four floors to be managed by "Bridge Street," presenting it as a global hospitality premier international provider of service apartments. The promotion emphasized the bridge street global booking engine's usage by leisure travelers worldwide, portraying an opportunity to be part of a new class of income-generating assets. Consequently, the pricing difference for these floors was Rs. 2000/- per sq ft higher compared to other floors sold under the name "Rhythm" on the remaining four floors. However, since the bridge street concept failed due to the termination of the contract with the respondents the excess amount should be refunded to the complainants. Therefore, the respondents should be directed to provide a chart comparing the booking details of Bridge Street and Rhythm to substantiate the difference in booking prices.

- V. Furthermore, the respondents should be instructed to furnish agreements and fallout details with documentary evidence regarding the contract with Bridge Street, including information on any forfeited security amounts. The amount recovered should be distributed proportionately among the complainants. This transparency and accountability are crucial to ensuring that the complainants are justly compensated for their investments and any losses incurred due to the failure of the bridge street arrangement.
- VI. That the respondents notified the complainants via email about the commencement of proceedings by bridge street London, to take over the serviced apartments at the property, indicating the deployment of resources for this purpose. Concurrently, the respondents demanded a sum of Rs. 2,09,361/-, citing it as necessary working capital. Additionally, a software installation fee of Rs. 8,374/- was levied, calculated at Rs. 250 plus GST and Rs. 10 per sq. ft. plus GST, respectively, with payment expected within seven days.
- VII. However, on 9th August 2019 the initial demand was revised to Rs. 1,77,425/- for the working capital, while the software installation fee remained unchanged. The complainants were taken aback by this sudden and strange financial demand, as it was not part of the original agreement nor had it been previously discussed or disclosed. The arbitrary imposition of these additional charges caused significant financial strain and frustration for the complainants.
- VIII. That as per clause 32 of the unit buyer's agreement stipulates that an assured return from 15.06.2017 to the date of the offer of possession of the unit, i.e., 05.10.2020, was payable to the complainants. The respondents did not register this agreement although they made us to pay registration charges of Rs. 5,003/- on 06.03.2019, in gross violation

of the provision of RERA Act 2016 for which suitable action needs to be taken by the Hon'ble Authority. The said assured return is in arrears for which the respondents be directed to pay assured return and registration charges of Rs. 5,003/- along with interest.

- IX. Furthermore, as per paragraph 5A of the addendum agreement dated 25.08.2017 a sum of Rs. 50,100/- per month is payable by the respondents on account of minimum lease commitment (MLC) for up to 3 years from the date of the notice of offer of possession, i.e., 05.10.2020. However in the current situation MLC be directed payable by the respondents from 01.01.2020 up till date since no possession has been given till date and no lease rental also started, which is the responsibility of the respondents.
- X. That the respondents has delayed the possession of the unit and has offered on 05.10.2020. Notably, the term "Constructive Possession" was introduced for the first time, altering the nature of possession from physical to constructive. Additionally, the size of the unit mentioned in the offer of possession was modified from the originally allotted 775 sq. ft. to 709.70 sq. ft., without prior notification or agreement from my end.
- XI. Even more surprising was the respondents compelling the complainants to execute the indemnity bond. This bond indemnifies the respondents and falsely expresses satisfaction that the complainants have inspected the units and are completely satisfied with various aspects such as size, area, dimension, location, quality of construction, materials used, and services provided, in accordance with the buyer's agreement.
- XII. Despite numerous attempts to contact the respondents and regular communication, the complainants received no satisfactory response regarding the physical possession / lease rentals. Various reasons were

provided by the respondents without addressing the concerns adequately.

- XIII. The complainants lost hope of obtaining physical possession of the unit and also their hard-earned money, as neither the agents of the respondents nor the respondents itself provided any updates regarding the status or the date of physical possession of the unit/flat.
- XIV. That the respondents are engaged in unethical and unfair practices aimed at extracting money from the complainants. The respondents demanded money illegally from the complainants. The complainants were supposed to receive the offer of possession of the unit on 31.12.2019, but were delayed possession indefinitely by the respondents with the offer of possession letter only delivered to the complainants on 05.10.2020. The respondents be directed to pay the delay compensation in the form of interest on the investment of Rs. 76,72,500/- from 31.12.2019 till the date of payment @ 11% p.a.
- XV. That the buyer is not contractually bound to pay charges like common area maintenance, sinking fund, labour cess, infrastructure augmentation, sewage, storm and water connection, multi dwelling unit, access control, electricity connection charges, and electricity substation charges which were never payable by the complainants as per the buyer's agreement.
- XVI. That the complainants visited the site on 30.10.2021, 19.11.2021, and again on 02.02.2023, 03.02.2023, 18.04.2023, 23.05.2023, 24.06.2023, 26.02.2024. However, there was no progress in the construction, finishing work, site development was done at the site. Upon inspection, it did not appear that the respondents was taking the completion and handover milestone seriously. The complainants demand damages and compensation for all this period.

- XVII. Despite numerous violations by the respondents the complainants have diligently paid all demands whenever raised. It was under false verbal promises and emails, that the complainants agreed to execute the conveyance deed on October 27, 2022, in the office of the concerned Sub Registrar, Gurugram. However, the conveyance deed document is another instance of the misrepresentation by the respondents.
- XVIII. That the respondents are guilty of deceiving the complainants, as the original layout shown at the time of the execution of the unit buyer's agreement has not been complied with. These actions by the respondents are in direct violation of RERA Act, 2016. Such deceptive practices undermine the trust and confidence of buyers and contravene the fundamental principles of the RERA Act, 2016.

C. Relief sought by the complainants:

4. The complainants sought following relief(s).
- In the light of the respondent's failure to attain the minimum lease commitment (MLC) as per annexure Rs. 30,12,543/-.
 - Interest for delay in possession on investment of Rs. 76,72,500/- as per proviso to section 18(1) of the Rera Act, 2016. Due date from the date of possession is actually due i.e., 31.12.2019 upto date of payment.
 - Direct the respondents to refund back the working capital and software installation fees which is unjust and a kind of arm twisting tactics by respondents Rs. 1,85,800/- along with interest Rs. 2,89,814/- as per annexure.
 - Direct the respondents to refund back the common area maintenance charges, sinking funds, labour cess, infrastructure charges, multi duelling unit charges and access control charges which is unjust Rs. 2,51,384/- along with interest Rs. 3,53,255/-.
 - Direct the respondents to refund back the fee it made us to pay for stamp duty and registration charges for registration of agreement to sale for a sum of RS. 5003/- and Rs. 2000/- along with interest Rs. 12,125/-

- vi. Direct the respondents to pay compensation of Rs. 10,00,000/- to the complainants for grave violation of RERA Act.
 - vii. Direct the respondents to award compensation for harassment and mental agony also of Rs. 20,00,000/- .
 - viii. Award litigation cost of Rs. 1,00,000/-
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1.

6. The respondent no. 1 vide reply dated 27.09.2024 contested the complaint on the following grounds: -
- I. 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 dated 04.08.2017, as shall be evident from the submissions made in the following paras of the present reply.
 - II. That the possession was offered to the complainants on 05.10.2020 and thereafter, executed a conveyance deed dated 27.10.2022. The lack of bonafide of the complainants is apparent that after conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondent no.1, they chose to remain silent for such a long period and have approached this authority to extort money. Thus, it is abundantly clear that the execution of conveyance deed was without any undue influence and coercion.
 - III. That the complainant as per clause 3 of the conveyance deed has even accorded his satisfaction and non-claim of compensation in the recitals of the conveyance deed dated 27.10.2022. Thus, the complainant

cannot now be allowed to retract from their affirmations and claim compensation.

- IV. That the complainants are not an "Allottee" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
- V. That the complainants have not come before this Hon'ble Authority with clean hands and have suppressed vital and material facts from this Hon'ble Authority.
- VI. That the complainants had approached the respondent no.1 and expressed an interest in booking a serviced apartment in the project developed by the respondent no.1 and booked the unit in question, bearing number 920, admeasuring 775 sq. ft. situated in the project developed by the respondent no.1, known as "AIPL Joy Street" at Sector 65, Gurugram, Haryana.
- VII. That thereafter the complainants vide application form dated 27.05.2017, applied to the respondent for provisional allotment of a unit bearing number 920," in the said project. The complainants consciously and willfully opted for a payment plan as per their choice for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. That the respondent had no reason to suspect bonafide of the complainants.
- VIII. 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.
- IX. That the booking was categorically, willingly, and voluntarily made by the complainants with an understanding of the same being for leasing

purposes and not self-use, as can be noted in clause 41 of the schedule I of the application form.

- X. That the complainants had given unfettered right to the respondent no.1 to lease the unit and had agreed to not object to the decision of leasing at any point in time. However, despite having booked the unit on these very terms, the complainants have malafidely filed the present complaint with the motive to seek wrongful gains over the respondent.
- XI. That pursuant to the execution of the application form, the complainants paid the booking amount of Rs 8,58,849/- to the respondents vide cheque on 27.05.2017. The respondent no.1 issued the allotment letter dated 30.06.2017 to the complainants.
- XII. That thereafter, buyer's agreement dated 04.08.2017 was executed between the complainants and the respondent no.1.
- XIII. That the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainants on 16.11.2019, to which the complainants never raised any objection.
- XIV. That the respondent no.1 was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labor, 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 complainants by the letter dated 30.11.2019.
- XV. That the arrangement between the parties was to transfer the constructive possession of the unit and the same was categorically agreed between the parties in the application form and the no protest in this regard had ever been raised by the complainants and the same was willingly and voluntarily accepted by the complainants. The clause



33 of the buyer's agreement "leasing arrangement" furthers the arrangement of constructive possession of the unit. In terms of the unit buyer's agreement, the leasing rights were with the respondent. The said leasing arrangement and constructive possession arrangement was even fortified in the clause 10 of the conveyance deed dated 27.10.2022.

- XVI. That despite there being a number of defaulters in the project, the respondent no.1 itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 16.07.2020. Occupation certificate was thereafter issued in favor of the respondent dated 28.09.2020.
- XVII. That pursuant to the receipt of the occupation certificate, the complainants were offered possession of the unit in question through letter of offer of possession dated 05.10.2020. The complainants were called upon to remit balance payment including other charges and to complete the necessary formalities/documentation necessary for constructive handover of the unit in question to the complainants. The respondent earnestly requested the complainants to obtain constructive possession of the unit in question and to further complete all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.
- XVIII. That the complainants duly executed an indemnity bond -cum undertaking dated 16.11.2021 in favor of respondents and the complainants have accepted the constructive possession of the said unit after being completely satisfied with all aspects of the said unit.

The complainants also specifically undertook that they would not demand the physical possession of the said unit.

- XIX. That as per clause 3 of the said conveyance deed the respondent have already adjusted the penalty on account of delay in handing over of possession of said unit and no claim whatsoever remains in favor of the complainant. That after the execution of the conveyance deed dated 27.10.2022, the transaction between the parties stands concluded, and no claims whatsoever of the complainants survive.
- XX. That the present unit was booked by the complainants and at the time, when the booking was made, there subsisted a co-operation agreement dated 25.05.2016, between the respondent, JNB Management and "Bridgestreet Accomodations London Limited" for operation and management of serviced apartments on 9th, 10th, 11th and 12th floors of the project.
- XXI. That the said operation and management company was in the process of taking over the serviced apartments at the project and had commenced deployment works and the things for progressing smoothly. However, to the utter shock and surprise of the respondent, being completely unaware and uninformed, it came to the knowledge of the respondent, due to passage of time that the Bridgestreet Hospitality had gone under liquidation. Thus, the respondent, in the interest of the project and the allottees, had to terminate the Co-operation agreement dated 25.05.2016 with the JNB Management and the Bridgestreet Hospitality on 29.11.2022.
- XXII. However, it needs to be highlighted and taken note of that the respondent, in order to fulfil its responsibilities and the projections to the allottees, the respondent completed the serviced apartments with

same services and amenities and fittings as were assured to the Allottees, in case the units were to be managed by Bridgestreet and JNB.

XXIII. That in the interregnum, due to the unprecedented and unforeseen termination of the cooperation agreement with Bridge Street, the respondent informed to the allottees of the project, giving them options with respect to the serviced apartments seeking their choice from the following options: -

- The Allottee may opt for self-use of the serviced apartment, as per his/ her sole discretion.
- The company may go ahead with another operator. However, in such a scenario the allottees may have to pay for up gradation of the specifications in case the same is required by the new operator.

XXIV. That the respondent, due to unforeseen circumstances and developments, due to termination of the cooperation agreement with JNB and Bridgestreet, held discussions with another well recognized Hotel Operator Brand "Justa" and was able to sign a preliminary Term sheet with the brand. Accordingly, the complainants were duly informed of the same vide letter dated 31.03.2023.

XXV. That however, since most of the allottees opted for the "Self-Use" of the serviced apartment, therefore, the respondent did not proceed with the arrangement with the new hotel operator "Justa," which was duly informed to the complainants vide letter dated 18.04.2023.

XXVI. That the complainants have taken the physical possession of the said unit. The complainants in pursuance of taking physical possession of the said unit executed an indemnity bond-cum undertaking dated 22.02.2024.

- XXVII. That the Authority has no jurisdiction to deal with the cases pertaining to leasing. The legislature intended the jurisdiction of the Act to extend to leasing arrangements, the same would have been incorporated. It is a settled principle that what cannot be attained directly, cannot be attained indirectly. Accordingly, the Hon'ble Authority has no jurisdiction to deal with the present matter and the present complaint need to be dismissed at the outset.
- XXVIII. That the total sale consideration of the said unit is Rs. 76,72,500/- plus other charges, stamp duty, registration charges etc. The respondent has already credited a sum of Rs. 14,30,332/- as assured returns. As per clause 32 of the said agreement, it was the obligation of the respondent to give the assured returns amounting Rs. 32,095/- from 15.06.2017 or the date of execution of buyer's agreement till the notice of offer of possession.
- XXIX. That the respondent vide letter dated 09.09.2022 and vide letter dated 28.03.2023 paid complainant Rs 30,060/- (till the period 31.03.2022) and 20,040/- (till the period 31.07.2022) respectively to settle the MLC amount and the balance amount stands waived off. The said letter was duly accepted by the complainant.
- XXX. That on perusal of the reliefs sought by the complainants, it can be seen that the relief of delay possession charges has been sought by the complainants. Without prejudice to the submission that the offer of possession was made within time as per the buyer's agreement dated 04.08.2017. As per the indemnity bond-cum undertaking as well the clause 3 of the conveyance deed dated 27.10.2022, the complainants are barred by estoppel to make the claim of delay possession charges.
- XXXI. That respondent has always strictly acted in terms of the buyer's agreement dated 04.08.2017. The respondent has raised all the

demands as per the buyer's agreement dated 04.08.2017 and as per the application form dated 27.05.2017 of the buyer's agreement.

XXXII. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.

6. The authority observes that the present complaint was filed on 20.06.2024. The counsel for the respondent no. 2 neither appeared nor filed the reply in the complaint. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent no.2 was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that it has nothing to say in the present matter and accordingly the authority proceeds with the case *ex parte* against respondent no. 2.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the complainants.

E. Jurisdiction of the authority

8. The respondents in its reply has raised an objection that the Authority has no jurisdiction to adjudicate the matter. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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) 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.

11. 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 respondent

F.I Objection regarding the complainant being investor.

12. The respondent/promoter has taken a stand that the complainants are the investors and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The authority observed that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled

principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

- i. In the light of the respondent's failure to attain the minimum lease commitment (MLC) as per annexure Rs. 30,12,543/-.**
14. The complainant in the present complaint has been seeking payment of minimum lease rental in terms of clause 5a of the addendum to the unit

buyer's agreement dated 25.08.2017. The said clause provides as under:

"The Company will pay to the Allottee Rs. 50,100/- as Minimum Rental per month, as committed rental return, **for up to 3 years from the date of Notice of Offer of Possession of the Unit.** In case the 'Revenue Share' calculation as per the audited report works out to a higher amount than the Minimum Rental, then in such case, the JNB and/or Brigestreet shall pay such higher 'Revenue Share' instead of the Company paying the 'Minimum Rental' mentioned herein above, in respect of the Unit, directly to the Allottee."

15. Further as per Section 11(4)(a) of the Act of 2016, the promoter is responsible for all obligations and responsibilities as per the provisions of the Act or the terms agreed as per agreement for sale. The relevant portion of Section 11(4)(a) is reproduced below:

(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 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

16. The Authority observes that in the present matter, the occupancy certificate was obtained on 28.09.2020 and the notice of offer of possession was issued on 05.10.2020. Subsequently, the conveyance deed was executed on 27.10.2022, and the leasing of the unit took place on 31.03.2023.
17. The respondent, however, has denied liability on the ground that the addendum agreement, including clause 5a, was subject to a cooperation agreement dated 25.05.2016 executed between JNB Management and

BridgeStreet Accommodations London Limited, under which BridgeStreet was to operate and manage serviced apartments located on the 9th, 10th, 11th, and 12th floors. It is submitted that since BridgeStreet subsequently went into liquidation, the respondent was constrained to terminate the said cooperation agreement on 29.11.2022. Therefore, the respondent argues that it is no longer under any obligation to pay the committed minimum lease rental to the complainant.

18. The Authority has carefully considered the submissions of both parties. It is pertinent to note that Clause 5a of the addendum agreement creates a clear and independent contractual obligation to pay the minimum lease rental from the date of offer of possession. The language of clause 5A does not indicate that such payment is conditional upon the continued validity or performance of the cooperation agreement with BridgeStreet. Moreover, there is nothing in the record to demonstrate that the complainant was a party to the cooperation agreement.
19. The plea that BridgeStreet's liquidation and subsequent termination of the cooperation agreement extinguished the respondent's obligation under clause 5a is not tenable, particularly when the commitment of rental return was directly made in favour of the complainant by way of an executed addendum. The Authority is of the considered opinion that the respondent cannot unilaterally escape its contractual liability toward the allottee on the basis of internal arrangements with third parties.
20. In view of the above, the Authority holds that the complainant is entitled to receive minimum lease rental at the rate of Rs. 50,100/- per month for a period of three years from 05.10.2020. The respondent is, therefore, directed to pay the outstanding amount due under Clause 5A,

if not already paid. The amount if any already paid on account of minimum lease rental shall be adjusted.

- ii. **Interest for delay in possession on investment of Rs. 76,72,500/- as per proviso to section 18(1) of the Rera Act, 2016. Due date from the date of possession is actually due i.e., 31.12.2019 upto date of payment.**

21. In the present complaint, the complainants are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

(Emphasis supplied)

22. The complainants booked a unit in the project of the respondent namely, AIPL Joy street situated at sector-66, Gurugram. The complainants were allotted a unit bearing no. 1001, 10th Floor, Type-Service apartment and the builder buyer agreement for the said unit was executed between the parties on 04.08.2017.
23. Clause 7 of the buyer's agreement provides for completion of construction and is reproduced below:

7.1.

"7.1 Schedule for possession of the said Unit/Apartment for residential purposes- The Promoter agrees and understands that timely delivery of possession of the Unit/apartment for Residential purposes alongwith parking to the Allottee(s) and the common Areas to the association of Allottee(s) or the competent authority, as the case may be, as provided under Rule2(1)(f) of the Rules, 2017 is the essence of the Agreement."

(Emphasis supplied)

24. As per possession clause 7 of the agreement dated 04.08.2017 the possession of the allotted unit was to be handed over as per the Rule

2(1) (f) of the Rules, 2017 i.e., as per Rera registration certificate which comes out to be 31.12.2020. In the present case the Authority observes that the respondent has obtained the occupation certificate on 28.09.2020 and subsequently offered the unit to the complainants for possession on 05.10.2020. Moreover, the conveyance deed also got executed on 27.10.2022.

25. The Authority is of the considered view that the respondent has completed the construction of the project and offered possession of the allotted unit to the complainants prior to the stipulated date of possession, as per the terms of the agreement. In light of this timely completion and offer of possession, the complainants are not entitled to any delay possession charges (DPC).
26. It is a settled principle under Section 18 of the Real Estate (Regulation and Development) Act, 2016, that a promoter becomes liable to pay compensation in the form of delay possession charges only in the event of a failure to complete the construction or hand over possession within the agreed timeline. In the present case, no such delay has occurred. On the contrary, the respondent has demonstrated due diligence by obtaining the occupation certificate on 28.09.2020 and offering possession on 05.10.2020.
27. Since there has been no breach of the buyer's agreement as well as of the provisions of Section 18(1) of the Act of 2016 for delay in the completion of the project, therefore the Authority finds no justification for awarding delay possession charges to the complainants. Accordingly, no case for delay possession charges is made out.

iii. Direct the respondent to refund back the working capital and software installation fees which is unjust and a kind of arm

twisting tactics by respondent Rs. 1,85,800/- along with interest Rs. 2,89,814/- as per annexure.

- iv. Direct the respondent to refund back the common area maintenance charges, sinking funds, labour cess, infrastructure charges, multi duelling unit charges and access control charges which is unjust Rs. 2,51,384/- along with interest Rs. 3,53,255/-.
- v. Direct the respondent to refund back the fee it made us to pay for stamp duty and registration charges for registration of agreement to sale for a sum of RS. 5003/- and Rs. 2000/- along with interest Rs. 12,125/-.

28. As far as common issues with regard to refund of working capital, software installation fees, common area maintenance charges, sinking funds, labour cess, infrastructure charges, multi dueling unit charges etc. are concerned, the Authority is of the view that after the execution of the conveyance deed between the complainants and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee.

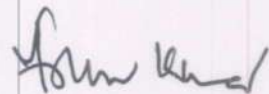
- vi. Direct the respondent to pay compensation of Rs. 10,00,000/- to the complainants for grave violation of RERA Act.
- vii. Direct the respondent to award compensation for harassment and mental agony also of Rs. 20,00,000/-.
- viii. Award litigation cost of Rs. 1,00,000/-

29. The complainants in the aforesaid relief are seeking relief w.r.t compensation. 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. (Decided on 11.11.2021), 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay the minimum lease rental at the rate of Rs. 50,100/- per month for a period of three years from 05.10.2020.
 - ii. The amount if any already paid on account of minimum lease rental shall be adjusted.
 - iii. No delay in handing over the possession of the subject unit on part of respondents is established and accordingly, no case of delay possession charges is made out.
 - iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
31. Complaint as well as applications, if any, stands disposed off accordingly.
32. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 04.07.2025