

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

Date of order: 15.05.2025

NAME OF THE BUILDER		M/s Advance India Project Ltd.	
PROJECT NAME		AIPL Business Club	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1825/2024	Mr. Praveen Kakar V/S M/s Advance India Project. Ltd.	Sh. Khush Kakra (Advocate for complainant) Sh. Harshit Batra (Advocate for respondent)
2.	CR/1826/2024	Mr. Praveen Kakar V/S M/s Advance India Project. Ltd.	Sh. Khush Kakra (Advocate for complainant) Sh. Harshit Batra (Advocate for respondent)

CORAM:

Shri. Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed *inter se*.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "AIPL Business Club" Sector-62 being developed by the same respondent/promoter i.e., **M/s. Advance India Project. Ltd.** The terms and conditions of the Buyer's Agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in all the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question and other certain issues.

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

Project Name and Location	M/s. Advance India Project. Ltd. AIPL Business Club" Sector-62, Gurugram.
Occupation Certificate: - 28.11.2019	
<p>38. The compliance of the terms and conditions of this Application and the project by the Company shall be subject at all times to Force Majeure conditions as defined below:</p> <p>The Company shall not be responsible or liable for not performing any obligation if such performance is prevented, delayed or hindered by any act not within the reasonable control of the Company. Such act shall mean any event which by itself or in combination with other events circumstances could not, by the exercise of reasonable diligence or despite the adoption of reasonable precautions and/or alternative measures, have been prevented, or caused to have been prevented, and which impairs or adversely affects the Company's ability to perform its obligations. Such events and circumstances shall include but not be limited to (a) Acts of God such as fire, drought, lightnings, cyclone, tornado, floods, earthquake, epidemics, natural disasters or deaths or disabilities etc.; (b) explosions or accidents, air crashes and shipwrecks; (c) strikes or lock outs, curfew, industrial/labor dispute; (d) non-availability of cement, steel or other construction material due to strikes of manufacturers, suppliers, transporters or other intermediaries; (e) war and hostilities of war, riots or civil commotion. (f) non-procurement of any approval from any Governmental Authority or imposition of any adverse condition or obligation in any approvals from any Governmental Authority, including delay in issuance of the Occupation Certificate, Completion Certificate and/or any other approvals/certificate as may be required; (9) change in Governmental policy or the promulgation of or amendment in any Applicable Laws, rule or regulation or the issue of any injunction, court order or direction from any Governmental Authority that prevents or restricts the Company from complying with any or all the terms and</p>	

Agreement including but not limited to the timely payment of the Total Price and also subject to the Applicant having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to hand over the possession of the Unit to the Applicant within a period of 48 (forty eight) months, with a further grace period of 6 (six) months, from the date of commencement of construction of the Project, which shall mean the date of commencement of the excavation work at the Project Land and this date shall be duly communicated to the Applicant.

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Due date of possession	Sale Consideration/ Total Amount paid by the complainants in Rs.	Offer of possession
1.	CR/1825/2024 Mr. Praveen Kakar V/S M/s Advance India Project. Ltd D.O.F. 29.04.2024 Reply: 28.08.2024	T3-19-12FL Area: 1000 sq. ft. (carpet area) (Page 61 of complaint)	15.05.2020 (As per application form at page no. 47 of reply)	TSC: - Rs.61,69,000/- (Page 45 of complaint) Note: Inadvertently mentioned as 67,41,280/- vide proceeding dated 03.04.2025 AP: - Rs.69,79,780/- (As mentioned in SOA at page 113 of reply)	O.P: 17.12.2019 (Page 40 of complaint)
2.	CR/1826/2024 Mr. Praveen Kakar V/S M/s Advance India Project. Ltd D.O.F. 29.04.2024 Reply: 28.08.2024	T3-20-12FL Area: 1000 sq. ft. (carpet area) (Page 60 of complaint)	13.05.2025 (As per application form at page no. 47 of reply)	TSC: - Rs.61,69,000/- (Page 45 of complaint) Note: Inadvertently mentioned as 67,41,280/- vide proceeding dated 03.04.2025 AP: - Rs.69,79,780/- (As mentioned in SOA at page 112 of reply)	O.P: 17.12.2019 (Page 40 of complaint)

The complainants in the above complaints have sought the following relief(s):

- 1) Direct the respondent promoter to execute the agreement for sale and addendum agreement, containing all fair terms and reasonable clauses as per the RERA Rules and RERA Act of 2016, negotiated and agreed upon by both the parties and to execute the conveyance deed and all necessary and required documents in respect of the Unit in favour of the complainant for

- constructive possession immediately upon this complaint being filed before this Hon'ble Authority or as this Hon'ble Authority deems fit and appropriate;
- 2) Direct the respondent promoter to pay monthly assured returns of Rs. 62,500/- per month to the complainant from 01.12.2020 till 31.12.2023.
 - 3) Direct the respondent promoter to pay monthly lease rent of at the rate Rs. 72.00/- per sq. ft. i.e., Rs. 72,000/- per month from 01.01.2024 till date.
 - 4) Direct the respondent promoter to pay interest as prescribed by law on total outstanding payment towards the assured returns and monthly lease rentals till date.
 - 5) Direct the respondent promoter to not charge common area maintenance (CAM) charges or any other charges from the complainant which were not agreed between the parties.
 - 6) Direct the respondent promoter to not levy any other cost on the complainant for the purpose of lease of the unit with Gourmer Services Private Limited and act in conformity with the agreement.
 - 7) Direct the respondent promoter to pay a sum of Rs. 10,00,000/- to the complainant for causing mental agony and harassment.
 - 8) Direct the respondent promoter to pay a sum of Rs. 1,00,000/- to the complainant towards litigation cost.

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

Abbreviations Full form.

DOF- Date of Filing

TSC- Total Sale Consideration

AP- Amount Paid

OP- Offer of Possession

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the Act as buyer's agreement has not been executed between the parties in respect of said unit, seeking award execution of buyer's agreement and other reliefs.
5. It has been decided to treat the said complaint(s) as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaint(s) filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case CR/1825/2024 Praveen Kakar V/s Advance India Project Limited are



being taken into consideration for determining the rights of the allottee(s) qua interest for every month of delay and other reliefs sought.

A. Unit and project related details.

7. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/1825/2024 Praveen Kakar V/s Advance India Project Limited

S. N.	Particulars	Details
1.	Name of the project	AIPL Business Club
2.	Project area	3.471 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010
5.	RERA Registered/ not registered	166 of 2017 dated 29.08.2017 valid up to 30.06.2019
6.	Unit no.	Office space, T1-10-12FL Relocated to T1-5-12FL (Page 59 of the complaint) T1-5-12FL Relocated to T3-19-12 FL (Page no. 61 of Complaint)
7.	Area admeasuring (Super area)	1000 sq. ft. (Page 37 of complaint)
8.	Allotment letter	14.08.2018 (Page no. 37 of the complaint)
9.	Date of execution of agreement for sale	Not executed
10.	Possession clause as per application form	38. <i>Subject to the aforesaid and subject to the Applicant 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 Applicant having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to</i>

		<p><i>hand over the possession of the Unit to the Applicant within a period of 48 (forty eight) months, with a further grace period of 6 (six) months, from the date of commencement of construction of the Project, which shall mean the date of commencement of the excavation work at the Project Land and this date shall be duly communicated to the Applicant.</i></p> <p>(Page 46 of reply)</p>
11.	Possession clause as per draft buyer agreement sent by respondent	<p>7. POSSESSION OF THE UNIT</p> <p>7.1 Schedule for possession of the unit: -</p> <p><i>The Promoter upon timely receipt of the total price of the unit as per the agreed payment plan assures to handover possession of the said unit as per agreed terms and conditions unless there is a delay due to force majeure, court orders, government policy/guidelines. The allottee hereby agrees and confirms that, in the event it becomes impossible for the promoter to handover the said unit, then this allotment and agreement shall stand terminated and the promoter shall refund to the allottee the entire amount received by the promoter from the allottee within 90 days. The promoter shall intimate the allottee about such termination at least 30 days prior to such termination. After refund of the money paid by the allottee, the allottee agrees that the allottee shall not have any rights, claims etc. against the promoter and that the promoter shall be released and discharged from all its obligations and liabilities under this agreement. ("Notice of Offer of Possession of the said Unit")</i></p> <p>7.2 Procedure for taking possession of the said unit: -</p> <p><i>The promoter, upon receiving the Total Price of the said Unit, shall offer in writing the possession of the said unit</i></p>

		<p><i>within 3 months from the date of receipt the entire consideration towards the unit as per terms of this Agreement.</i></p> <p>(Page no. 74-75 of the complaint)</p>
12.	Lease rental clause as per draft Addendum Agreement	<p>3(a) Leasing Arrangement:</p> <p><i>The promoter hereby undertakes to pay to the Allottee Rs. 62,5000/- per month as assured return/ lease rent/ license fees from the date of issuance of Notice of offer of possession, till the commencement of first lease/leave and license of the said unit or 3 years whichever is later.</i></p> <p>(Page no. 94 of the complaint)</p>
13.	Date of start of construction	<p>15.11.2015</p> <p>(Stated by the respondent in its written submissions)</p>
14.	Due date of possession	<p>15.05.2020</p> <p>(48 months from date of start of construction + 6 months of grace period is allowed unconditionally)</p>
15.	Sale consideration	<p>Rs. 61,69,000/-</p> <p>(Page no. 45 of the complaint)</p>
16.	Amount paid by the complainant	<p>Rs.69,79,780/-</p> <p>(As per SOA at page no. 113 of Reply)</p>
17.	Occupation certificate /Completion certificate	<p>28.11.2019</p> <p>(Page no. 57 of the reply)</p>
18.	Offer of possession	<p>17.12.2019</p> <p>(Page no. 60 of the reply)</p>
19.	Reminder letters	<p>15.02.2024, 23.03.2024, 19.04.2024, 01.05.2024</p>
20.	Lease rental paid till date	<p>Rs.6,13,232/-</p> <p>(As per document submitted during proceedings dated 15.05.2025)</p>

B. Facts of the complaint:

8. The complainant has submitted as under:

- a. The complainant in the year 2018 was looking to purchase a commercial property, and was approached by the respondent promoter for purchasing an office space in a commercial project being developed by the respondent promoter named "AIPL Business Club" situated at Sector 62, Gurugram, Haryana. It is submitted that the respondent promoter assured and represented to the complainant that if he invests in the said project of the respondent promoter, the respondent promoter would pay guaranteed monthly assured return to the complainant till the time the project is constructed and thereafter, it was further assured that the complainant would enjoy a constructive possession of the said unit allotted by the respondent promoter and would further be getting an lease rent income upon completion. It is basis this that the complainant relying on the said assurances has submitted a booking application form dated 21.07.2018 and paid a booking amount aggregating to a total of Rs. 46,66,666/- vide cheque no. 208730, 208731 and 208732 dated 20.07.2018 and 24.07.2018 respectively, out of the agreed total sale consideration of Rs. 61,69,000/- as per the payment plan outlined in the specimen of the allotment letter. It is pertinent to note here that the booking payment was acknowledged by the respondent promoter by issuing three (3) payment receipts for an amount of Rs. 5,00,000/-, Rs. 23,33,333/- and Rs. 18,33,333/- respectively and each dated 24.07.2018.
- b. That subsequent to the booking made by the complainant herein, the respondent promoter issued an allotment letter dated 14.08.2018 and allotted an office space in Tower-1, Floor No. 12 bearing Unit No. T1-9-12FL admeasuring 1000 sq. ft. (approx.) in the commercial project

of the respondent promoter It is essential to note here that the respondent promoter has orally assured to the complainant that they would be paying a monthly assured return of Rs. 62,500/- per month until the possession of the unit is transferred to the complainant. Additionally, it is pertinent to highlight that the respondent promoter also committed to pay an amount of Rs. 62,500/- per month as lease rent or license fees from the date of issuance of the notice of offer of possession until the initiation of the first lease or leave and license agreement for the said unit, or for a period of 3 years, whichever is earlier. Evidently, pursuant to the oral agreement the respondent promoter has started to disburse the monthly assured return to the complainant from the date of booking the aforementioned unit.

- c. At the outset, it is submitted that the respondent promoter has not executed the agreement to sale and has merely allotted the unit to the complainant by issuing the allotment letter. That somewhere around in the start of the year 2019, the complainant has enquired about the date for the execution of the agreement to sale, the respondent promoter has represented that the project will get complete by the end of the year 2019 and thereafter they will soon share the agreement to sale for signing purpose and subsequently will process to execute the same.
- d. That on 27.09.2019 the respondent promoter has sent a letter to the complainant, wherein it was communicated that an application for the grant of an occupation certificate was made on 11.09.2019, and the respondent promoter would receive the occupancy certificate in the due course of time from the concerned authority. Additionally, the complainant was informed that an outstanding amount of Rs. 20,74,613/- is payable upon the issuance of the notice of offer of

possession. Furthermore, it was clarified that the assured return for the month of September, until the issuance of the notice of offer of possession, would be duly adjusted from the demand raised at the time of said notice.

- e. On 17.12.2019, the respondent promoter issued a notice for the offer of possession even prior to finalizing and executing the agreement for sale and demanded the balance amount of the sale consideration from the complainant. It is relevant to mention that since the complainant was receiving the assured return every month, they waited for some more time regarding the execution of the agreement for sale. The complainant adhered to the payment plan and the demands made by the respondent promoter and diligently paid an amount aggregating to a total of Rs. 21,13,956/- as the balance sale consideration to the respondent promoter, hoping that he will soon get the possession of the unit.
- f. The respondent promoter made the payment of assured return to the complainant till November 2020 as per the mutual agreement. However, the respondent promoter started making default in payment of assured returns from the month of December 2020. That the complainant started following up with the respondent promoter through telephonic calls and emails seeking legitimate monthly assured returns, however, the respondent promoter did not respond to any such issues and kept the complainant in the dark. That it is also fit to place reliance on the recent judgment of the Hon'ble Haryana real estate regulatory authority, Panchkula wherein the issue of assured return came into the consideration of in the case titled as Baldev Gautam v. Rise Projects Private Limited (RERA-PKL-2068-2019) and it was held that builder is liable to pay monthly assured returns to the

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complainant till possession of respective apartments stands handed over and there is no illegality in this regard. Furthermore, the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula *vide* order dated 12.09.2022 in the complainants titled as "Veena Sukhrani & Anr. v. Vatika Limited" and Gaurav Gandotra & Anr. v. Vatika Limited", wherein it directed the builder to ensure payment of assured returns to the investors of the project, along with interest since the defaulting date.

- g. The respondent promoter while issuing the notice for the offer of possession, requested the complainant to complete the documents and provide KYC documents, power of attorney, etc. for the execution of the conveyance deed for the constructive possession. However, to the complainant's surprise and disappointment, the respondent promoter failed to execute the conveyance deed and never informed the complainant after receiving the aforementioned documents for the registration of the unit. Subsequently, the complainant sent an email dated 02.03.2021, requesting the respondent promoter to proceed with the registry process and also sought issuance of a statement regarding the assured return. However, on a bare perusal of the email 03.03.2021, it is clearly seen that the respondent promoter has very vaguely & casually replied to the email of the complainant, ignoring the queries regarding the registry process and the steps taken for the conveyance deed.
- h. The complainant has paid a total amount of Rs. 69,79,780/- to the respondent promoter and the complainant's being concerned about the project's status, have made numerous attempts to contact the representatives of the Respondent Promoter several times, but their inquiries yielded no response. Upon visiting the site, the complainant

was shocked and dismayed to found out that the construction remained incomplete and standstill. This clearly shows that the respondent has *malafidely* lured the complainant and collected the balance amount at the time of notice of offer of possession with malice intention and consequently, the said offer of possession was not a legal and valid possession.

- i. That the respondent promoter in a letter dated 23.02.2023, asserted that the payment of Minimum Lease Commitment has been Relinquished/waived off due to reasons beyond the control of the respondent promoter, including but not limited to COVID-19, NGT construction, financial meltdown, etc, is entirely arbitrary and invalid. This unilateral waiver is clearly against the consent and mutual agreement of the complainant.
- j. Thereafter, the respondent promoter, through a letter dated 17.10.2023 has unilaterally reassigned the originally allotted unit of the complainant from T1-9-12FL to T1-4-12FL without the consent of the complainant. Furthermore, the respondent promoter *vide* letter dated 01.11.2023 has arbitrarily levied common area maintenance charges on the complainant without there being any prior agreement *qua* the same. Following this, the respondent promoter informed the complainant of yet another re-allocation and leasing plan *vide* letter dated 11.12.2023, and allotted a new unit bearing no. T3-19-12FL, and arbitrarily demanded an additional consideration amounting to Rs. 7,03,665/- along with leasing brokerage charges and lease registration charges, which was initially not agreed between the parties. That in terms of the aforesaid letter the respondent promoter informed the complainant that the unit would be given to lease to "Gourmer Services Private Limited", however, no Lease Deed pursuant thereto was shared

with the complainant. According to the terms outlined in the leasing agreement, the respondent promoter provided assurance to the complainant regarding a monthly lease rent amounting to Rs 72,000, equivalent to Rs. 72 per sq. ft., contingent upon the approval of the complainant. On the 16.12.2023, the complainant acknowledged acceptance of the aforementioned terms by affixing their signature to the document and further communicated to the respondent promoter, via a written note beneath the signature requesting for the waiver of any additional charges specified therein. The communication confirming acceptance and the request for waiver was duly received by the respondent promoter on the aforementioned date. Despite there being an outstanding assured and lease rentals due from the respondent promoter, the latter sought to take advantage of the complainant's situation, having already received a substantial sum of money from them. The complainant under the constant threat of the cancellation of the unit and forfeiture of the booking amount was unable to negotiate or dispute these unlawful charges and unilateral allocation.

- k. That consequently, the complainant being aggrieved by the re-allocation of the unit without his consent and the failure of the respondent promoter to pay the amount of minimum lease rental and assured return, the complainant has sent an email dated 11.12.2023 and 12.12.2023 raising his concern about the above-mentioned grievance and sought a probable response from the respondent promoter before initiating any dispute. However, the respondent promoter kept silence and did not even replied to the grievances of the complainant.

- l. That the respondent promoter has finally in the month of December 2023, provided the complainant with a specimen of the agreement for Sale and an Addendum to the Agreement for Sale after a delay of 5 years from the date of booking the aforesaid Unit in the Project. It is apposite to mention herein that the agreement for sale and the addendum agreement both contained various one-sided, unfair and unreasonable terms having complete unreasonable clauses therein, and cannot be made binding on the complainant in terms of the law laid down by the Hon'ble Supreme Court in Pioneer Urban Land & Infrastructure Limited vs. Govindan Raghavan.
- m. That the respondent promoter ought to have executed the agreement for sale after receiving 10% of the earnest money and the balance consideration was to be paid according to the stipulated terms of payment. It is submitted that the RERA Act, 2016 does not provide for payment of almost entire consideration before execution of the builder-buyer agreement. Section 13 of the Act 2016 provides that not more than 10% money can be demanded without execution of builder-buyer agreement.
- n. That the complainant could not negotiate any of the clauses, as the respondent promoter had already collected the entire sale consideration from the complainant and there was a constant threat of forfeiture of the amount or cancellation of the allotment, in case of any disagreement or dispute thereto.
- o. Additionally, the complainant was shocked to know while perusing the agreement for sale that the respondent promoter has only acknowledged an amount of Rs. 46,66,666/- however, the complainant has already paid the entire consideration and the balance amount was

not reflected and acknowledged in the agreement for sale. That due to the aforesaid, the complainant refrained from submitting the agreement for sale to the respondent promoter.

- p. That therefore, in light of the above-mentioned facts the grievance of the complainant inter alia is that the respondent promoter has without executing the agreement for sale, lured the complainant on various aspects and collected the entire sale consideration from the complainant. That furthermore, the respondent promoter has failed to honour its part of the promise to pay the orally agreed upon assured returns after November 2020, and has wrongly issued the offer of possession despite incomplete construction of the project, as evidenced by the respondent promoter's own admission in a letter dated 23.02.2023, citing project delays due to COVID-19 and other factors. That this shows that the notice of offer of possession sent in the month of December 2019 is an invalid offer of possession.
- q. The respondent mounted pressure on the complainant that they had to agree to such arbitrary act of the respondent. However, the respondent in utter disregard to the mutual agreement, miserably failed to pay the Assured Returns as per the agreement. Furthermore, at the outset, the respondent promoter misguided the complainant about the construction stage of the project and despite executing the agreement for sale has duped the complainant by issuing the notice for offer of possession in the year 2019. It is submitted that the respondent, since inception, had the malafide intention to defraud & dupe the complainant and it is apparent that the respondent with their ill motive have cheated the complainant by extorting their hard-earned money. Hence, the present complaint.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):

- a. Direct the respondent promoter to execute the agreement for sale and addendum agreement, containing all fair terms and reasonable clauses as per the RERA Rules and RERA Act of 2016, negotiated and agreed upon by both the parties and to execute the conveyance deed and all necessary and required documents in respect of the unit in favour of the complainant for constructive possession immediately upon this complaint being filed before this Hon'ble Authority or as this Hon'ble Authority deems fit and appropriate;
- b. Direct the respondent promoter to pay monthly assured returns of Rs. 62,500/- per month to the complainant from 01.12.2020 till 31.12.2023.
- c. Direct the respondent promoter to pay monthly lease rent of at the rate Rs. 72.00/- per sq. ft. i.e., Rs. 72,000/- per month from 01.01.2024 till date.
- d. Direct the respondent promoter to pay interest as prescribed by law on total outstanding payment towards the assured returns and monthly lease rentals till date.
- e. Direct the respondent promoter to not charge common area maintenance (CAM) charges or any other charges from the complainant which were not agreed between the parties.
- f. Direct the respondent promoter to not levy any other cost on the complainant for the purpose of lease of the unit with Gourmer Services Private Limited and act in conformity with the agreement.

g. Direct the respondent promoter to pay a sum of Rs. 10,00,000/- to the complainant for causing mental agony and harassment.

h. Direct the respondent promoter to pay a sum of Rs. 1,00,000/- to the complainant towards litigation cost.

10. 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:

11. The respondent has submitted as under:

- a. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. 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.
- b. The complainant is not "allottee" but Investor who had booked the retail unit in question as a speculative investment in order to gain the benefit of assured returns. That the complainant has multiple units in the projects of the respondent, from which, he has been earning returns and as such, does not fall within the meaning of an allottee.
- c. The complainant, being interested in the real estate development of the answering respondent, known under the name and style of "AIPL Business Club" located at Sector 62, Gurugram, Haryana (the "Project") booked a unit on 29.07.2018. The complainant, prior to approaching the answering respondent, had conducted extensive and independent enquiries regarding the project and it was only after he was fully satisfied with regards to all aspects of the project and the unit, that the

complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. Since the very beginning, the intention of the complainant has been *ex-facie* and *prima facie* clear to earn investment return from the purchase of the unit.

- d. A draft of the agreement to be executed was initially provided to the complainant, along with the booking form only and the same was agreed by the complainant as well. However, the complainant failed to execute the same despite having reminders from the respondent. Apart from constant telephonic reminders, reminder letters dated 18.10.2023 and 27.10.2023 were also issued to the complainant for execution and registration of the agreement.
- e. The sole intention of booking was to lease the unit and with that understanding, an offer was made by the complainant by filing the application form, upon the acceptance of which, provisional allotment of office space unit bearing no. T1-09-12FL, 12th Floor, Tower 1, (the "Old Unit") was made vide provisional allotment letter dated 14.08.2018.
- f. Due to the non-execution of the agreement, and hence, no contractual obligation of the respondent, no payment of assured return @67,895/month was bound to be made by the Respondent, however, acting in utmost bonafide, the respondent made the payment of assured returns from 27.07.2018 till Aug 2019, i.e., till the date of application for occupation certificate. That thereafter, for the months of September 2019, October 2019, and November 2019, the assured return was adjusted in the final demand. That in such manner a total sum of Rs. 10,03,379 was paid/credited to the Complainant in form of assured returns.

- g. As per the clause 38 of the application form, the due date of offer of possession shall be 48 months with a grace period of 6 months from the date of start of construction (15.11.2015), hence, the due date comes out to be 15.05.2020. That without any delay and in utmost bonafide manner, the application for occupation certificate was applied on 11.09.2019 and the same was received on 27.09.2019. That thereafter, as per the agreed terms and conditions, the respondent had made an offer for possession on 17.12.2019. That the occupation certificate was received within the time frame, as promised and there is no delay of any manner whatsoever.
- h. As it was agreed between the parties that allotment of the complainant was solely for the purpose of leasing either as an individual unit or as a part of combined area, as has also been agreed by the complainant in the complaint under clause 41 of the application form. That due to the agreement of lease of the specific area, either alone or in part with a combined area, the location of the unit remains to be tentative.
- i. Hence, acting in the best interests of the company and the investors and to ensure the operationalisation of the project through leasing, the old unit was first changed to unit bearing no. T1-4-12FL vide reallocation letter dated 17.10.2023 and thereafter, finally changed to T3-20-12FL ad, 1000 sq. ft super area (the "new unit") vide leasing and re-allocation letter dated 11.12.2023
- j. With the change in the unit and the allotment of the new unit, the respondent thereafter again delivered a copy of the new buyer's agreement and the addendum to the buyer's agreement on 01.01.2024. However, despite having received the agreement twice, the executed copies of the same have not yet been delivered by the complainant. The respondent has issued multiple reminders on 10.01.2024, 23.03.2024,

19.04.2024, and 01.05.2024 however, the executed copy of the agreement has not yet been delivered by the complainant, for reasons best known to them.

- k. The complainant was given a leasing and reallocation letter, whereunder, it was confirmed to the complainant that the new unit has been leased to Gourmer Services Private Limited @72 Rs/sq. ft. and hence, in accordance with the aforementioned clauses of the Addendum, the additional of sales consideration, the lease brokerage, and the registration charges were sought from the complainant.
- l. In accordance with clause 3(a) of addendum agreeemnt, from the date of offer of possession and up to the leasing of the unit, the Minimum Lease of Rs. 62.50 per sq. ft was being paid by the respondent from the date of offer of possession (17.12.2019) till 3 years, i.e., December 2022.
- m. That while the complainant remains at default in making the due payments towards additional sales consideration, the lease brokerage, etc, the Respondent has acted in utmost bonafide and a total sum of Rs. 15,34,768 was paid/credited by the Respondent as Minimum Lease Charges from December 2019 till December 2022. Hence, there is no default whatsoever, on part of the respondent.
- n. At this stage, it is relevant to note that the payment of the said Minimum Lease Charges were not absolute and subject to the happening of the events, as mentioned in clause 3(a) of the Addendum, as noted above. That in 2020 and thereafter in 2021, the world had faced the advent of Covid - 19 which had put all the commercial activities at halt and a national wide lockdown had been imposed. That the construction of the project was also affected by the construction bans and the financial meltdown of the market. The happening of such events fell under the clause 3(a)(a) and 3(a)(f), as noted above and hence, a moratorium had



been effected for the period between April 2020 - August 2020, February 2021 to July 2021, till September 2021. In this regard a letter dated 23.02.2023 was also issued to the complainant after having explained the same.

- o. Hence, the total demand comes upto Rs. 76,18,390.00 out of which only a sum of Rs. 69,79,780.20 has been paid by the complainant and Rs. 4,56,404.80 is still outstanding and payable by the complainant. Although the respondent has ensured its utmost *bonafide* conduct, at all times, however, the present complaint, filled with unsubstantiated and frivolous allegations, cannot be entertained. That the complainant seeks reliefs qua assured returns and lease rent, however, as noted above, there is no contractual obligation of the respondent in this regard. The complainant has failed to execute the agreement and the addendum and hence, no order in lieu of any payment whatsoever be made by this Ld. Authority. That the complainant cannot be allowed to take advantage of his own wrong. That in a similarly situated case before the Hon'ble Haryana RERA titled as *Alok vs Advance India Projects Limited bearing Case No. 1135 of 2022*, where the investor had not executed the agreement and had filed a case seeking assured returns, in the absence of an agreement to this effect, the same was not allowed.
- p. In the present case, a total sum of Rs. 25,38,147 has been paid/credited by the respondent to the complainant, however, since there is no contractual obligation of the respondent, the relief of either assured return or lease rent cannot be entertained. Moreover, it is most vehemently submitted that the complainant is praying for the relief of "Assured Returns" which is beyond the jurisdiction that this Ld. Authority has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of

19

remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the Allottee. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed in jurisdiction to grant "Assured Returns".

- q. The non-payment of assured return post 2020 as alleged by the complainant in his complaint is bad in law. The payment of assured return is not maintainable before the Ld. Authority in light of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act]. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. The assured returns or assured rentals under the said Agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme".
- r. The complainants cannot, under the garb of said the allotment, seek enforcement or specific performance of an Investment Return Scheme before this Hon'ble Authority, which is specifically barred and banned under Section 3 of The BUDS Act, hence the present complaint deems dismissal. Reliance in this regard is placed on the order dated 19.04.2022 passed by the Ld. District Court Guru gram in the matter titled as *Naresh Prasad vs. M/s. Vatika Ltd. and Anr.* (CIS NO. 338 of 2022).
- s. The complainant is not entitled to any relief whatsoever. There is no contractual obligation of the respondent and in any case whatsoever,



this Ld. Authority does not have the jurisdiction to deal with the present matter.

12. 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

13. 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

14. 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

15. 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) (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) 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.

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

F. Findings on the objections raised by the respondent:

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

17. 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"

18. 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 the relief sought by the complainant.

G.I. Direct the respondent to execute the agreement for sale and addendum agreement, containing all fair terms and reasonable clauses as per the RERA Rules and RERA Act of 2016, negotiated and agreed upon by both the parties and to execute the conveyance deed and all necessary and required documents in respect of the unit in favour of the complainant for constructive possession immediately upon this complaint being filed before this Hon'ble Authority or as this Hon'ble Authority deems fit and appropriate .

19. The complainant was allotted a unit in the project of respondent "AIPL Business Club" at sector 62, Gurgaon vide allotment letter dated 14.08.2018 for a total sum of Rs. 61,69,000/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 69,79,780/-. In the present matter the authority observed that the registered buyers' agreement is not executed inter se parties. Clause 38 of the application form provides for the handing over of possession of the subject unit as 48 months from date of start of construction. Accordingly, the due date of handing over of possession of the subject unit comes out to be 15.05.2020. As per the documents available on record the respondent offered the possession of the unit on 17.12.2019 after obtaining OC from the competent authority on 28.11.2019.
20. The complainant has submitted that despite receipt of an amount of Rs. 69,79,780/- from them against the sale consideration of Rs. 61,69,000/-,

the respondent has failed to enter into a registered buyer's agreement against the unit allotted to them till date. Thus, seeking the relief of execution of buyer's agreement against the booked unit/space in their favour. The authority observes that despite receipt of considerable amount against the booked unit back in 2019 from the complainants, the respondent-promoter has failed to enter into a written agreement for sale against the unit in question and has failed to get the unit registered in their name till date. Hence, it is violation of the provisions of the Act, and shows its unlawful conduct. As per Section 13(1) of the Act, 2016, the promoter is obligated to not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. The respondent's failure to comply with this mandatory requirement is unlawful and reflects a contravention of the rights and protections afforded to the complainant under the Act. Thus, in view of Section 13 of the Act of 2016, the respondent-promoter shall enter into a registered buyer's agreement with the complainants as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017.

G.II. Direct the respondent to pay monthly assured returns of Rs. 62,500/- per month to the complainant from 01.12.2020 till 31.12.2023

21. The Authority has carefully considered the complainant's claim for relief of assured returns, which the respondent allegedly committed to pay. Upon review of the documents and the submissions made, it is observed that there is no mention or provision of assured returns in the draft of the Buyer's Agreement, nor is there any formal agreement between the parties regarding such a commitment. The issue of assured return, as presented, appears to be a purely contractual obligation between the complainant and the respondent. In the absence of any specific provision

under the Act, 2016, or the Rules, 2017, that mandates the payment of assured returns, the claim does not fall within the purview of the statutory obligations under the Act. Furthermore, the assured returns, if paid by the respondent to the complainant prior to the due date of possession, appear to be part of a commercial transaction between the parties rather than a statutory entitlement. It is noted that the complainant's counsel, during proceedings on 23.01.2025, has stated that the respondent orally promised to pay assured returns. However, such an oral promise does not create any enforceable contractual obligation under the provisions of the Haryana Real Estate (Regulation and Development) Act, 2016, as no written agreement or specific clause related to assured returns exists in the agreement for sale. In view of these circumstances and in the absence of any statutory violation, the claim for assured returns is dismissed as being non-maintainable.

G.III. Direct the respondent to pay monthly lease rent of at the rate Rs. 72/- per sq. ft. i.e., Rs. 72,000/- per month from 01.01.2024 till date.

22. Upon perusal of the documents available on record, it is observed that on 11.12.2023, the respondent issued a letter to the complainant regarding the leasing intimation of the allotted unit, which was duly received by the complainant on 16.12.2023. This correspondence establishes the respondent's obligation to pay lease rentals in relation to the subject unit. Furthermore, Clause 3 of the draft addendum agreement, annexed with the complaint, specifically outlines the respondent's liability to pay lease rentals. The clause 3 of the draft addendum agreement is reproduced below for the ready reference:

The Allottee hereby grants unconditional, unequivocal and irrevocable right and request the Promoter to put the Said 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/leave and license or otherwise, for and on behalf of the Allottee ("Lease Grant Right"), from the date of signing of this Addendum till such time the

Promoter communicates in writing its unwillingness to exercise the said Lease Grant Right "Lease Grant Right Tenure"), and based on the request of the Allottee and representations and covenants of the Allottee captured herein, the Promoter has accepted the Lease Grant Right. Notwithstanding anything contained herein in this Clause, the Allottee hereby agrees and confirms that the Lease Grant Right granted in favour of the Promoter shall not in any manner relieve or discharge the Allottee from its obligation to pay the maintenance charges and the Allottee shall continue to comply with its obligation to pay the maintenance charges as per the terms of the Agreement. The Allottee has clearly understood the general risks involved in giving the Said Unit 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 hereby undertakes to pay to the Allottee Rs 62,500.00 (Rupees Sixty-Two Thousand Five Hundred Only) per month as assured return/lease rent/license fees from the date of issuance of Notice of Offer of Possession, till the commencement of first lease/leave and license of the Said Unit or 3 (three) years whichever is earlier.

23. The clause grants the promoter (respondent) an irrevocable right to lease the unit, either individually or in combination with other units, and mandates the payment of Rs. 62,500/- per month as assured return/lease rental/license fees to the complainant, commencing from the date of issuance of the notice of offer of possession, until the commencement of the first lease or for a period of three years, whichever is earlier. The Authority finds that this leasing intimation and the aforementioned clause of the addendum agreement create a binding obligation on the respondent to pay the agreed lease rentals to the complainant. Therefore, the respondent is liable to honor the terms of the addendum agreement and pay the assured lease rentals as stipulated, in accordance with the binding provisions of the agreement.

G.IV. Direct the respondent promoter to pay interest as prescribed by law on total outstanding payment towards the assured returns and monthly lease rentals till date.

24. Pursuant to clause 3 of the draft addendum agreement, the respondent was obligated to pay lease rentals to the complainant from the date of

issuance of the notice of offer of possession until the commencement of the first lease/leave and license agreement for the said unit, or for a period of three (3) years, whichever is earlier. The complainant asserts that the respondent has defaulted on the payment of lease rentals since December 2020. Although the addendum agreement has not been executed, the communication regarding the leasing arrangement, specifically the intimation for leasing letter dated 11.12.2023, clearly indicates that both parties had mutually agreed that the respondent would pay lease rentals to the complainant. Consequently, the respondent is hereby liable to pay lease rentals in accordance with the terms stipulated in clause 3 of the draft addendum agreement.

- G.V. Direct the respondent to not charge CAM charges or any other charges from the complainant which were not agreed between the parties.**
G.VI. Direct the respondent to not levy any other cost on the complainant for the purpose of lease of the unit with Gourmer Services Private Limited and act in conformity with the agreement.

25. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
26. In the present matter, although the respondent has offered the possession of the said unit on 17.12.2019 after receiving OC. However, vide said letter dated 28.11.2019 only constructive possession has been offered by the respondent which means the complainant is not in actual physical possession of the said unit. The respondent has very specifically mentioned in letter of offer of possession that physical possession was never to be handed over and is for the purpose of lease only. Furthermore, it is the obligation of respondent to put the said unit on lease. Accordingly, the CAM charges shall be payable by the lessee once the said unit is put on lease by the respondent and the complainants is not liable to pay the CAM charges. The respondent shall not impose or



charge any fees, costs, or charges not expressly consented to by the parties in documentation.

G.VII. Direct the respondent promoter to pay a sum of Rs. 10,00,000/- to the complainant for causing mental agony and harassment.

G.VIII. Direct the respondent promoter to pay a sum of Rs. 1,00,000/- to the complainant towards litigation cost.

27. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (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.

H. Directions of the authority:

28. 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 hereby directed to execute the buyer's agreement with the complainant and subsequently execute the conveyance deed in favor of the complainant, in accordance with the applicable laws and regulations.
- The respondent is hereby directed to pay the lease rentals as agreed in clause 3 of the draft addendum agreement, either until the date of issuance of the notice of possession of the unit, or for a period of three (3) years, whichever is earlier. In the event of non-payment, the outstanding amount shall accrue interest at the rate of 9.10% per annum, from the due date until the date of actual realization.

- c. The CAM (common area maintenance) charges shall be payable by the lessee once the said unit is leased by the respondent. The complainant shall not be liable for the payment of CAM charges, as the said unit is not intended for the purpose of self-occupation by the complainant.
 - d. The respondent is not entitled impose or charge any fees, costs, or charges not expressly consented to by the parties in documentation.
 - e. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
29. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, total sale consideration, amount paid by the complainant and execution of conveyance deed is mentioned in each of the complaints.
30. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
31. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.05.2025