

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

Complaint no. : 5379 of 2023
Order pronounced on: 14.05.2025

1. Sachin Johar
2. Chitrakshi Munjal
Both R/o: GC-Elite Tower-G, Belgravia,
Central Park-2 Resorts, Sector-48, Gurugram,
Haryana-122018.

Complainants

Versus

M/s Advance India Projects Limited
Registered office: AIPL Business Club, Floor-5th,
Golf Course Extension Road, Sector-62,
Gurugram, Haryana.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Varun Chugh (Advocate)
Harshit Batra (Advocate)

Complainants
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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details.

2. The particulars of the unit, project, the details of 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:

Sr. No.	Particulars	Details
1.	Name & Location of the project	"AIPL Business Club", Sector-62, Gurgaon, Haryana.
2.	Area of project	3.471 acres
3.	Nature of project	Office space
4.	DTCP license no.	Licence no. 86 of 2010 Dated-23.10.2010
5.	RERA registered	Registered
6.	Unit no.	Office space bearing no.-8, on Floor-11, Tower-3 (As on page no. 24 of complaint)
7.	Unit area	531.42.sq.ft. [Carpet area] 1000 sq.ft. [Super-area] (As on page no. 26 of complaint)
8.	Unit no changed [now]	T3-2-12FL
9.	S.P.A dated 04.01.2019	By the co-allottee (Mrs. Chitrakshi Munjal w/o Mr. Sachin Johar)
10.	Date of execution of buyer's agreement dated	31.12.2018 (As on page no. 22 of complaint)

11.	M.O.U	20.05.2022 (As on page no. 64 of complaint)
12.	Possession clause [Constructive possession]	<p>Clause 5 TIME IS ESSENCE</p> <p><i>The Promoter shall abide by the time schedule for completing the project, handing over the possession of the unit to the Allottee (which for the purpose of this Agreement shall mean issuance of Notice of Offer of possession of the Unit by the Promoter to the Allottee) and the Common Areas to the association of allottees or the Governmental Authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017 by 30.06.2019 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 from time to time. The completion of the project shall mean grant of Occupancy certificate for the Project.</i></p> <p><i>The Allottee hereby agrees that wherever the reference is made for possession of the Unit in this Agreement or any other document with reference to the Unit, it shall always mean constructive possession of the Unit and not physical handover of the Unit to the Allottee. The Allottee hereby confirms that the promoter has in no way made any representation or warranty to the Allottee that the promoter shall offer/handover physical possession of the Unit to the Allottee except where specifically agreed by the promoter in writing with the Allottee.</i></p>

13.	Due date of possession	30.06.2019
14.	Total sales consideration	Rs.60,50,000/- (As on page no. 59 of complaint)
15.	Total amount paid by the complainant	Rs.68,46,500/- (As per account statement on page no. 59 of complaint)
16.	Assured return paid	Rs.8,31,411/- [From May,2018 till August,2019]
17.	Occupation certificate	28.11.2019 (As on page no. 134 of reply)
18.	Offer of possession	13.12.2019 (As on page no. 61 of complaint)
19.	Lease deed intimation	15.02.2024
20.	Lease rentals clause	<p>Clause 22 .</p> <p>A. IN CASE OF ASSURED RETURN PLAN POST POSSESSION:</p> <p>(a) The Promoter undertakes to pay to the Allottee Rs.62,500.00 (Rupees Sixty Two Thousand Five Hundred Only) per month as lease rent /licence fees till the commencement of first lease or 3(three) years from the date of issuance of Notice of offer of possession, whichever is earlier.</p>

B. Facts of the complaint:

- The complainants have made the following submissions in the complaint: -

- I. That the present complaint is being filed through Mr. Sachin Johar, who is the primary allottee/owner of the unit in question along with his wife as the co-allottee and is a Special power of attorney holder of Ms. Chitrakshi Munjal, the co-owner herein and is fully aware of the facts and circumstances of the case and hence duly authorized to sign, file the present complaint and pursue it accordingly.
- II. That the respondent, after obtaining license bearing no. 86 dated 23.10.2010, from DTCP, Haryana, developed an IT Park, over a land parcel of 3.471 acres by the name of 'AIPL Business Club', in Sector-62, Gurugram, Haryana.
- III. That an Office Space admeasuring 1000 sq. ft., was booked by the complainants in May 2018 in the project and the allotment letter was issued by the respondent in favour of the complainants.
- IV. That initially unit no. T3-11-11 FL was allotted on 12.06.2018, which was later on reallocated to T3-8-11 FL vide letter dated 06.10.2018 and an Agreement for Sale was executed on 31.12.2018 between the complainants and the respondent. However, the unit was again reallocated by the respondent from T3-8-11 FL to T1-4-18 FL vide letter dated 28.06.2022 for the reasons best known to the respondent. The total cost of the aforementioned unit was Rs.68,46,500/- and the entire sale consideration has already been paid by the complainants to the respondent and nothing is due and payable by the complainants.
- V. That, believing the assurances and reposing trust in the commitments made by the respondent, the complainants purchased the property in question. As per clause 22 A (a) of the Agreement for sale, the respondent

undertook to pay Rs.62,500/- to the complainants as monthly rent/license fees till the commencement of first lease or three years from the date of issuance of notice of offer of possession, whichever is earlier.

- VI. That it was further agreed between the respondent and the complainants that the complainants will only get the constructive possession of the unit in question since the respondent has been granted the exclusive leasing rights of the unit in question. On 13.12.2019, the respondent has offered constructive possession of the unit in question to the complainants.
- VII. That the respondent vide its letter dated 28.06.2022 has informed the complainants that a Leasing arrangement has been made with M/s Parthtech Developers LLP for leasing out the office space in the project and the unit belonging to the complainants is also a part of the said Lease Agreement and for the said very purpose, the unit of the complainant has been re-allocated again. In fact, the respondent has also requisitioned the account details of the complainants besides other KYC formalities, for remittance of the monthly rental amount in the account of the complainants which was to commence from 01.07.2022.
- VIII. That in the MOU dated 20.05.2022, entered into between the respondent and M/s Parthtech Developers LLP, the respondent has categorically stated the lease term, rental amount, lock-in period, security deposit and other terms and conditions of the purported lease. However, to the utter shock and surprise of the complainants, after the receipt of the constructive possession of the unit in question, they received the minimum lease commitment only for few months during the initial period of one year commencing from December 2019 till November 2020, excluding the months from April 2020 till August 2020, during

which period the minimum lease commitment was not paid by the respondent on account of moratorium due to Covid-19, and thereafter, the complainants never received any monthly rent as committed by the respondent. After waiting for a considerable period, the complainants were finally constrained to write emails besides personal visits enquiring about the reason for non-payment of the monthly rent as assured by the respondents, upon which the respondent has duly acknowledged the delay but had no cogent reason for non-payment of rent in accordance with the leasing arrangement.

- IX. That from December 2020 till date, not even a single penny has been remitted in the account of the complainants, in the name of monthly rental. That finding no other alternative, the complainants served the respondent with a Legal Notice dated 10.10.2023 thereby demanding the assured return amount of Rs.25 lacs which is long due and payable to the complainants, but all in vain as despite the service of the said Legal Notice, the respondent did not pay any heed and has not paid the arrears of the assured return amount due and payable to the complainants.
- X. That the respondent has issued a letter via e-mail dated 01.11.2023, demanding common area maintenance charges to the tune of Rs.18,000/- per month whereas the respondent itself in a continuous default in making the payment of minimum lease guarantee amount.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s): -
- Direct the respondent to pay Rs.25,00,000/- towards arrears of minimum lease commitment reckoning from April to August 2020 and from December 2020 till October 2023, along with interest @ 12% per annum

of the rental amount accrued to the complainants as per provisions of the Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017.

- ii. Direct the respondent to continue to pay the minimum lease commitment to the complainants in accordance with the terms of the Agreement for Sale dated 31.12.2018.
 - iii. Direct the respondent to pay a sum of Rs.50,000/- to the complainants towards the cost of the litigation.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent made the following submissions: -
- I. That the complainants booked a commercial unit vide an Application form, subsequent to which, a tentative unit no. T3-11-11FL on 11th floor, in Tower T3 was allotted to the complainants. The unit was mutually reallocated to T3-8-11FL for which, an Agreement for Sale dated 31.12.2018 was executed between the complainants and the respondent with the cogent understanding that the unit forms part of a larger undivided area. The complainants consciously and wilfully opted for 'Down Payment Plan' as per their choice for remittance of the sale consideration for the unit in question and further represented that they shall remit every instalment on time as per the payment schedule.
 - II. That the unit allotted to the complainants was tentative and was changed after mutual discussions. That as on date, the final unit of the complainant stands to "T3-2-12FL". That since the very beginning, the intention of the parties has

been to take the constructive possession of the unit. That the Agreement also records that the unit formed part of an undivided area. It is also to be noted that the tentative due date for offer of possession was 30.06.2019 which was further extendable, as intimated by the Authority from time to time.

- III. That the respondent received the occupation certificate on 28.11.2019 and offered the possession on 13.12.2019. The relationship between the parties is purely contractual in nature and must be dealt with as per the terms and conditions of the Agreement. It is submitted that the respondent has duly fulfilled their obligation of payment of assured returns as per Clause 21 of the Agreement, i.e., paid complete assured returns from May 2018 till application for grant of occupation certificate on 11.09.2019. That in fact, the excess amount has been paid by the respondent.
- IV. Without prejudice to the rights of the respondent, assuming though not admitting that if any lease payment is due against the respondent, then such excess payment needs to be duly adjusted. That complete assured returns have been paid from May 2018 till Aug 2019 amounting to Rs.8,31,411, thereafter, in lieu of Monthly Lease Commitment, the total amount paid/adjusted is Rs.6,01,167.
- V. That thereafter, on 25.09.2019, the respondent conveyed to the complainant that the complete liability of payment of assured return has been satisfied. The possession having been offered to the complainant, non-existence of cause of action, and the delay in making payments by the complainants, this complaint is bound to be dismissed with costs in favour of the respondent.
- VI. That the complainants are praying for the relief of "Minimum Lease Commitment" which is beyond the jurisdiction of the Authority. That from the bare perusal of the Act, it is clear that the said Act provides for three kinds of

remedies in case of any dispute between a developer and allottee, such remedies are provided under Section 18 of the Act, 2016. That the said remedies are of Refund, Interest for delay of every month and the last one is for compensation. That it is relevant to mention here that nowhere in the said provision the Authority has been dressed in jurisdiction to grant "Minimum Lease Commitment".

- VII. That the unit in question formed part of a larger area and the parties agreed to put the unit on lease. That the unit has been leased out to M/s. Datta Power Infra Pvt. Ltd. and the intimation of such lease has been given to the complainants on 15.02.2024. The complainant in the complaint refers to an MOU with "Parthtech" for the lease of the unit, however, said understanding was terminated and the unit stands leased to M/s. Datta Power Infra Pvt. Ltd. That as per Clause 22A of the Agreement, in case of assured return plan post possession, the lease rent had to be paid till commencement of first lease or till three years from the date of issuance of the offer of possession. The clause 22A(a) is reiterated as under:

22. LEASING ARRANGEMENT:

A. IN CASE OF ASSURED RETURN PLAN POST POSSESSION:

At the request of the Allottee, the Promoter agrees to put the Unit, individually and/ or in combination with other units by way of merging it as part of the larger area whether horizontally and/ or vertically, on lease, for and on behalf of the Allottee, from the date of signing of this Agreement. Notwithstanding anything contained herein in this para, subject to sub-clause (n) herein below, the Allottee agrees and confirms that this leasing arrangement shall in no way affect the liability of the Allottee to pay the maintenance charges as per the terms of this Agreement. The Allottee has clearly understood the general risks involved in giving any premises on lease and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Promoter. It is further agreed that:

(a) The Promoter undertakes to pay to the Allottee Rs.62,500.00 (Rupees Sixty Two Thousand Five Hundred Only) per month as lease rent/ licence fees till the commencement of first lease or 3 (three) years from the date of issuance of Notice of Offer of Possession, whichever is earlier.

The Allottee hereby agrees and confirms that upon commencement of first lease or after the expiry of 3 (three) years from the date of issuance of Notice of Offer of Possession, whichever is earlier, the Promoter shall be absolved and relieved of all its obligations (financial as well as otherwise) towards the Allottee under this Agreement, and the Allottee will not be left with any claim, demand, etc against the Promoter in this regard on any account whatsoever.

- VIII. That if any lease payment is due against the respondent, then such excess payment needs to be duly adjusted. That complete assured returns have been paid from May 2018 till Aug 2019 amounting to Rs.8,31,411. Thereafter, in lieu of minimum lease commitment, the total amount paid/adjusted is Rs.6,01,167 (paid till Nov 2020).
- IX. That in 2020, the respondent was gravely affected with the global pandemic and hence, owing to *force majeure* circumstances, the payment of the minimum lease commitment was stopped. That the respondent cannot be held liable to make the payment of any lease as was gravely affected by force majeure circumstances beyond its control. Since March 2020, the country underwent a lockdown in several phases which led to the stoppage of work. That the entire world went online during such time and for a major period, only essential services were available. That under no circumstance whatsoever, the respondent can be expected to lease the unit during such period.
- X. That pursuant to the advisory issued by the Government of India, Ministry of Housing & Urban Affairs and thereafter by the State Government, the Authority has granted six months general extension from 25.03.2020 to 24.09.2020 as a force majeure event, due to Covid. Thereafter, the Authority further grant three months extension due to second wave of Covid-19 from 01.04.2021 to 30.06.2021, considering it as force majeure event. Thus, this period of nine months should be treated as zero period.

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

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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 complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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 of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the reliefs sought by the respondent

F.I Direct the respondent to pay Rs.25,00,000/- towards arrears of minimum lease commitment reckoning from April to August 2020 and from December 2020 till October 2023, along with interest @ 12% per annum of the rental amount accrued to the complainants as per provisions of the Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017.

F.II Direct the respondent to continue to pay the minimum lease commitment to the complainants in accordance with the terms of the Agreement for Sale dated 31.12.2018.

12. On the above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will affect the result of the other reliefs.
13. In the present complaint, the complainants are seeking minimum lease commitment along with interest for a period between April 2020 to August 2020 and from December 2020 till October 2023. Also the complainant is seeking directions to the respondent to continue to pay the minimum lease commitment to the complainants in accordance with the terms of the Agreement dated 31.12.2018.
14. In the present complaint, the property in question pertains to an office space measuring 1000 sq. ft., forming part of the respondent's project titled "AIPL Business Club", located in Sector-62, Gurugram, Haryana. Initially, the unit allotted to the complainants was designated as "T3-11-11-FL"; however, the same was reallocated to unit "T3-8-11-FL" vide communication dated 06.10.2018. Subsequently, an Agreement for Sale was executed between the parties on 31.12.2008.
15. Thereafter, vide letter dated 28.06.2022, the unit was again reallocated to "T1-4-18-FL" without providing any justification or obtaining prior consent of the complainants. The respondent has on multiple occasions, unilaterally changed the unit allotted to the complainants without obtaining their consent. The total

sale consideration for the subject unit was Rs.68,46,500/-, which has been paid fully by the complainants. As per Clause 22 of the Agreement dated 31.12.2008, the respondent undertook to pay a monthly rent/license fee of Rs. 62,500/- to the complainants, either until the commencement of the first lease or for a period of three years from the date of issuance of the notice offering possession—whichever occurred earlier. The constructive possession of the unit was purportedly offered to the complainants on 13.12.2019. Subsequently, vide letter dated 28.06.2022, the respondent informed the complainants that a lease deed had been executed with M/s Parthtech Developers LLP in respect of certain units within the project, which included the complainants' unit. An MOU dated 20.05.2022 outlined the terms of the lease, including rental amount, lock-in period, security deposit, and other relevant terms and conditions. However, the respondent failed to fulfil the obligations arising thereunder, and the complainants received only a limited number of lease payments for a short duration. Thereafter, no monthly rent or license fee was received by the complainants.

16. The respondent has stated that the Authority does not have the jurisdiction to deal with matters relating to "Minimum Lease Commitment" or "Lease Rentals". The Authority is of the view that if any payment of "Minimum Lease Commitments" or "Lease Rentals" is part and parcel of the Buyer's Agreement, then the builder is liable to pay that amount as agreed upon. In view of the above, the Authority has complete jurisdiction with respect to the reliefs claimed by the complainants as the contractual relationship arises out of the agreement for sale and between the same contracting parties to agreement for sale.
17. The Authority is of the considered view that the respondent devised the entire scheme of selling office spaces in the project under the pretext of offering attractive rental yields, with the intention of inducing buyers to invest in the

- project on the assurance of substantial rental returns. However, the respondent subsequently failed to honor the commitment of remitting the promised returns
18. The agreement for sale executed between the parties i.e. the promoter and the allottee is binding on them. It is relevant to comment on the pre-set leasing clause of the agreement wherein the drafting of the clauses are not only vague and uncertain but entirely loaded in favour of the promoter and against the allottee. The builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
19. The respondent had undertaken to pay an amount of Rs.62,500/- per month as lease rent/license fee to the complainants until the commencement of the first lease or for a period of three years from the date of issuance of the Notice of Offer of Possession, whichever is earlier.
20. Thus the respondent is obligated to pay a sum of Rs.62,500/- per month as assured lease rent/license fee from the date of issuance of the Notice of Offer of Possession till the commencement of the first lease or for a period of three years from the issuance of offer of possession, whichever is earlier. Thereafter, the minimum lease rental of Rs.62.50 per sq.ft. on the unit's super area per month is to be paid for the first term and if the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.62.50 per sq.ft. on the Unit's Super area per month, then the Promoter shall pay the differential rent per month i.e., minimum lease rental of Rs.62.50 less the actual lease rent achieved, for the first term of lease or 3 years, whichever is earlier. The amounts, if any, already paid by the respondent to the complainants towards assured lease rentals and lease rentals shall be duly adjusted against the total amount payable under this order. The balance amount, after such adjustment, shall be paid by the respondent to the complainants within a period of 30 days from the date of this order.

F.III Direct the respondent to pay a sum of Rs.50,000/- to the complainants towards the cost of the litigation.

21. The complainants are also seeking relief w.r.t compensation. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* (supra) has held that an allottee is entitled to claim compensation & litigation charges under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G. Directions of the Authority:

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay a sum of Rs.62,500/- per month as assured lease rentals from the date of issuance of the Notice of Offer of Possession till the commencement of the first lease or for a period of three years from the issuance of offer of possession, whichever is earlier. The amounts, if any, already paid by the respondent to the complainants towards assured lease rentals/lease rentals shall be duly adjusted against the total amount payable under this order.
- ii. Thereafter, the minimum lease rental of Rs.62.50 per sq.ft. on the unit's super area per month is to be paid for the first term and is the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.62.50 per sq.ft. on the Unit's Super area per month, then the Promoter shall pay the differential rent per month i.e., minimum lease rental of

Rs.62.50 less the actual lease rent achieved, for the first term of lease or 3 years, whichever is earlier.


iii. The amounts already paid by the respondent to the complainants towards assured lease rentals and lease rentals, if any, shall be duly adjusted against the total amount payable under this order. The balance amount, after such adjustment, shall be paid by the respondent to the complainants within a period of 30 days from the date of this order along with detailed statement of account, in this regard.

23. Complaints stand disposed of.

24. File be consigned to registry.

Dated: 14.05.2025




(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM