

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

Complaint no. : 1149 of 2024
Complaint filed on: 22.03.2024
Order pronounced on: 15.05.2025

Dina Nath Goswami

R/o: Flat no. 399, Block-II, Ahinsa Utsav
Bhiwadi-301019

Complainant**Versus****M/s Advance India Project Ltd.**

Regd. Office: The Masterpiece, Golf Course Road,
Sector-54, Gurugram-122002, Haryana

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Gaurav Rawat (Advocate)
Shri Dhruv Rohtagi (Advocate)

**Complainant
Respondent****ORDER**

1. The present complaint has been filed by the complainants/allottees 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 allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

4. 2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the due date of proposed handing over

of the possession, and the delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"AIPL JOY GALLERY", Sector 66, Gurugram
2.	Project type	Commercial Complex
3.	Unit no.	1067, First floor (As per page 28 of complaint)
4.	DTCP License No.	19 of 2008 dated 05.12.2018
5.	Rera Registration	20 of 2020 dated 17.08.2020
6.	Application form	05.06.2020 (Annexed at page 30 of complaint)
7.	Allotment Letter	11.08.2020 (Page 28 of complaint)
8.	Date of execution of buyer's agreement	Not Executed (Note: Inadvertently mentioned as 05.01.2022 vide proceedings dated 15.05.2025)
9.	Due date of possession	31.03.2028 (As per application form on page 37 of complaint) (Note: Inadvertently mentioned as 13.05.2025 vide proceedings dated 15.05.2025)
10.	Sale consideration	Rs.76,84261/- (As per page 29 of complaint)
11.	Amount paid by the complainant	Rs.40,00,000/- (As per SOA at page 54 of complaint)
12.	Demand/Reminder Letters dated	11.03.2023, 21.03.2023, 05.04.2023
13.	Cancellation letter	12.05.2023 (As per page 63 of reply)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint:

5. The complainants have made following submissions in the complaint:
- This is with reference to the commercial project "AIPL JOY GALLERY" at Sector -66, Gurugram was launched by M/s. Advance India Projects Limited, under the license no. 197 of 2008, issued by DTCP, Haryana, Chandigarh.
 - That the complainant is the allottee within the meaning of section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The respondent company is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
 - In 2019, the respondent company issued an advertisement announcing a commercial project "AIPL JOY GALLERY" at Sector -66, Gurugram was launched by M/s. Advance India Projects Limited, under the license no. 197 of 2008, issued by DTCP, Haryana, Chandigarh, situated at Sector - 66, Village Hayatpur, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the authority.
 - The complainant while searching for a commercial was lured by such advertisements and calls from the brokers of the respondent for buying a commercial shop in their project. The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the national capital region. The respondent handed over one brochure to the complainant which showed

the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.

- e. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant, booked a unit in the project by paying a booking amount towards the booking of the said unit bearing no. 1067, 1st Floor, in Sector 66, having super area measuring 320.98 sq. ft. to the respondent dated 19.06.2019 and the same was acknowledged by the respondent.
- f. That respondent sent an allotment letter dated 11.08.2020 to the complainant confirming the booking of the unit dated 19.06.2019, allotting a unit no. 1067, first Floor measuring 320.98 Sq. Ft in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 76,84,261.00, which includes basic price Plus EDC and IDC, car parking charges, PLC, IFMS and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- g. As per the provisions of the RERA Act, 2016, no builder/promoter can take advance amount without getting the project registered with the HARERA Authority, GGM but in the present case respondent got the said project registered with HARERA on 17.08.2020 but booking amount was taken from the complainant on 19.06.2019. Furthermore, respondent even did not take the said amount in the ESCROW account as mandatory as per the provisions of the RERA Act, 2016.
- h. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.40,00,000/-, towards the said unit against total sale consideration of Rs. 76,84,261.00.



- i. That after repeated request, emails and reminders respondent failed to get the buyers agreement executed with the complainant. It is pertinent to mention here that booking of the said unit was done on 19.06.2019, allotment letter was issued on 11.08.2020 and till date the agreement has not been executed.
- j. That it is pertinent to mention here that allotment of the unit was made on 11.08.2020, after coming into force of the RERA Act, 2016 and as per the Act, after coming into force of the Act the respondent is under obligation to get the buyers agreement executed as per the sample agreement provided under the Act, and HARERA Rules, 2017, made thereafter, but in the present case respondent failed to comply with the same.
- k. Further, the complainant having dream of its own commercial unit in NCR signed the booking application in the hope that the unit will be delivered within four years from the date of execution of agreement. The complainant was also handed over one detailed payment plan.
- l. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. That such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.



- m. That during the period the complainant went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period.
- n. The complainant contacted the respondent on several occasions and were regularly in touch with the respondent with regard to execution of the builder buyer agreement. The respondent was never able to give any satisfactory response to the complainant regarding the status of the agreement, construction and were never definite about the delivery of the possession.
- o. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they get the agreement executed and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given.
- p. The respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, allotment letter and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- q. That allotment of the unit was made on 11.08.2020, after coming into force of the RERA Act, 2016 and as per the act, after coming into force of the Act the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present case, respondent has charged the complainant on the super area i.e. 320.98 sq. ft. which is against the provisions of the RERA Act, 2016 and the rules, 2017 made thereof. Hence, in accordance to the provisions of the RERA Act, necessary penal action to be taken against the respondent and direction may kindly be passed to the

respondent to charge on the carpet area instead of the super area of the unit.

- r. In the present case respondent has collected approx. Rs.40,00,000/-till date without executing the builder buyer agreement. Complainant visited number times to the office of the respondent stating that respondent has failed to obtain the OC. Further, requesting for the execution of the agreement but respondent failed to do so till date.
- s. That complainant raised objections on account of non-adjustment of the amount, price and raising the concern/objection that on ground reality status of construction of is not the same as the demand of money raised. Furthermore, requested for the inspection of the unit as per the agreement. That thereafter complainant sent several reminders through telephone to the respondent's company but they were never able to give any satisfactory response regarding the aforesaid issues raised by the complainant. That the respondent instead of complying as per the provisions of the Act, and obtaining the OC, sent Pre-termination letter dated 20.04.2023 and intimation of termination dated 12.05.2023 and full and final payment dated 20.12.2023 to the complainant forfeiting an amount of Rs. 18,07,164/- without providing any justification to same and against the spirit of the RERA Act,2016. Thereafter, an amount of Rs. 21,92,835/- was arbitrarily sent into the SBI Account of the complainant without providing any justification to the complainant and not responding nor providing any justification with respect to the query raised by the complainant.
- t. It is abundantly clear that the respondent has played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to

execute the BBA with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.

- u. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for commercial purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the relief/compensation in such cases would necessarily have to be higher.
- v. That complainant visited number times to the office of the respondent stating that respondent has failed to pay the fixed return and it has been several months but you have failed to obtain the OC. Further, requesting for the execution of the agreement but respondent failed to do so till date.
- w. That complainant raised objections on account of non-adjustment of the amount, non-payment of assured return change in payment plan, price and raising the concern/objection that on ground reality status of construction of is not the same as the demand of money raised. Furthermore, requested for the inspection of the unit as per the agreement. That thereafter complainant sent several reminders through telephone to the respondent's company but they were never able to give any satisfactory response regarding the aforesaid issues raised by the complainant.
- x. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and

Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

- y. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it.
- z. That the complainant is entitled to get refund of the entire amount paid along with interest at the prescribed rate from date of payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Hon'ble Adjudicating Officer.

C. Relief sought by the complainants:

6. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the Rs. 18,07,165/- amount paid by the complainant to the respondent along with interest till the date of its realization.
 - b. Direct the respondent to not to create any third-party rights in the said unit final realization of the total amount paid along with interest.
 - c. Initiate penal proceedings against the builder on account of violation of various Section/provisions of the Act, 2016 and rules frames thereafter.
7. 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) of the Act to plead guilty or not to plead guilty

D. Reply by the respondent:

8. The respondent has made following submissions in the reply:
 - a. 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 allotment and booking, as shall be evident from the submissions made in the following paras of the present reply.

- b. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the respondent No.1 has already terminated the allotment of the complainant, who has failed to honour the payment terms, despite repeated reminders. The reliefs sought in the false and frivolous complaint are barred by estoppel.
- c. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground alone.
- d. That the complainant is not "Allottee" but investors who had booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
- e. That the complainant has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.
- f. That the complainant had approached the respondent and expressed an interest in booking a unit in the commercial complex developed by the respondent and booked super market space bearing number B01/004, on basement one floor admeasuring 230.14 sq.ft. situated in the project developed by the respondent, known as "AIPL Joy Central"

at Sector 65, Gurugram, Haryana. It is submitted that the complainant, prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after they 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. That pursuant to the execution of the application form, the respondent issued the allotment letter dated 13.06.2019 to the complainant for his booking in AIPL Joy Central.

- g. The complainant was also interested in booking another unit in the said project and accordingly, even paid a sum of Rs. 40,00,000/- for the said unit in AIPL Joy Central.
- h. That meanwhile, the complainant gained knowledge that the respondent was launching a prestigious project, which is the project in question, by the name of "AIPL Joy Gallery", which was a standalone prestigious project of the respondent and had an assured return scheme in place. The complainant expressed his desire to book a unit in the said new project, proposed to be launched by the respondent.
- i. That the respondent informed the complainant that the said project was under RERA registration and there was still some time, when the respondent would start taking bookings in the said project. However, the complainant did not have adequate funds to make another booking and therefore, requested the respondent to halt the process of subsequent booking in AIPL Joy Central, so that he could, thereafter, invest in AIPL Joy Gallery.
- j. That the complainant insisted that, even though, the project in question was not registered with RERA and the said process was

ongoing, yet he wanted his booking to be transferred in the said project, in order for him to enjoy assured returns for a longer duration of time.

- k. Thus, on the request of the complainant, the respondent agreed to take the booking of the complainant in its project AIPL Joy Gallery, with the understanding that the complainant would receive the assured returns till the application of the occupation certificate and the necessary allotment letter and buyer's agreement will be issued subsequently after the RERA and other compliances would be completed.
- l. That the complainant soon after insisted on issuance of the allotment Letter, to which the respondent continued to request the complainant for awaiting the issuance of the RERA registration certificate, however, due to the persistent pressure and requests of the complainant, the respondent had no other option, but to issue an allotment letter to the complainant, dated 11.08.2020 and the same was received by the complainant on 07.11.2020. The copy of the allotment letter dated 11.08.2020, in respect of the booking in AIPL. The respondent had allotted a retail unit bearing no. 1067 on 1st floor of the project, having super area of 320.98 sq. ft., along with 1 car parking.
- m. That the respondent, in terms of the agreed arrangement between the parties, continued to pay the assured returns to the complainant.
- n. That the respondent received RERA registration for its project AIPL Joy Gallery, vide registration No. RERA-GRG-PROJ-650-2020 on 17.08.2020. It needs to be highlighted here that all this while, the complainant has never agitated or objected to the booking made by him in AIPL Joy Gallery, in the absence of the RERA registration, nor

any concern or objection was raised to the payment of Rs. 40,00,000/- , without execution of the buyer's agreement. The respondent could not have gotten a buyer's agreement executed at the time of transfer of the booking of the complainant, since the project AIPL Joy Gallery was not registered with RERA. The payment received was, a transfer case, which is evident from the account statement filed by the complainant himself, and as such, the respondent was only accommodating the requests of the complainant. It is apparent that the complainant is now taking advantage of the cooperation extended to him by the respondent to accommodate his requests. The present complaint deserves to be dismissed.

- o. That the respondent from time to time reached out to the complainant, requesting him to provide registration fee cheque for generating the challan required for registration of the 'agreement for sale'/ buyer's agreement, which fell on deaf ears.
- p. That upon completion of the formalities, the respondent, issued an email dated 01.03.2023, calling upon the complainant to come forward for the execution of the 'agreement for sale'/ buyer's agreement, in respect of the unit in question. It was also informed in the said email that the company had dispatched the agreement copy for perusal of the complainant at his registered address. However, till date, the complainant has not returned the executed copy of the buyer's agreement to the respondent.
- q. That the breach and non-compliance on the part of the complainant did not end here. The respondent, vide letter dated 18.01.2023, informed the complainant about the construction update and categorically asked him to be ready with the next instalment of Rs. 23,07,195/-, payable on the completion of the retail super structure.

- r. That when the payments became due and payable, the complainant failed to remit the payments on time and the respondent was therefore, constrained to issue reminders dated 11.03.2023, 21.03.2023 and 05.04.2023 to the complainant, but to no avail.
- s. That the respondent also issued several emails dated 11.04.2023 and 18.04.2023 also to the complainant, calling upon him to make the outstanding payments.
- t. That when the complainant showed complete ignorance to the repeated reminders issued by the respondent, the respondent issued a pre-termination Letter dated 20.04.2023 to the complainant, putting him to a final notice that in case of his failure to make the outstanding payments, his allotment would be cancelled.
- u. Thus, it is evident from the conduct of the complainant that he was not interested to make the further payments and was only trying to usurp the benefits of the assured returns, without complying with his reciprocal obligations of timely payments of his instalments. The complainant is in clear breach and default and therefore, the termination of the allotment done by the respondent is valid, legal and binding.
- v. That the respondent was thereafter constrained to terminate the allotment of the complainant, for default in payment of instalments, despite reminders and accordingly, a letter of intimation of termination dated 12.05.2023 was issued to the complainant.
- w. That the respondent, thereafter, issued a letter dated 20.12.2023, wherein it was categorically informed to the complainant, that in terms of the intimation of termination, the refundable amount of Rs. 21,92,835/- was, remitted to his account, after adjustment of all deductibles. Without prejudice, it is submitted that, owing to the



- defaults of the complainant, the respondent is further entitled to deduct/ adjust the amount of assured returns paid to the complainant.
- x. The complainant by filing the present complaint and by taking such baseless and untenable pleas is just trying to conceal the material facts in order to somehow cover up their own wrongs, delays and latches and to wriggle out of his contractual obligations by concocting false and frivolous story.
 - y. That the law of equity and justice cannot allow such complainant to reap benefits of such opportunistic attitude and will strive for balance of rights of both the parties at dispute. That this Hon'ble Authority should not allow the complainant to mislead the Hon'ble Authority and to misuse Real Estate (Regulation and Development) Act, 2016 for harassing the builder.
 - z. No cause of action has arisen or subsists in favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
9. 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 submissions made by the complainants-allottees.

E. Jurisdiction of the Authority:

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

E.1 Territorial jurisdiction

11. 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 the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

13. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complainant being investor

14. The respondent took a stand that the complainant is investor and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. 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 allotment letter, it is revealed that the complainant is buyer, and they 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.

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred 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 "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on relief sought by the complainant:

- G.1 Direct the respondent to refund the Rs. 18,07,165/- amount paid by the complainant to the respondent along with interest till the date of its realization.**

16. The complainants were allotted a unit in the project of respondent "AIPL JOY GALLERY" at sector 66, Gurgaon vide allotment letter dated 11.08.2020 for a total sum of Rs. 76,84,261/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.

40,00,000/-. The complainant intends to withdraw from the project and are seeking refund of the paid-up amount.

17. The respondent vide its reply stated that the unit was cancelled on account of non-payment after issuance of multiple reminders. Further vide proceedings dated 15.05.2025 counsel for the respondent stated that an amount of Rs.21,92,835/- was refunded to the complainants on 19.12.2023 after deduction of 10% amount and the same has been confirmed by the complainant. Further amount of Rs.9,78,175/- has been paid to the complainant towards assured returns. Now, the question arises whether the cancellation is valid or not.
18. The complainant has opted for construction linked payment plan annexed with the application for at page no. 24 of the complaint. As per the opted payment plan, the complainant has to 10% of BSP at time of booking, 10% of BSP within 60 days from the booking date, 10% of BSP at time of allotment, 10% of BSP + 5% of PLC on start of excavation and so on. The complainant was required to pay as per the demands raised by the respondent as per the payment plan. Though the respondent has raised a demand letter dated 09.06.2017 and 15.05.2017 for payment of outstanding dues and after that a reminder letter dated 15.05.2023 was issued by the respondent but the complainant never responded to the same. Thereafter, the respondent issued cancellation notice of the unit on 12.05.2023.
19. The due date of possession as per application form is 31.03.2028 which has not been lapsed till date. In the present complaint, the complainant has failed to make the payments as per the opted payment plan and the respondent. In view of the afore-mentioned facts, the cancellation of the unit dated 12.05.2023 stands valid.

20. As per clause (j) of the application form provides for handing over of possession and is reproduced below:

The Company shall handover possession of the Unit on or before 31 March 2028 as disclosed at the time of registration of the Project with the Authority or such extended period as may be intimated and approved by Authority from time to time. The completion of the Project shall mean grant of Occupancy Certificate for the Unit/Project. It is agreed between the Parties that for the purpose of this Application "handing over the possession of the Unit" shall mean issuance of Notice of Offer of Possession of the Unit by the Company. However, in case the regular development/construction of the Project is adversely impacted/hampered/stopped, including but not limited to complete stoppage of work or partial stoppage of work, due to (a) Force Majeure; or (b) applicability of any Applicable Law, whether with retrospective or prospective effect, whether by way of notification/clarification/order/guideline/notice/ direction, etc, of an existing Applicable Law, or (c) introduction of a new Applicable Law, or (d) notification/ clarification/order/ guideline/notice/ direction, etc of any Governmental Authority including board, tribunal or court; or (e) non-provision of facilities to be provided by the Governmental Authority(ies) like electricity, water, sewage disposal, etc; or (f) lockdown/curfew is imposed by the Governmental Authority on the Project/City in which the Project is located/State in which the Project is located/Neighbouring Cities to the City in which the Project is located/Neighbouring State to the State in which the Project is located; or (g) or any reason beyond the control of the Company, the Company shall be entitled to the extension of time for delivery of possession of the Unit.

21. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated is still not received till date. However, now when complainant approached the Authority to seek refund, it is observed that as per clause (h) of application at page 39 of the reply i.e., booking application form, the respondent-builder is entitled to forfeit the earnest money of the total sale consideration. The relevant portion of the clause is reproduced herein below:

After allotment of the Unit, I/we may at my/our option raise finance or loan for purchase of the Unit. However, getting the loan sanctioned and disbursed shall be my/our obligation. In the event loan is not being

A

sanctioned/disbursed or the same gets delayed for any reason whatsoever, the payment to the Company as per payment plan shall not be delayed. I/We confirm and agree that delay in sanction/disbursement or non-sanction of the loan shall not be a ground for delay in payment of the outstanding dues to the Company, and any such delays may result in levy of interest by the Company or cancelation/termination of the Allotment Letter and forfeiture of the entire Earnest Money (10% of the Total Consideration of the Unit) together with interest on delayed payment, brokerage if paid etc.

22. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the unit remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020) and Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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.

- 23. Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount already paid by them in respect of the subject unit at the prescribed rate of interest 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.

- 24.** The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.

25. 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., 15.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a).

G.II Initiate penal proceedings against the builder on account of violation of various Section/provisions of the Act, 2016 and rules frames thereafter.

27. The complainant has not mentioned the specific provisions of the Act, 2016 being violated by the respondent accordingly, the said relief cannot be deliberated by the authority. The action for non-adherence of model BBA is being initiated by the Authority separately.

H. Directions issued by the Authority:

28. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- a. The respondent is directed to refund the paid-up amount of Rs. 40,00,000/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with prescribed rate of interest. The amounts already paid towards assured returns (Rs.9,78,175/-) and the refund amount (Rs.21,92,835/-) previously



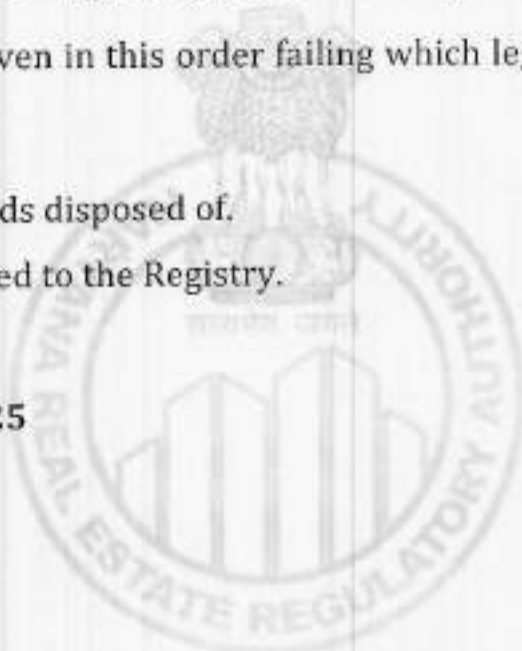
remitted in respect of the said unit be also adjusted from above refundable amount.

- b. The respondent is directed to refund the remaining balance amount to the complainant along with interest at the prescribed rate of 11.10% per annum from the date of cancellation (12.05.2023) till actual realization of amount.
- c. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to the Registry.

Dated: 15.05.2025



V.l. 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM