BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 23.07.2025

NAME OF THE BUILDERS		WELLWORTH PROJECT DEVELOPERS PRIVATE LIMITED AND ADVANCE INDIA PROJECT LIMITED	
PROJECT NAME		"AIPL Joy Central" Situated at : Sector 65, Gurugram, Haryana	
Sr. No.	Case No.	Case title	Appearance
1.	CR/4861/2023	Mr. Rajat Gupta and Mrs. Poonam Gupta Vs. Wellworth Project Developers Private Limited & Advance India Project Limited	Sh. Bhrigu Dhami, Advocate Sh. Dhruv Rohatgi, Advocate
2.	CR/37/2024	Mr. Rohit Kumar Gupta Vs. Wellworth Project Developers Private Limited & Advance India Project Limited	Sh. Bhrigu Dhami, Advocate Sh. Dhruv Rohatgi, Advocate

CORAM:
Shri Ashok Sangwan **Member**

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "AIPL Joy Central" situated at Sector-65, Gurugram being developed by the same respondent-promoters i.e., "Wellworth Project Developers Private Limited and Advance India Projects Limited". The terms and conditions of the buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of amount paid by the complainant(s) along with assured returns.

3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, assured returns clause and relief sought are given below:

Project Name and Location	**"AIPL Joy Central" at Sector – 65, Gurugram, Haryana**
Project area	3.987 acres
DTCP License No. and validity	249 of 2007 issued on 02.11.2007 valid up to 01.11.2024
RERA Registered or Not Registered	Registered Registration no. 183 of 2017 dated 14.09.2017 valid upto 31.12.2022
Possession Clause	**Clause j of Application Form-** *"The Company shall subject to force majeure conditions propose to* ***handover possession of the unit on or before December 2022*** *notified by the Promoter to the Authority at the time of registration of the project ....."* (Page 50 of complaint in CR/4861/2023)
Due date of Possession	**31.06.2023** (31.12.2022 + 6 months in lieu of Covid-19)
Application submitted by respondent to DTCP for grant of occupation certificate	**28.04.2023**
Occupation certificate	**15.01.2024**

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit No. and Size	Date of application form, Allotment letter and Execution of BBA	Basic Sale Price / Total Amount paid by the complainants	Offer of possession/ Amount of AR paid by respondent to the complainants
1.	CR/4861/2023 **Mr. Rajat Gupta and Mrs. Poonam Gupta Vs. Wellworth Project Developers Private Limited & Advance India Project Limited** **DOF:** 31.10.2023 **Reply:** 07.02.2024	0007D, 10th Floor (Allotment letter at Page 57 of complaint) *Re-allocated **743, 7th Floor** vide e-mail dated 08.05.2020 (Page 62 of complaint) **Super Area** 500 sq. ft. (Allotment letter at Page 57 of complaint)	**Application Form: 24.05.2018** (Page 44 of complaint) **Allotment Letter: 29.05.2018** (Page 57 of complaint) **BBA: Not Executed**	**BSP-Rs. 44,53,000/-** (SOA dated 05.02.2024 at page 93 of reply) **AP-Rs. 49,87,360/-** (SOA dated 05.02.2024 at page 93 of reply)	**11.04.2024 (Constructive Possession)** (Page 4 of additional submissions placed on record by respondent on 13.11.2024) **AR Paid: Rs.21,36,628/-** (As alleged by the respondent at page 13 of reply) **Refund request by complainant:** E-mail dated 22.06.2010 and 10.02.2021 (Page 64 and 158 of complaint, respectively)
2.	CR/37/2024 **Mr. Rohit Kumar Gupta Vs. Wellworth Project Developers Private Limited & Advance India Project Limited** **DOF:** 15.01.2024 **Reply:** 28.02.2024	0007E, 10th Floor (Allotment letter at Page 81 of reply) *Re-allocated **744, 7th Floor** vide e-mail dated 08.05.2020 (Page 64 of complaint) **Super Area** 500 sq. ft. (Allotment letter at Page 81 of reply)	**Application Form: 25.05.2018** (Page 65 of reply) **Allotment Letter: 29.05.2018** (Page 81 of reply) **BBA: Not Executed**	**BSP-Rs. 44,53,000/-** (SOA dated 24.02.2024 at page 95 of reply) **AP-Rs. 49,87,360/-** (SOA dated 24.02.2024 at page 95 of reply)	**11.04.2024 (Constructive Possession)** (Page 4 of additional submissions placed on record by respondent on 13.11.2024) **AR Paid: Rs.18,14,811/-** (As alleged by the respondent at page 13 of reply) **Refund request by complainant:** E-mail dated 22.06.2010 and 10.02.2021 (Page 63 and 249 of complaint, respectively)

The complainants have sought the following relief(s):

1. Direct the respondent to refund the entire monies paid with applicable interest from the date of deposit till date of actual realization.
2. Direct the respondent to pay outstanding assured return amounts from the date of default till the date of filing of the present complaint along with interest as prescribed under the RERA Act.
3. Impose appropriate penalty upon the respondents in terms of the provisions of the RERA Act and applicable rules for violation of provisions of Section 13 of the RERA Act.
4. Direct the respondent to pay Rs. 5,00,000/- towards legal costs and expenses incurred by the complainant in pursuing legal recourse against the respondent.

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

Abbreviation	Full form
DOF	Date of filing of complaint
BSP	Basic sale price
BBA	Builder Buyer Agreement
AP	Amount paid by the allottee/s
AR	Assured Returns

4. The facts of all the complaints filed by the complainant-allottees are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/4861/2023 titled as "Mr. Rajat Gupta and Mrs. Poonam Gupta Vs. Wellworth Project Developers Private Limited and Advance India Project Limited"*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

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

CR/4861/2023 titled as "Mr. Rajat Gupta and Mrs. Poonam Gupta Vs. Wellworth Project Developers Pvt. Ltd. and Advance India Projects Ltd"

Sr. No.	Particulars	Details
1.	Name and location of the project	"AIPL Joy Central", Sector-65 in village Badshahpur, District Gurugram. Haryana
2.	Project area	3.9875 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	249 of 2007 dated 02.11.2007 valid upto 13.06.2018

	Name of the Licensee	Wellworth Project Developers Pvt. Ltd.
5.	RERA registered/ not registered and validity status	Registered Regd. No. 183 of 2017 dated 14.09.2017 valid upto 31.12.2022
6.	Application Form	Undated **24.05.2018**- As pleaded by complainant at page 15 of complaint and agreed to by respondent at page 2 of reply. (Page 44 of complaint)
7.	Allotment Letter	29.05.2018 (Page 57 of complaint)
8.	Date of buyer's agreement	Not executed
9.	Unit no.	0007D, 10th floor (500 sq. ft.) (Allotment letter at page 57 of complaint)
	Changed vide e-mail dated 08.05.2020	743, 7th floor (Page 62 of complaint)
10.	Possession Clause	**Clause j of Application Form-** *"The Company shall subject to force majeure conditions propose to* ***handover possession of the unit on or before December 2022*** *notified by the Promoter to the Authority at the time of registration of the project ....."* (Page 50 of complaint)
11.	Due date of Possession	**30.06.2023** (31.12.2022 + 6 months in lieu of Covid-19)
12.	Letter inviting objections for revision in building plans sent by respondent to complainant	21.11.2019 (Page 81 of reply)
13.	Letter sent by respondent to complainant about re-mobilisation of project and effect on AR	30.11.2019 (Page 82 of reply)
14.	E-mails sent by complainants requesting the respondent to share the draft BBA	06.02.2020, 16.05.2020, 22.06.2020 (Page 60, 61 and 62 of complaint) *Vide **e-mail dated 06.02.2020**, the respondent raised issue of non-payment of assured returns and non- execution of buyer's agreement.

		*Vide **e-mail dated 22.06.2020**, respondent shared the BBA for the first time- Not in consonance with agreed terms and thus, forwarded to respondent vide email dated 26.06.2020. (Page 65 of complaint) *Vide **e-mail dated 27.10.2020**, respondent shared an agreement pertaining to something entirely different (Page 79 of complaint) *Vide **e-mail dated 11.11.2020,** a draft agreement along with addendum shared with the complainants(Page 81 of complaint)
15.	Assured return clause	Rs.58,236/- per month till lease was executed and once lease was executed, minimum lease rental of Rs.90/- per sq. ft. to be paid to complainants for a period of 3 years. (As admitted by respondent at page 6 of reply)
16.	Assured Returns paid from May 2018 till November 2023	Rs.21,36,628/- (As alleged by respondent at page 13 of reply)
17.	Basic Sale Price	Rs.44,53,000/- (SOA dated 05.02.2024 at page 93 of reply)
18.	Total Sale consideration	Rs.50,62,360/- (SOA dated 05.02.2024 at page 93 of reply)
19.	Amount paid by the complainants	Rs.49,87,360/- (SOA dated 05.02.2024 at page 93 of reply)
20.	Request for refund by complainant	E-mail dated 22.06.2010 and 10.02.2021 (Page 64 and 158 of complaint, respectively)
21.	Application for OC	28.04.2023 (Page 88 of reply)
22.	Occupation certificate	15.01.2024 (Page 89 of reply)
23.	Offer of Possession	11.04.2024 (Page 4 of additional submissions placed on record by respondent on 13.11.2024)

B. Facts of the complaint

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

a) That the present complaint is preferred under Sections 3, 12, 13, 18, 19, 31, 34 (f), 71 and any other applicable provisions of the RERA Act, 2016 and Rules 15, 16, 28 and any other applicable Rules of the Haryana Real Estate (Regulation and Development) Rules, 2017.

b) The complainants were deceived by the shrewd marketing gimmicks and false advertisements of the respondents and its channel partners Mr. Pravesh Bhatia of M/s. Absolute Realty into investing their hard-earned monies into the respondent's project, namely, "AIPL Joy Central."

c) That it was represented to the complainants that the assured returns at the promised rate would be paid till the construction is completed and possession of the subject unit is handed over after obtaining the OC, and thereafter assured rent as explained above will be started subsequently and immediately by the respondents as per the assured rent scheme.

d) That in furtherance of above representations, it was also assured that subsequent to this period of construction and handover of possession, the respondents shall put the shop on rent on their own either as an individual unit or combining with adjoining commercial spaces and the rentals from the tenant would be credited to their account. It was assured to the complainants that subsequent to the handing over of the unit, be paid assured rents equivalent to Rs. 45,000/- per month, for a fixed period of minimum 3 years.

e) However, in case of the rent charged by the respondents from the tenant under the 1st Lease was less than Rs.90/- per sq. ft., then the respondents would refund the proportionate capital cost at the rate of Rs. 141.18/- per sq. ft. for every rupee of shortfall. Further, in case the respondents get a higher rental than Rs. 90/- per sq. feet per month under the 1st Lease;

then the complainants would pay extra capital cost to the respondents at the rate of Rs.70.59/- per sq. ft. per extra Rupee.

f) That the complainants acting upon the assurances and assertions made by the respondents and their channel partner, applied for a unit having super area of 500 sq. ft in the said project vide respondents template Application form dated 24.05.2018. Furthermore, an amount of Rs. 63,53,000/- plus Rs.5,34,360/- of GST totalling Rs.68,87,360/- (out of which a cash component of Rs. 19,00,000/- was paid but no receipt was issued by the respondents despite repeated requests) as demanded was paid and unit No. 0007D on the 10th floor was allotted vide Allotment Letter dated 29.05.2018.

g) That the AR amounts received with respect to the subject unit equalled to interest 11% p.a. (promised rate) on the total amount of Rs. 63,53,000/- (including cash component of Rs. 19,00,000/-).

h) That vide the said Allotment letter the respondents acknowledged the receipt of Rs. 49,87,360/- towards total sale consideration, which was only a part of the total payment done to the respondents. The respondents till date have wilfully neglected to issue receipt for the cash amount of Rs. 19,00,000/- paid to them against the sale consideration.

i) That it was assured by the respondents that they shall share a draft copy of the agreement with the complainants soon after allotment. However, despite several reminders and requests from the complainants and their own channel partner, the respondents wilfully neglected to share a copy of the agreement as per the terms agreed. The complainants sent e-mails dated 06.02.2020, 16.05.2020 and 22.06.2020 requesting for sharing the draft agreement.

j) That their own channel partner, vide email dated 06.02.2020 raised the issue of non-payment of the assured return amount as well as the non-execution of the buyer's agreement.

k) That the respondents vide their email dated 08.05.2020 had conveyed to the complainants that they had arbitrarily changed the unit earlier allotted to them and a new unit no. 743 on 7th Floor, was now allotted to them. It is submitted that no approval for the same was taken from the complainants neither were they apprised of any such requirement to change the allotted unit.

l) That the complainants sent an email dated 16.05.2020, as a reminder to the email dated 06.02.2020 sent earlier by their own channel partner to the respondents for sharing of the Agreement for execution and also sought for release of the outstanding Assured Return amounts for the months of April and May, 2020.

m) That vide email dated 22.06.2020, the complainants raised their concerns regarding inordinate delay in sharing/execution of the buyer's agreement, which was being delayed by the respondents and for payment of outstanding Assured Returns. The complainants had also sought for refund of its monies paid with interest.

n) That the respondents vide their e-mail dated 24.06.2020 duly admitted delaying on their part in sharing the buyer's agreements and pursuant to several reminders and requests for payment of assured returns and for executing the buyer's agreement, the respondents vide the said e-mail for the first time shared a purported one-sided agreement.

o) That in the interim, the respondents had again sent an e-mail dated 26.06.2020, with respect to scheme of Assured Return. The respondents in their said e-mail had unilaterally tried to amend the terms of the AR

scheme to further their own economic interests by diving the AR into two segments i.e., Payment of part – I AR and Payment of Part – II AR. The said amended scheme was never approved by the respondents nor any prior approval was obtained from them.

p) That their own channel partner, thereafter, vide email dated 22.07.2020, confronted the respondents with regards to the alleged AR amended scheme and clarified that as the complainants had paid 100% of the Sale Consideration then why would the said scheme apply to them. The said e-mail was forwarded to the complainants.

q) Thereafter, on the demands issued on behalf of the respondents the complainants issued a cheque dated 20.10.2020, for an amount of Rs. 12,503/- drawn on HDFC bank, in favour of SBI registration fee, towards Registration fee for the said unit along with letter dated 27.10.2020. The respondents thereafter provided another agreement vide e-mail dated 27.10.2020 which also turned out to be pertaining to something entirely different.

r) That finally on 11.11.2020, the respondents vide e-mail dated 11.11.2020 supplied a copy of a draft agreement along with an addendum to the complainants. A perusal of the said agreement revealed that the same included new, onerous and one-sided provisions which were never discussed, let alone agreed, at the time of approaching the complainants in 2018 for the sale of the shop, nor were any such conditions mentioned in the application form, allotment letters or any communication from the respondents until 11.11.2020.

s) That the complainant's vide their e-mails dated 16.12.2020 had duly apprised the respondents of the blatant irregularities in the term as agreed at the time of execution of application form and the terms sought

to be unilaterally imposed upon the complainant now by way of the draft agreement. The said e-mail was responded to by the respondents vide their e-mail dated 22.12.2020, in a mechanical manner.

t) That the complainants vide a detailed e-mail dated 23.12.2020 duly highlighted the irregularities between the earlier mutually agreed terms and the terms of the agreement and addendum now proposed to be introduced. The said e-mail was replied to vide e-mail dated 30.12.2020 by the respondents. The respondents rather than amending the proposed terms to be in consonance with the terms agreed at the inception, have been using their dominant position to somehow force the new terms and conditions upon the complainants which would only further the economic interest of the respondents and would be to the detriment of the complainants. The complainants thereafter have addressed e-mails dated 31.12.2020, 12.01.2021, 14.01.2021, 21.01.2021, 22.01.2021 and yet again sadly only received mechanical replies dated 14.01.2021, 21.01.2021, 22.01.2021, 27.01.2021 from the respondents.

u) That the complainants left with no other alternative were constrained vide their e-mail dated 10.02.2021, to request the respondents to refund their hard-earned monies along with suitable interest.

v) That the complainants were yet again constrained to raise the said issue and the issue of payment of outstanding AR amounts vide their various e-mails which were yet again replied to in a mechanical manner vide replies dated 03.03.2021, 01.10.2021, 02.12.2021, 16.12.2021, 23.12.2021, 08.01.2022, 12.01.2022, 14.01.2022.

w) That till date the respondents have wilfully neglected to provide and execute the buyer's agreement for the subject unit in consonance with the terms and conditions that were mutually agreed at the time of execution

of the application form. Furthermore, the respondents have also stopped payment of the Assured Return amounts which remains unpaid since September, 2021. The total principal AR outstanding amounts as on date comes to Rs. 13,97,664/- plus interest @18% p.a.

x) That the sale of the subject unit was done on super area basis whereas in terms of the model agreement as notified and to be followed by all developers in the state of Haryana, the sale price or the sale of any property is to be made strictly on carpet area basis. The act of the respondents to promote sale on Super Area basis in 2018, is against the provisions of the RERA Act, 2016 and accompanying rules and regulations.

y) That the complainants were utterly shocked when vide e-mail dated 24.06.2020, the respondents for the very first time sent a one-sided agreement, wherein the unit measurement was for the first time reflecting as on carpet area basis. As the said agreement was not specific to the mutually agreed terms between the parties the same was duly disregarded.

z) The complainants were even more shocked after perusing the agreement dated 11.11.2020, wherein the unit no. was still reflecting as 743, 7th floor, further the carpet area which was for the first time revealed to the respondents was only 245.53 sq. ft. which is less than 50% of the super area, i.e. 500 sq. ft.

aa) That as on date of filing the present complaint, the respondents are in default in making payments of AR amounts. The AR amounts are outstanding since September 2021 and the total outstanding till date comes to Rs. 13,97,664/- plus applicable interest for delay in making payments.

bb) As represented by the respondents the building plans had already been approved by HUDA. The respondents should therefore have been well aware of the final area of the unit. Thus, it does not lie with the respondents to make a vague baseless provision for any 'additional area' at the time of offering of the possession. The adding of such a provision duly showcases their malicious intent in unlawful extortion of additional amounts from the complainants and thus could not be allowed to be added as a unilateral term contrary to the understanding already arrived at between the parties at the time of execution of the application form.

cc) That as per clause 1.8 of the agreement, the change in carpet area upon completion of construction is extremely ambiguous and needed clarification from the respondents, as this was a virtual space. As per the application forms, there was a mention of 10% + / - modification in the super area and there was no mention of carpet area. The respondents have unilaterally inserted reference to carpet area, and increase/decrease at the end stage to 5%. The respondents have now given a fixed carpet area (subject to 5% increase/decrease) and unilaterally reserved the right to increase the super area without increasing the carpet area.

dd) That as per clause 15 of the Application Form, the refund of amounts by the respondents was to be coupled with interest @18% p.a., whereas under Clause 1.8 of the Agreement, the refund of amount in the same situation has been altered without any intimation. Furthermore, the respondents appear to have taken a separate stand under the addendum.

ee) That, without prejudice to the aforementioned issues, it has been repeatedly provided that, possession under the Agreement for the duration contemplated i.e. term of the 1st Lease or 3 years, is implied

notional possession and not physical possession. The respondents, however, have failed to provide any clause pertaining to handing over of possession to the Complainant(s) post the 3 year Assured Rental period and not given any clarity on the same. The draft Agreement dated 11.11.2020 also does not deal with how the office space shall be dealt with post the 1st Lease period.

ff) That without prejudice to the above, the respondents have claimed in the draft agreement dated 11.11.2020 that the unit super area may or may not be equivalent to the area to be leased, for which the assured return is to be provided. While claiming the cost of collecting the rental, however the respondents have claimed that the same will be on the basis of unit super area, which itself was objected to by the complainants. It is thus clear that the terms sought to be added by the respondents are contrary to the mutually agreed terms and against the interest of the innocent complainants.

gg) That further the respondents have arbitrarily stated that if the complainants seeks physical possession of the Shop, then the Carpet Area would be further reduced.

hh) Furthermore, even with respect to the Addendum provided by the respondents, the same has failed to address the following issues: -

a) That as per the original understanding and as per Clause 3.1 of the Addendum, the respondents were supposed to pay the Assured Returns on the 5th of every succeeding English calendar month (+ 1 day), till the receipt of OC and offer of possession thereafter, but however with effect from November, 2019 the payments have been very erratic and random without any clarity and there are undue delays in depositing the TDS also with the Government departments,

for which the complainants had written to the respondents as well. The said amounts have not been paid to the complainants even as on date.

b) Furthermore, it was agreed between the parties that in case of shortfall from the base rental value of Rs. 90/- per sq. ft. per month, the respondents will pay back the proportionate basic sale price at the rate of Rs. 141.18/- per sq. ft. for every rupee of shortfall and in case of rental being in excess of the base rate of Rs. 90/- per sq. ft. per month, the complainants would pay excess sale price at the rate of Rs. 70.59/- per sq. ft. for every rupee of rental in excess of the price already paid. Shockingly in the addendum now provided, the respondents have unilaterally changed the entire understanding.

c) It was agreed between the parties that the Assured Return would continue till the receipt of Occupation Certificate and offer of possession made thereafter, and the same would mark the simultaneous and subsequent commencement of the First Lease/ Assured Rent Period. The replacement of the said understanding with the stage of filing of application for occupancy certificate is completely unacceptable. The respondents cannot unilaterally create an exemption in the form of the time period.

d) That the complainants have never agreed to the costs mentioned as per clause 5(h), i.e. leasing/leave and license, lease/leave and license renewals, subsequent leases/leave and licenses, etc including but not limited to brokerage, fit out cost, interior cost, etc to be incurred for lease/renting out of the Said unit.

e) Furthermore, the respondents have unilaterally inserted Clause 5(m) in the Addendum, whereby the respondents are seeking to evade the

premise of the understanding between the parties. The basis of the scheme being Assured Rental, the respondents cannot shirk the responsibility of ensuring that amount of Assured Rent is provided to the complainants. The said Clause is contrary to the provisions of Addendum itself whereby the rent has been assured to the complainants with consequences of the shortfall admittedly falling on the respondents.

f) As is the case with other charges, all taxes, applicable on such rent /license fee including GST provided for under the Addendum should be paid for by the tenant.

ii) That till date the respondents have not given the possession of the said unit after obtaining the requisite OC. Further, the respondents are also not complying with the terms and conditions of the AR Scheme. That the complainants have been regularly suffering on account of wilful neglect of the respondents in complying with their contractual obligations.

C. **Relief sought by the complainants**

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

I. Direct the respondent to refund the entire monies paid with applicable interest from the date of deposit till date of actual realization.

II. Direct the respondent to pay outstanding assured return amounts from the date of default till the date of filing of the present complaint along with interest as prescribed under the RERA Act.

III. Impose appropriate penalty upon the respondents in terms of the provisions of the RERA Act and applicable rules for violation of provisions of Section 13 of the RERA Act.

IV. Direct the respondent to pay Rs. 5,00,000/- towards legal costs and expenses incurred by the complainant in pursuing legal recourse against the respondent.

8. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondents

9. During the course of proceedings dated 07.02.2024, the counsel for "Advance India Projects Limited" submitted that "Wellworth Projects Developers Private Limited" had been taken over by the "Advance India Projects Limited." Herein, the respondents have contested the complaint on the following grounds:

a) That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act.

b) That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

c) That the complainants are not an "Allottee" but an investor who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.

d) That the complainants had approached the respondent through a broker namely Pravesh Bhatia of M/s Absolute Realty and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing number "7D, admeasuring 500 sq. ft. situated in the project developed by the respondent, known as "AIPL Joy Central" at Sector 65, Gurugram, Haryana. Thereafter the complainants, vide application form dated 24.05.2018, applied to the respondent for provisional allotment of a unit bearing number 7D in the said project.

e) That the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the

respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The complainants consciously and willfully opted for a Down payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every instalment on time as per the payment schedule. That the respondent had no reason to suspect bonafide of the complainants.

f) That it is noteworthy to mention that merely filing of the application form does not constitute any right of allotment/agreement to sale and any kind of obligation of the complainants towards the respondents. This is evident from the clause of the Application Form, as reiterated below:

> *I/We have clearly understood that submission of this signed Application Form and payment by me/us of the Booking Amount shall not constitute a right to allotment of the aforesaid Unit and nor shall it create or result in any obligations on the Company towards me/us. This Application does not constitute any right to allotment/Agreement to Sell. I/we understand that the Company may at any time prior to the execution of the Unit Buyer's Agreement reject my/our application.*

g) 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 k of the Schedule I of the Application form:

> *k. I/We agree that the Unit is not for the purpose of self-occupation and use by me/us and is for the purpose of leasing to third parties along with combined units as larger area. I/We have 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 deem fit. I/We shall at no point of time object to any such decision of leasing by the Company.*

h) That as can be noted from the above-mentioned clause k, the complainants had given unfettered right to the respondent 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.

i) That at this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms. That in the present case, the complainants purchased the unit only on the categorical understanding that the unit shall not be for physical possession.

j) That pursuant to the execution of the application form, the respondent issued allotment letter dated 29.05.2018 to the complainants. The total Basic Sale Price of the Unit was fixed at Rs. 44,53,000/- and Interest Free Maintenance Security at Rs. 75,000/- plus stamp duty and other charges, which were to be ascertained at a later stage plus taxes. Further, the unit allotted was provisional and subject to change as was categorically agreed between the parties.

k) 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 21.11.2019. The complainants neither paid any heed to the requests of the respondent nor came forward with objections, if any. The complainants chose to be mute spectator by not even replying to the said letter. Clause b and c of the application form becomes relevant here.

l) That the respondent 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 payment of assured return was severely affected

during this period and the same was rightfully intimated to the complainants by the letter dated 30.11.2019.

m) That on a total invested amount of Rs. 49,87,360/- till date, till such time the unit and building stood completed, with Occupancy Certificate, and all amenities and facilities in place, the respondent was to pay to the complainants fixed assured returns of Rs. 58,236/- per month, till such time the lease was executed. It is also stated that inter-alia, once the lease was executed, the minimum lease rental of Rs. 90/- per Sq. Ft. was to be paid to the complainants for a period of three years.

n) That in light of this guaranteed return, even after completion of construction, the respondent has reduced the assured returns for the period after offer of possession marginally, as this is a direct cash outflow from the pocket of the respondent after offering possession to the complainants. This kind of guarantee is not usually given in such situations by most builders.

o) That the amount of assured returns is not payable to the complainants for the period the aforesaid NGT ban as the same was beyond the control of the respondent and also for the period of COVID-19 lockdown i.e. 22.03.2021 to 16.06.2021, as applicable due to impact on the project. This was also intimated to the complainants vide letter dated 30.11.2019.

p) 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 no protest in this regard had ever been raised by the complainants.

q) That the complainants have filed the present complaint before the Hon'ble Authority which is not maintainable. The complainants are praying for the relief of "Assured Returns" which is beyond the

jurisdiction that this Hon'ble Authority. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a Builder and Buyer with respect to the development of the project as per the agreement. Such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the act. That the said remedies are of "Refund" in case the Allottee wants to withdraw from the Project and the other being "interest for delay of every month" in case the Allottee wants to continue in the Project and the last one is for Compensation for the loss occurred to the Allottee.

r) That the respondent cannot pay the "Assured Returns" to the complainants by any stretch of imagination in the view of prevailing laws. On 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019", to stop the menace of unregulated deposits, the "Assured Returns Scheme" given to the complainants fell under the scope of this Ordinance and the payment of such returns became wholly illegal. That later, an act by the name "The Banning of Unregulated Deposits Schemes Act, 2019" (hereinafter referred to as "the BUDS Act") notified on 31.07.2019 and came into force. That under the said Act all the unregulated deposit schemes such as "Assured Returns" have been banned and made punishable with strict penal provisions. By no stretch of imagination, the respondent can continue to make the payments of the said Assured Returns in violation of the BUDS Act.

s) That due to the COVID-19 pandemic, whole nation was under the complete lockdown and all activities, including the construction of the said project was under a complete standstill. The respondent was also severally affected by the adverse effects of the Covid pandemic. Yet,

despite the same, the respondent maintained on its commitment of payment of assured return. On 06.07.2020, the payment of assured returns was divided in two parts of 50% each.

t) That it is a matter of record that the respondent has paid to the complainants a total sum of Rs. 21,36,628/- including taxes, as assured returns from May 2018 to November 2023, and nothing further remains to be paid. Since, the complainants are in breach of their reciprocal obligations of signing the buyer's agreement, the respondent has rightly stopped the further payment of the Assured Returns.

u) That the respondent had applied for Occupation Certificate on 28.04.2023. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project. The complainants were duly intimated about the application for Occupation Certificate vide letter dated 29.08.2023.

v) That it was an obligation of the complainants to make the payments against the unit, however, the complainants have gravely defaulted in the same. The principal amount demanded against the said unit was Rs. 50,62,360/-. The total Sales Consideration was Rs. 45,28,000/- including IFMS charges, however, excluding the stamp duty, registration charges, sinking fund and other charges amounting to Rs. 6,13,825/-.

complainants are yet to pay other charges, Stamp Duty and Registration Charges as stated above. Hence, the complainants can either seek the refund of above-mentioned excess and pay the Stamp Duty and Registration Charges or seek an adjustment of the excess and pay the balance dues.

w) That it must also be stated that the entire dispute created by the complainants is under an incorrect premise that the terms of the Application Form were complete, final and binding and no further terms were to be executed between the parties.

x) That it is stated that the excavation work at the project site was started on 06.02.2018 and therefore, the possession timeline of the Unit was tentatively to be 06.08.2022, subject to exclusion of time during the NGT ban on construction activities and the delays caused in the entire real estate sector, much like other impacted sectors, including the project due to COVID-19 pandemic.

y) That the Project was duly registered under RERA vide Registration Certificate dated 14.09.2017 bearing No. HRERA-840/2017/1084 which was for completion of the same till 31.12.2022. However, due to the COVID-19 pandemic, the competent authority under RERA, vide order dated 26.05.2020 had tentatively extended the timeline for all real estate projects for a period of 6 months i.e., till 30.06.2023. Infact, Partial Completion Certificate for the retail area and multiplex has already been received on 24.12.2021.

z) That it is submitted that this Hon'ble Authority has no jurisdiction to deal with the cases pertaining to leasing. That the Act is entirely silent on the same. That had 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.

10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

12. As per notification no. ***1/92/2017-1TCP dated 14.12.2017*** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has a complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

> ***Section 11***
>
> ....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

14. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the Adjudicating Officer, if pursued by the complainants at a later stage.

15. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in "***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.***" and followed in case of "***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others" dated 13.01.2022 in CWP bearing no. 6688 of 2021*** wherein it has been laid down as under: -

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon Under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication Under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer Under Section 71 and that would be against the mandate of the Act 2016"*

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to

entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondents.

F.I Objection regarding maintainability of complaint on account of complainants being the investors.

17. The respondent took a stand that the complainants are the investors and not the consumers and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or Rules or Regulations made thereunder. Upon careful perusal of all the terms and conditions of the application form as well as the allotment letter, it is revealed that the complainants are the buyers and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. 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;"*

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the application form executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to 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 an "investor". Thus, the contention of the promoter that the allottees

being the investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

19. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in ***CR/8001/2022*** titled as ***"Gaurav Kaushik and Another Vs. Vatika Limited"*** has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the BUDS Act of 2019. Hence, the plea with respect to non-payment of assured return is hereby dismissed.

F.III Objection regarding delay in project due to force majeure circumstances.

20. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, GST, adverse effects of Covid-19 etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The application form was executed between the parties

on 24.05.2018 and the due date to complete the construction was 31.12.2022 in terms of clause j of the said application form and the events taking place such as orders of NGT in NCR on account of the environmental conditions, demonetization, GST are for short duration, which does not made any impact of the construction of the developer, adverse effects of Covid-19 etc. and others force majeure circumstances which occurred after the due date of completion. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

F.V Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

21. The Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020 dated 29.05.2020*** has observed as under:

> *"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

22. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 31.12.2022. As per ***HARERA notification no. 9/3-2020 dated 26.05.2020***, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in

which the subject unit is being allotted to the complainants is 31.12.2022 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 30.06.2023.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to refund the entire monies paid with applicable interest from the date of deposit till date of actual realization.

G.II Direct the respondent to pay outstanding assured return amounts from the date of default till the date of filing of the present complaint along with interest as prescribed under the RERA Act.

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

24. The factual matrix of the case reveals that the complainants applied for booking a unit in the project of the respondents, namely, "AIPL Joy Central", situated at Sector-65, Gurugram vide application form dated 24.05.2018. Thereafter, the respondents issued allotment letter dated 29.05.2018 wherein the complainants were allotted a unit bearing no. 0007D situated on 10th floor, admeasuring 500 sq. ft. (super area) for a basic sale consideration of ₹44,53,000/-. However, it is important to note that the builder buyer agreement was not executed between the parties. Further vide e-mail dated 08.05.2020 the unit earlier allotted to the complainants was reallocated to unit no. 743 at 7th floor.

25. The plea of the complainants is that they had paid a sum of ₹68,87,360/- (₹49,87,360/- as evident from allotment letter + ₹19,00,000/- cash) towards the subject unit. However, the respondent submitted that only an amount of ₹49,87,360/- has been paid by the complainants and same is evident from

statement of accounts dated 05.02.2024 placed on record by the respondent at page no. 93 of its reply. There is no documentary evidence on record to substantiate the cash payment of ₹19,00,000/- being made by the complainants to the respondents. Thus, after a careful perusal of documents available on record as well as submissions made by the parties, it can be ascertained that the complainants have paid only (₹49,87,360/- towards the unit in question. Further, the amount of ₹21,36,628/- has been paid by the respondents to the complainants on account of assured returns.

26. Further, the complainants vide e-mail dated 22.06.2020 asked the respondent that they wish to withdraw from the project and made a request for refund of the paid-up amount on its failure to execute the builder buyer agreement and give possession of the allotted unit in accordance with the terms and conditions agreed between them, but the respondent never refunded the amount till date. On failure of respondent to refund the same, they have filed this complaint seeking refund.

27. Herein, the complainants herein intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per Section 18(1) of the Act and the same is reproduced below for ready reference:

> *"**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.-***
> ***in accordance with the terms of the agreement for sale** or, as the case may be, duly completed by the date specified therein; or*
> *due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
>
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be,***

> ***with interest at such rate as may be prescribed*** *in this behalf including compensation in the manner as provided under this Act..."*

28. **Due date of handing over of possession:** The due date of possession is to be calculated as per clause j of the application form executed between the parties on 24.05.2018. The relevant clause is reiterated as under:

> *"The Company shall subject to force majeure conditions propose to* ***handover possession of the unit on or before December 2022*** *notified by the Promoter to the Authority at the time of registration of the project ....."*

29. Thus, clause j of the application form obligates the respondents to complete the construction of the said unit and hand over possession of the unit by 31.12.2022. Further as per ***HARERA notification no. 9/3-2020 dated 26.05.2020,*** an extension of 6 months is granted for the projects having a completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 31.12.2022 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to the outbreak of Covid-19. As such the due date for handing over of possession comes out to be 30.06.2023.

30. **Admissibility of refund along with prescribed rate of interest:** The complainant-allottees intends to withdraw from the project and are seeking refund of the amount paid by him in respect of the subject unit with interest at the prescribed rate. However, the legislature in its wisdom in the subordinate legislation, under the provision of Rule 15 of the Rules, ibid vide notification dated 12.09.2019, has determined that for the purpose of proviso to Section 12; Section 18; and Sub-Sections (4) and (7) of Section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%. the prescribed rate of interest. Therefore,

in case the complainant/allottee intends to withdraw from the project after commencement of the Act, 2016, the amount paid by him shall be refunded along with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

31. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

32. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

33. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that as per clause j of the application form dated 24.05.2018, the possession of the apartment was to be delivered by 30.06.2023. However, the complainant has already withdrawn from the project by sending e-mail dated 22.06.2020 and sought refund of the paid-up amount with interest even before the due date of possession. So, in such a situation, the complainants withdrew from the project even prior to the due date. Thus, they are not entitled to refund of the

complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under.

> ***"5. AMOUNT OF EARNEST MONEY***
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money* ***shall not exceed more than 10% of the consideration amount*** *of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

34. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.49,87,360/- after deducting 10% of the sale consideration of Rs.44,53,000/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 22.06.2020 till actual refund of the amount within the timelines provided in Rule 16 of the Haryana Rules, 2017 ibid. However, it is important to note that the amount of assured returns paid by the respondent to the complainant-allottees shall be adjusted/deducted from the payable amount.

G.III Impose appropriate penalty upon the respondents in terms of the provisions of the RERA Act and applicable rules for violation of provisions of Section 13 of the RERA Act.

35. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a

penalty, RERA follows a due process that includes conducting an investigation and a hearing where the developer can present their case.

36. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainant does not intend to pursue the above relief sought by him. Hence, the authority has not rendered any findings pertaining to the above-mentioned relief.

G.IV Direct the respondent to pay Rs. 5,00,000/- towards legal costs and expenses incurred by the complainant in pursuing legal recourse against the respondent.

37. The complainants are also seeking relief w.r.t. compensation. 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 & litigation charges 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 & litigation expense 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 and legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

38. 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/promoter is directed to refund to refund the paid-up amount of Rs.49,87,360/- after deducting 10% of the sale consideration being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 22.06.2020 till its realization. The amount of assured return already paid by the respondent to the complainants as specified in para 3 of this order shall be adjusted/deducted from the payable amount.

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

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

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

41. Files be consigned to the registry.

Dated: 23.07.2025

Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram