

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

Complaint no. : 1398 of 2024
Date of complaint : 16.04.2024
Date of Decision : 09.05.2025

Rajesh Mittal

R/o: The Hibiscus Building 8, Flat 5B, Sector-50,
Gurgaon-122018, Haryana.

Complainant

Versus

1. Wellworth Projects Developer

Address: 3, Munirka Marg, Vasant Vihar, New
Delhi-110019

2. Advance India Projects Pvt. Ltd.

Address: AIPL Business Club, 5th Floor,
Sector-62, Gurgaon.

Respondents

CORAM:

Shri Arun Kumar

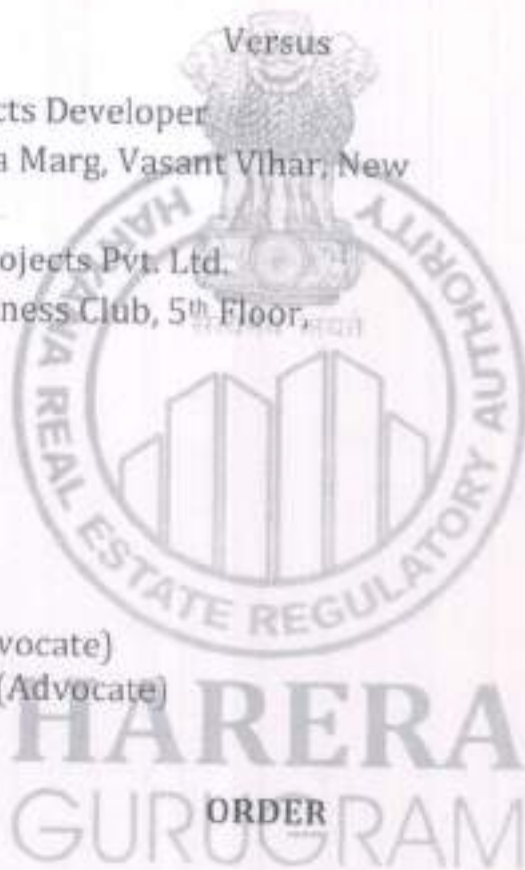
Chairman

APPEARANCE:

Shri Vipin Rana (Advocate)

Shri Dhruv Rohtagi (Advocate)

**Complainant
Respondents**

**ORDER**

1. The present complaint has been filed by the complainant/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 complainant, 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 Joy Central, Sector 65, Gurugram.
2.	Nature of project	Commercial Colony
3.	Project area	3.987 acres
4.	DTCP license no.	249 of 2007 issued on 02.11.2007 valid up to 01.11.2024
5.	Name of licensee	M/s Wellworth Project Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	95, Ground Floor (page 73 of complaint)
8.	Area admeasuring	1386 sq. ft. (page 73 of complaint)
9.	Allotment Letter	10.04.2017 (page no. 102 of complaint)
10.	Date of apartment buyer agreement	18.09.2017 (page 71 of complaint)
11.	Renumbering of unit letter GF-116	20.05.2020 (Page no. 133 of reply)

12.	Possession Clause	<p>Clause 44</p> <p><i>Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavors to hand over the possession of the Unit to the Allottee within a period of 54 (fifty four) months, with a further grace period of 6 (six) months, from 1 September 2017.</i></p> <p><i>[Emphasis supplied]</i> <i>(As on page no. 90 of complaint)</i></p>
13.	Due date of possession	<p>01.09.2022</p> <p>[Calculated 54 months + 6 months from 01.09.2017]</p>
14.	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. 1,67,039/- per month by way of assured return to the Allottee from 28.04.2017 till the date of issue of Notice of possession of the unit.</u> The return shall be inclusive of all taxes whatsoever payable or due on the return.</p> <p><i>(Emphasis supplied)</i></p>

15.	Total sale consideration	Rs.3,75,20,406/- (as per payment plan on page no. 95 of complaint)
16.	Paid up amount	Rs.4,19,37,819/- (as per SOA at page no. 142 of complaint)
17.	Occupation certificate	24.12.2021 (page no. 130 of reply)
18.	Offer of possession (constructive)	21.01.2022 (page no. 104 of complaint) Unit no. has been changed from 95 to 116
19.	Letter regarding leasing of unit	24.11.2022 (page no. 149 of reply)
20.	Lease termination letter	06.10.2023 (page no. 150 of reply)
21.	New lease with nature's basket	06.10.2023 (page no. 151 of reply)
22.	Lease termination with nature's basket	02.02.2024 (page no. 152 of reply)
23.	New lease with image fashion forever	03.04.2024 (page no. 153 of reply)
24.	Lease termination with image fashion forever	22.04.2024 (page no. 154 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the complainant booked a unit in the project of the respondent and made a total payment of Rs. 4,19,37,819/- for unit GF-116 in AIPL Joy Central.
- II. That the respondents violated the section 3(1) of The Real Estate Regulation and Development Act, 2016, which provide that "No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.
- III. In the present case, the RERA registration was obtained by the respondents on 14.09.2017 whereas, the respondents accepted the deposit of ₹ 5,00,000/- towards the booking amount of the said unit GF-116 (0095) in project AIPL Joy central on 13.12.2016.
- IV. That the respondents accepted a total amount of ₹ 1,95,10,913/- without completing the RERA registration, well before the official launch of project AIPL Central.
- V. That the complainant was made to sign the builder buyer's agreement on 15.03.2017 registered on ₹100 Stamp paper instead of a formal builder-buyer agreement since the respondent had already accepted approx. 45% of the unit value.
- VI. That the respondent has wilfully violated Section 13 of the RERA Act, 2016 by compelling the complainant to pay 100% of the unit's amount without first engaging in a builder-buyer agreement. Additionally, despite the complaint being lodged, the respondent has refused to sign and formalize the builder-buyer agreement,

thereby evading mandatory obligations such as penalty charges for delays, assured returns, and the timely provision of the unit as prescribed in the RERA Act, 2016.

- VII. That the respondents lured the complainant to extract the money by making false promises and statements in connection with the assured returns and the delivery time of the project, which resulted in the loss of revenue as the intend unit was meant to fetch the rental income for the complainant.
- VIII. That the respondents have violated the clause 11 of the buyer's agreement, which provide that "The Company upon obtaining occupation certificate from the Government Authority shall offer in writing possession of the unit to the Allottee provided the Allottee is not in default of the terms and conditions of this agreement and has complied with all provisions, formalities, documentations etc".
- IX. That the para 2 of the clause 11 also provide that the "Upon receiving a written intimation from the company as above, the Allottee shall within the time stipulated by the company, take possession of the unit from the company.
- X. Despite issuing a notice of offer of possession, the respondents have declined to finalize the necessary formalities and documentation required for the peaceful handover of the said unit, numbered GF-116, thereby, technically, not complying with the procedure after issuing the offer of possession.
- XI. That the respondents has failed to lease out the mentioned unit for the past two years, starting from January 21, 2022. This failure has once again led to significant revenue losses for the complainant.

- XII. That clause 12 of the buyer's agreement provides that "the Allottee shall be handed over the possession of the unit from the company only after the Allottee has fully discharged all his obligations and entire total price (including interest due if any, thereon) against the unit has been paid and all other applicable charges/dues/taxes/cess of the Allottee have been paid and conveyance deed has been executed and registered in his favour.
- XIII. That clause 12 of the buyer's agreement further provides that "the company shall hand over possession of the unit to the Allottee provided the Allottee is not in default of the terms and conditions of this agreement and has complied with all provisions, formalities, documentations etc.
- XIV. That the respondent vide its letter dated 21.01.2022 issued an notice of offer of possession wherein the respondent made several demands such as, the demand towards IFMS, Development charges, labour cess, infrastructure augmentation charges, electric switch in station and deposit charges and sewage/storm water/water connection charges, electric meter, stamp duty, registration charges which were not payable by the complainant.
- XV. That the complainant made a total payment of Rs.4,19,37,819/- towards the total basic sale price, development charges, infrastructure development charges, IFMS, PLC, of the unit from 2016 onwards. The complainant opted for down payment plan with the added benefit of assured returns as applicable.
- XVI. That the complainant maintained regular contact with the respondent, reaching out on numerous occasions. Despite this ongoing communication, the respondent consistently failed to

provide satisfactory responses regarding the construction progress and remained uncertain about the possession delivery timeline.

- XVII. That from 2016 whenever the complainant went to the office of the respondent and requested the respondent to allow them to visit the site. They were denied saying that they do not permit any buyer/allottee to visit the site during the construction period.
- XVIII. That on 28.09.2023 the complainant sent an email to respondent requesting for information on the status of leasing out the said unit no. GF-116.
- XIX. That on 07.10.2023 the respondent via email message informed the complainant that the lease agreement with brand W & Aurelia is terminated without specifying the actual reasons.
- XX. That on 02.02.2024 the respondent again informed the complainant that brand nature's basket has also terminated the lease agreement with the respondents.
- XXI. That on 16.02.2024, the complainant met the representative of the Respondent and he confirmed that the respondent company AIPL has no reservation in handing over the physical possession of the said unit no. GF-116 which is lying vacant since 21.01.2022. He needed a written consent of the complainant to initiate the process of physical handover of the unit. The complainant immediately informed the respondent that he give his consent to prepare the physical handover of the unit GF-116 along with the pending assured returns, however, the respondent again failed to deliver on the promise made to the complainant.
- XXII. That on 21.02.2024, the complainant again sent a detailed email message to the respondent requesting for an immediate action to

handover the physical possession of the unit GF-116 in Joy Central as the respondent has failed to lease out the same since 21.01.2022.

XXIII. That the company initially under clause 32 of the UBA agreed to pay an amount of Rs. 1,67,039/- from 28.04.2017, and Rs. 3,34,078/- from January 2019 onwards per month by the way of assured return to the Allottee till the date of occupancy certificate from DGTCP. However, the company has failed to make these payments on timely basis. Therefore the company is liable to compensate the complainant an amount excluding the assured returns payments until the date of physical possession of the allotment.

XXIV. That the offer of possession sent by the respondent to the complainant includes many demands which are not part of the buyer's agreement and hence are not payable by the complainant and the same are mentioned hereunder apart from the demand which has been raised on account of the increased super area, which too is very illegal and unjustified.

XXV. That the respondents have demanded a labour cess of ₹ 24,064/-, 12 months of advance maintenance charges amounting to ₹ 2,15,350/-, sinking fund of ₹ 3,16,498/- from the complainant.

XXVI. Apart from the above, the following charges levied by the respondent are unjust and illegal as provided to the allottees placed in similar conditions and hence are not payable at all.

- a. Electrical Switch in Charges Station and Deposit Charges of ₹1,00,447/-
- b. Sewage/Storm Water/ Water Connection of ₹ 9,186/-
- c. Infrastructure Augmentation charge of ₹13,210/-
- d. Electrical Meter Charges of ₹11,800/-

e. Registration charge of ₹ 50,003/-

C. Relief sought by the complainant:

4. The complainant sought following relief(s).
 - i. Direct the respondents to handover the physical possession and duly execute the conveyance deed in favour of complainant.
 - ii. Direct the respondent to pay interest so accrued on the entire amount paid by the complainant at the prescribed rate for every month of delay from the due date of possession till offer of possession.
 - iii. Direct the respondents to pay outstanding assured returns as per the buyer's agreement till the realization of actual amount with prevailing interest rate of SBI PLR +2% until the physical possession of the unit.
 - iv. Direct the respondents to adjust the entire amount of interest due to the complainant from the date of delivery period as per the buyer's agreement to the actual delivery of possession against the just and legal demands from the complainant.
 - v. To set aside the offer of possession on grounds of it being unjust and illegal and direct to issue fresh offer of possession.
 - vi. Restrain the respondent from raising any fresh demand with respect to the unit.
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 respondents.

6. The respondents vide reply dated 27.11.2024 contested the complaint on the following grounds: -
 1. That the complainant has 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.

- II. That the complainant is estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainant, has failed to make payments within time.
- III. That the complainant is not an "Allottee" but Investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.
- IV. That the complainant had approached the respondent and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing number "0095, Ground Floor, admeasuring 1386 sq. ft. situated in the project developed by the respondent, known as "AIPL Joy Central" at Sector 65, Gurugram, Haryana. Thereafter the complainant along with his wife, vide application form, applied to the respondent for provisional allotment of a unit bearing number 0095, Ground Floor, in the said project. That subsequently, at the request of the complainant himself, the name of his wife was deleted and as on date, the unit stands allotted in the name of the complainant alone.
- V. That the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant 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 complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- VI. 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 complainant purchased the unit

only on the categorical understanding that the unit shall not be for physical possession. The said fact is fortified from the clause 43 of the application form, duly signed by the complainant himself.

- VII. That pursuant to the execution of the application form, the respondent provisionally allotted unit no. GF/0062A in the said project. The respondents were provisionally allotted a commercial unit admeasuring approx. 349 sq. ft. of the super area on the ground floor in the said project vide provisional allotment letter dated 24.03.2017. That the unit allotted was provisional and subject to change as was categorically agreed between the parties.
- VIII. That the buyer's agreement was executed between the parties on 18.09.2017. The said agreement was duly signed by the complainant after properly understanding each and every clause contained in the agreement. The complainant was neither forced nor influenced by the respondents to sign the said agreement.
- IX. That in the present case, the complainant has miserably failed to abide by the terms and conditions of the buyer's agreement and defaulted in remitting timely instalments. The respondent was constrained to issue payment reminder letters to the complainant. It was further conveyed by the respondent to the complainant that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.
- X. That the complainant as per their own decision and after fully understanding their obligations opted for flexi payment plan as per the buyer's agreement. The respondent developer raised all the demands as per the payment plan so opted for by the complainant.

However, the complainant defaulted in making due and timely payments, for which the respondent developer issued reminder letters and also made repeated follow-ups.

- XI. That despite default by the complainant in fulfilling their obligations, the respondents did not default and completed the construction of the project without having regular payment of monies by the complainant. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant.
- XII. That the respondent was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour, etc being circumstances beyond the control of the respondent and force majeure circumstances, that the construction was severely affected during this period and the same was rightfully intimated to the complainant by the letter dated 30.11.2019. Despite all these factors, the respondent completed the construction within the stipulated time and offered the possession before the agreed due date of delivery.
- XIII. That in terms of clause 32 of the buyer's agreement, the respondents were to pay Rs. 1,67,039/- per month as assured returns to the complainant from 28.04.2017 till the date of issue of notice of

possession. The payment of assured returns was subject to force majeure conditions and applicable laws, orders, notifications, etc, affecting the construction of the project and for such period, assured returns were not to become due and payable by the promoter and the promoter was not liable to pay assured return for such period.

- XIV. That till June 2019, the assured returns were given through cheques and post June 2019, the electronic clearing services were made mandatory. The respondent has already paid a sum of Rs. 99,42,054/- to the complainant. The assured returns were given to the complainant till the Covid-19 pandemic started. The payment towards the assured returns during the period was delayed due to pandemic. The respondent issued the letter to the complainant in which it was clearly stated that due to Covid pandemic the construction of the project was put on halt and the assured returns for the same could not be given and later the payment of assured returns was resumed.
- XV. That after the implementation of the BUDS Act, the payment of assured returns were impacted. After banning of the assured returns from the BUDS Act, there exists no liability of the respondents to pay the assured returns. 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 complainant 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.

- XVI. That the respondents had applied for occupation certificate on 09.05.2021. The occupation certificate was thereafter issued in favour of the respondents on dated 24.12.2021.
- XVII. That meanwhile, for the overall betterment of the project and due to the requirement of the Governmental Authority, there were some change in the area of the unit allotted to the complainant and the unit area was altered from 1386 sq. ft. to 1382.56 sq. ft., which was in terms of clause 10 of the buyer's agreement. Further, the unit numbering was also changed and the unit no. 0095 on ground floor of AIPL Joy Central, allotted to the complainant was re-numbered as GF-116. The above facts were duly intimated to the complainant vide letter dated 20.05.2020.
- XVIII. That upon the receipt of the occupancy certificate the respondents issued letter of offer of possession dated 21.01.2022 to the complainant. The respondents vide the said notice of offer of possession advised and requested the complainant to clear the outstanding dues including delayed payment charges and to complete the necessary formalities/documentation necessary for constructive handover of the unit in question to the complainant.
- XIX. That the total sale consideration of the unit is Rs. 4,51,29,278/- (including Development Charges, IFMS, GST, Service Tax, stamp duty and registration charges), out of which the complainant has paid a sum of Rs. 4,19,37,819.18/-. Additionally, a sum of Rs. 31,91,460/- is still due and payable, which the complainant is liable to pay, in order to get the conveyance/sale deed.

- XX. That it is submitted that this Hon'ble Authority has no jurisdiction to deal with the cases pertaining to leasing. The Act is entirely silent on the same. The legislature intended the jurisdiction of the Act to extend to leasing arrangements, the same would have been incorporated.
- XXI. That the complainant has filed the present complaint before the Hon'ble Authority which is not maintainable. The complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Hon'ble Authority.
- XXII. That the complainant shall be directed to file pursue the complaint before the civil court for any dispute arises from the agreement in the form of investment agreement and lease agreement. The respondent no.1 vide its letter dated 24.11.2022, intimated the complainant that it had entered into a letter of intent with brands 'W' and 'Aurelia' for its retail store at the unit in question. However, the said lease did not fructify, and the respondent intimated the same to the complainant vide letter dated 06.10.2023.
- XXIII. That the respondent no.1, simultaneously was able to find another tenant 'Nature's Basket' for the unit in question and the same was intimated to the complainant vide letter dated 06.10.2023. However, as the fate would suggest, the said prospective tenant also did not go ahead with leasing the unit and decided to terminate the transaction. The said fact was also intimated to the complainant vide letter dated 02.02.2024.
- XXIV. That the respondent thereafter again entered into negotiations with another brand 'Image Fashion Forever' for running their apparel store at the unit in question and the said lease was successfully fructified. The said fact was also duly intimated to the complainant vide letter

dated 03.04.2024. However, the said tenant due its own reasons had withdrawn from the transaction. The said fact was also duly intimated to the complainant vide letter dated 22.04.2024.

6. 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 complainant.

E. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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 complainant at a later stage.

F. Findings on the objections raised by respondent

F.1 Objection regarding the complainant being investor.

11. The respondent/promoter has taken a stand that the complainant is the investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The authority observes that the Act is enacted to protect the interest of consumer of the real estate sector. 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;"

12. 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 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". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondent to handover the physical possession.**
- G.II Direct the respondent to pay interest so accrued on the entire amount paid by the complainant at the prescribed rate for every month of delay from the due date of possession till offer of possession.**
- G.III Direct the respondents to pay outstanding assured returns as per the buyer's agreement till the realization of actual amount with prevailing interest rate of SBI PLR +2% until the physical possession of the unit.**

Possession

13. In the present complaint complainant booked a unit in the project of the respondent/promoter namely, AIPL, Joy Central, situated at sector-65, Gurugram. The complainant was allotted a unit bearing no. 95 situated on ground floor admeasuring 1386 sq. ft. vide allotment letter dated 10.04.2017. Thereafter on 18.09.2017 the apartment buyer agreement was executed between the parties. Further vide letter dated 20.05.2020 the unit earlier allotted to the complainant was renumbered as GF-116.
14. The complainant pleaded that he is seeking physical possession of the unit along with delay possession charges as per clause 12 and 44 of the apartment buyer agreement dated 18.09.2017. The said clause 12 and 44 of the apartment buyer agreement is reiterated as under:

12. That the Allottee shall be handed over possession of the Unit from the Company only after the Allottee has fully discharged all his obligations and entire Total Price (including interest due, if any, thereon) against the Unit has been paid and all other

applicable charges/dues/taxes/cess of the Allottee have been paid and Conveyance Deed has been executed and registered in his favour. The Company shall Handover possession of the Unit to the Allottee provided the Allottee is not in default of any of the terms and conditions of this Agreement and has complied with all provisions, formalities, documentation, etc. as may be prescribed by the Company in this regard. The Allottee shall be liable to pay the Maintenance Charges from the date referred in the notice for taking possession of the Unit. After taking possession of the Unit, it shall be deemed that the Allottee has satisfied himself with regard to the construction r quality of workmanship.

44.

Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavors to hand over the possession of the Unit to the Allottee within a period of 54 (fifty four) months, with a further grace period of 6 (six) months, from 1 September 2017.

15. The plea of the respondent is otherwise and stated that at the time of booking of the unit complainant was fully aware of the fact that unit in question was not for self-use and for the purpose of leasing out to third party. The respondent stated that it was never agreed between the parties that the physical possession of the unit would be handed over to the complainant and in support of its contention it placed reliance upon clause 43 of the application form which states as under:

43. *The Applicant has clearly understood that the Unit is not for the purpose of self-occupation and use by the Applicant and is for is for the purpose of leasing to third parties alongwith combined units as larger area. The Applicant has given unfettered rights to the Company to lease out the Unit alongwith other combined units as a larger area on the terms and conditions that the Company would deem fit. The Applicant shall at no point of time object to any such decision of leasing by the Company."*

16. The Authority after hearing both the parties is of the view that clause 12 of the apartment buyer agreement dated 18.09.2017 deals with the "Handing over of Possession". Clause 12 specifies that the allottee would be handed over the possession of the unit. Further it is a matter of record that it is nowhere mentioned that the complainant/allottee would be handed over "constructive possession" instead of "physical possession". Further as far as the plea of the respondent w.r.t clause regarding constructive possession in the application form is concerned, the same is not tenable by virtue of the clause 36 of the apartment buyer's agreement dated 18.09.2017 which clearly mentions that the buyer's agreement supersedes all the previous understandings, agreements, correspondences, arrangements whether written or oral if any, between the parties and hence, clause of booking application cannot be relied upon.
17. In light of the reasons stated above, the Authority is of the view that as per the buyer's agreement dated 18.09.2017, both the parties have agreed to handover of physical possession of the subject unit and accordingly, the respondent was liable to handover the physical possession of the subject unit to the complainant-allottee and not the constructive possession. The occupation certificate for the unit in question has already been received on 24.12.2021. Therefore, the respondent is directed to hand over the physical possession of the unit to the complainant within 60 days of this order.

Assured Return

18. The complainant in the present complaint is seeking relief w.r.t payment of assured return as per the clause 32 of the apartment buyer agreement dated 18.09.2017. It is pleaded that respondent has not

complied with the terms and conditions of the said buyer's agreement. Though for some time assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of **Banning of Unregulated Deposit Schemes Act, 2019** (hereinafter referred to as the Act of 2019), citing earlier decision of the authority **Brihmjeet & Anr. Vs. Lnadmark Apartments Pvt. Ltd. complaint no. 141 of 2018**, whereby relief of assured return was declined by the authority. The Authority has rejected the aforesaid objections raised by the respondent in CR/8001/2022 titled as **Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the Authority while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land. Further, it was held that when payment of assured return is part and parcel of apartment buyer's agreement then the promoter is liable to pay that amount as agreed upon and the BUDS Act, 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)-(I)(iii) of the Act of 2019. Thus, the plea advance by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

19. Moreover, as far as the order passed by **Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022** restraining the competent authority from taking any coercive action against the respondent is concerned, the said objection was itself dealt by Hon'ble High Court vide order dated 22.11.2023 wherein it was held that ".....there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate

Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them.” In view of the aforesaid order, the authority is proceeding with the present complaint as such.

20. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
21. The agreement/MOU defines the builder buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, the respondent builder is liable to pay the assured return as per clause 32 of the apartment buyer agreement dated 18.09.2017 i.e., ₹ 1,67,039/- per month to allottee from 28.04.2017 till the date of issue of notice of possession of the unit.

Delay Possession Charges:

22. In the present complaint, the complainant intends to continue with the project and is 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.”

23. An apartment buyer agreement dated 18.09.2017 was executed between the parties. The due date to handover the possession of unit is calculated as per clause 44 of ABA. The relevant clause is reproduced below:

44 "Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavors to hand over the possession of the Unit to the Allottee within a period of 54 (fifty four) months, with a further grace period of 6 (six) months, from 1 September 2017.

24. **Due date of handing over of possession:** As per possession clause 44 of the agreement dated 18.09.2017 the possession of the unit was to be handed over within 54 months with a further grace period of 6 months from 01.09.2017. The said grace period of 6 month is allowed as it is unqualified. Hence, the due date of possession comes out to be 01.09.2022.
25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at prescribed rate of interest. Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, 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.
27. 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., 09.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
28. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

30. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 01.09.2022. The respondent company has obtained the occupation certificate dated 24.12.2021 from the competent authority and thereafter, issued notice for offer of constructive possession on 21.01.2022. The respondent has offered the possession of the subject unit before the expiry of due date of handing over possession.

31. In view of the above findings, no delay in handing over the possession of the subject unit on part of respondent is established and accordingly, no case of delay possession charges is made out.

G.IV. Direct the respondents to adjust the entire amount of interest due to the complainant from the date of delivery period as per the buyer's agreement to the actual delivery of possession against the just and legal demands from the complainant.

32. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

G.V To set aside the offer of possession on grounds of it being unjust and illegal and direct to issue fresh offer of possession.

33. The complainant has pleaded that the respondents vide offer for possession dated 21.01.2022 have charged various illegal charges on account of Labour Cess of ₹ 24,064/- , Advance Monthly Maintenance Charges of ₹2,15,350/- , Sinking Fund of ₹ 3,16,498/-, Electrical Switch in Charges Station & Deposit Charges of ₹ 1,00,447/-, Sewage/Storm Water/Water Connection Of ₹ 9,186/-, Infrastructure Augmentation

Charges of ₹13,210/-, Electric Meter Charges of ₹11,800/-, Registration Charges of ₹50,003/-.

34. The authority observes that the respondents has issued an offer for possession dated 21.01.2022 which is annexed at page 104 of complaint. All the demands are dealt accordingly below:

- **Labour cess**

35. The complainant has pleaded that respondent is charging an amount on account of labour cess i.e., ₹ 24,064/- which is illegal. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited wherein it was held that since labour cess is to be paid by the respondents, as such no labour cess should be charged by the respondents. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondents and it is the respondent/builder who is solely responsible for the disbursement of said amount.

- **Sinking Fund**

36. The complainant has pleaded that respondents are charging an amount on account of sinking fund i.e., ₹ 3,16,498/- which is illegal. The

authority is of the view that clause 18 of the apartment buyer agreement is relevant and is reproduced below for ready reference:

*18. As and when, any plant & machinery within the Project/Tower as the case may be, including but not limited to lifts, DG sets, Electric Sub-station, pumps, fire-fighting equipment, or any other plant or equipment of capital nature, etc, require replacement, up-gradation, additions, etc., the cost thereof shall be contributed by the Allottees in the project on pro rata basis. The Maintenance agency shall have the sole authority to decide the necessity of such replacement, up gradation, addition, etc., including its timing or cost thereof and the Allottee agrees to abide by the same. **The Allottee shall also make contribution to the sinking fund, if any in the Project.***

37. The authority is of the view that as per the above mentioned clause of the agreement dated 18.09.2017 the allottee had agreed to pay the said charge. Hence, the complainant/allottee is liable to pay for the same.

- **Electrical Switch in Charges Station & Deposit Charges, Electric Meter Charges, Sewage/Storm Water/Water Connection**

38. However, in case of electricity connection charges, water connection charges, sewerage connection charges, there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Moreover, this issue too has already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" decided on 12.08.2021, wherein it was held that these connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the above said connections including security deposit provided to the units, then the promoters will be entitled to recover the

actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head. Thus, any amount charged under the said heads is valid and payable by the complainant.

- **Infrastructure Augmentation Charges**

39. The complainant has pleaded that respondent is charging an amount on account of infrastructure augmentation charges i.e., ₹ 13,210/- which is illegal. The authority is of the view that clause 1.11 of the agreement is relevant and is reproduced below for ready reference:

1.11 The Allottee hereby agrees that any payment towards Development Charges/IAC/Labour Cess levied/leviable by the Government Authorities shall be paid by the Allottee and any increase in Development charges/IAC/Labour Cess by whatever name called or in whatever form and with all such conditions imposed by the Government Authorities shall be paid by the Allottee.

40. The authority is of the view that as per the above mentioned clause of the agreement dated 18.09.2017 the allottee had agreed to pay the said charge. Hence, the complainant/allottee is liable to pay for the same.

- **Registration Charges**

41. The registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of registration charges, is significant. The authority considering the pleas of the

developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

G.VI Restrain the respondent from raising any fresh demand with respect to the unit.

42. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.

G.VII. Duly execute the conveyance deed in favour of complainant.

43. With respect to the conveyance deed, the provision has been made under clause 14 of the buyer's agreement dated 18.09.2017 and the same is reproduced for ready reference:

The Company shall execute a Conveyance Deed/Sale Deed/or any other documents to convey the title of the Unit in favour of the Allottee, provided the Allottee has paid the entire Total Price in accordance with this Agreement and the Allottee is not in breach of any of the terms of this Agreement.

44. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining

thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

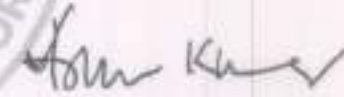
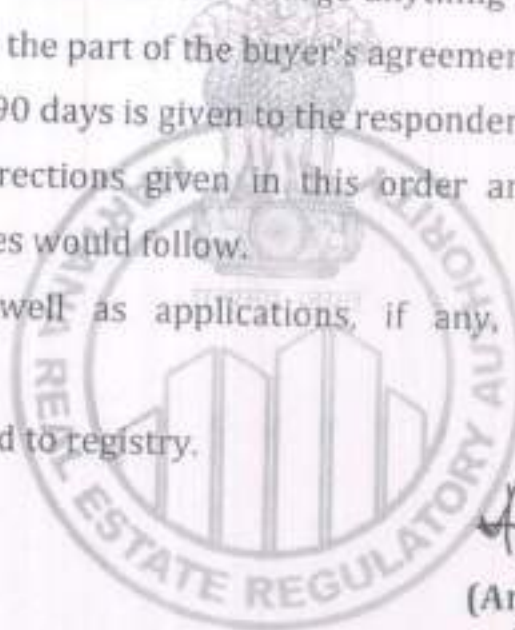
45. As occupation certificate of the unit has been obtained from the competent authority on 24.12.2021, therefore, there is no reason to withhold the execution of conveyance deed, which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the conveyance deed in favour of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

H. Directions of the authority

46. 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):
- The respondent is directed to pay the assured return as per clause 32 of the apartment buyer agreement dated 18.09.2017 i.e., ₹ 1,67,039/- per month to allottee from 28.04.2017 till the date of issue of notice of possession of the unit.
 - The respondent is directed to handover physical possession of the unit to the complainant within 60 days of this order.
 - The rate of interest chargeable from the allottee by the promoter, in case of default if any shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of

interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- iv. The respondent is directed to execute conveyance deed in favour of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.
 - v. The respondents shall not charge anything from the complainant, which is not the part of the buyer's agreement.
 - vi. A period of 90 days is given to the respondent/promoter to comply with the directions given in this order and failing which legal consequences would follow.
47. Complaint as well as applications, if any, stands disposed off accordingly.
48. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 09.05.2025

HARERA
GURUGRAM