BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**2195 of 2023**
Date of filing:		**29.05.2023**
Date of decision	**:**	**01.07.2025**

Mr. Sandeep Seth
Mr. Nikhil Soni
Both RR/O: A-84, Shivalik, Malviya Nagar, New Delhi-110017

Complainants

Versus

1. M/s Advance India Projects Ltd.
   Regd. office: 232-B, 4th floor, Okhla Industrial Estate, Phase-III, New Delhi-110020
2. M/s Wellworth Project Developers Pvt. Ltd.
   Regd. Office: 232-B, Fourth floor, Okhla Industrial Estate, Phase III, New Delhi – 110020

Respondents

CORAM:	
Shri. Arun Kumar	**Chairperson**
Shri. Ashok Sangwan	**Member**

APPEARANCE:	
Dhruv Lamba (Advocate)	Complainants
None	Respondent no. 1
Sh. Harshit Batra (Advocate)	Respondent no. 2

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sno.	Particulars	Details
1.	Name of the project	AIPL Joy Central
2.	Project location	Sector 65, Badshahpur, Gurugram, Haryana
3.	Project type	Commercial Colony
4.	DTCP License	183 of 2017 dated 14.09.2017
5.	HRERA registration	Not registered
6.	Date of allotment	28.04.2017 [pg. 57 of reply]
7.	Date of unit buyer agreement	21.08.2017 (As per page no. 28 of the complaint)
8.	Unit no.	0067 on floor GF (As per page no. 30 of the complaint)
9.	Unit area admeasuring	787 sq. ft. (super area) (As per page no. 30 of the complaint)
10.	Possession clause	44 *Subject to the four set and subject to the allottee not being in default under any part of this agreement including but not limited to the timely payment of the total price and subject to the allottee having complied with all the formalities or documentation as prescribed by the company the company endeavours to hand over the possession of the unit to the allottee within a period of* ***54 months with a further grace Six months from 1st September 2017.*** *(As per page no 33 of the agreement)*
11.	Due date of possession	01.09.2022

		Including grace period of 6 months
12.	Total sale consideration	Rs.1,17,04,069/- (As per SOA dated 16.10.2023 on page no. 103 of reply)
13.	Amount paid by the complainant	Rs.1,30,57,517/- (As per SOA dated 16.10.2023 on page no. 103 of reply)
14.	Assured Return	*32. Where the Allottee has opted for Payment Plan as per Annexure-A attached herewith and accordingly, the company has agreed to pay Rs. 21,263/- per month by way of assured return to the Allottee from 28/04/2017 till date of issue of notice of Possession of the Unit. The return shall be inclusive of all taxes whatsoever payable or due on the return.* *(As per page no 44 of the complaint.)*
15.	Assured return paid by respondent	Rs.45,73,288/- (As per page 107 of reply)
16.	Occupation certificate	24.12.2021 [pg. 97 of reply]
17.	Offer of constructive possession	24.03.2022 [As per page no. 60 of the complaint]
18.	Letter regarding leasing the said unit to bluestone jewellery	28.12.2022 [pg. 106 of reply]

B. Facts of the complaint

3. The complainants have submitted as under:

a. That relying on the assurances and promises of the respondents, on 20.01.2017, Mr. Rishi Soni and Mr. Sandeep Seth had made an application for booking and subsequently on the same day had paid an amount of

Rs.10,00,000/- in lieu of the same. The payment was acknowledged by the respondent's company and accordingly a booking receipt was issued.

b. That on 28.04.2017, an allotment letter was issued by the respondent's company M/s. ADVANCE INDIA PROJECTS LIMITED in the name of Mr. Rishi Soni and Mr. Sandeep Seth vide which 1 Car Parking along with a unit bearing no. 67 on Ground Floor having a super area of 787 sq. ft. was allotted at BSP @ Rs. 14,000/- per sq. ft., Development charges @ Rs. 676/- per sq. ft. and IFMS @ Rs. 100/- per sq. ft.

c. That on 21.08.2017, a buyer's Agreement was executed between M/s Advance India Projects Ltd. (hereinafter referred to as the respondent no.1) and Mr. Rishi Soni and Mr. Sandeep Seth wherein 1 Car Parking along with a unit bearing no. 67 on Ground Floor having a super area of 787 sq. ft. was allotted. As per Annexure- A of the buyer's agreement, the total sale consideration of the subject unit was Rs. 1,16,28,712/-. It is pertinent to mention over here that Clause 1.2 of the said agreement talks about Due date of possession, clause 11 specifies "Procedure for Taking Possession" and Clause 12 specifically talks about "Handing Over Possession".

d. That the buyer's Agreement executed inter se both the parties is executed post- RERA coming into force and yet is not a RERA compliant agreement and is loaded in the favour of the respondent builders. This Agreement also contains numerous clauses which are in violation of the provisions of the Act of 2016 and Rules of 2017. That vide clause 1.2 of the buyer's agreement dated 21.08.2017, the due date of possession comes out to be 01.03.2022.

e. That on 24.03.2022, a notice of offer of possession was sent by the respondent company to Mr. Rishi Soni and Mr. Sandeep Seth along with final statement of account. The subject of the said notice reads as

"Intimation of Constructive Possession of Unit no.....". Not only this, the said statement of account consisted of certain unlawful and arbitrary demands as Sinking Fund, Labour cess, Infrastructure Augmentation Charges, Electric switch-in station & Deposit Charges, Sewage/ Storm Water/ Water Connection charges, Electric Meter Charges etc.

f. That said notice of offer of possession was completely illegal and unlawful as Firstly, it nowhere talks about physical handing over of possession. So, such an offer of possession where practically no physical possession is offered is itself null and void in the eyes of law. Secondly, the said notice of offer of possession was accompanied by many illegal demands as Sinking Fund, Labour cess, Infrastructure Augmentation Charges, Electric switch-in station & Deposit Charges, Sewage/ Storm Water/ Water Connection charges, Electric Meter Charges, Payment due area change to name a few. This Hon'ble Authority in many of its judgements have held that an offer of possession which is accompanied by unlawful and illegal demands is not a valid / lawful offer of possession. Thirdly, the complainants were allotted a retail shop along with 01 car parking space. It is important to mention here that the said notice of offer of possession nowhere mentions or talks about the said car parking space. Fourthly, the said notice of offer of possession was accompanied with Indemnity Bond cum Undertaking. In view of the submissions made above, the said notice of offer of possession dated 24.03.2022 is illegal, unlawful and not valid in the eyes of law. It is most humbly prayed before this Hon'ble Authority to struck down the said notice of offer of possession along with the illegal demands made by the respondent's company and declare the same as unlawful and invalid. Further, it is also most humbly prayed that a direction w.r.t issuance of a fresh offer of possession in which physical possession of the subject unit is

offered along with 01 car parking space be made and a fresh statement of accounts be issued after removing all the illegal charges.

g. That Mr. Rishi Soni who was a co-allottees of the subject unit left for heavenly abode on 27.05.2022 and subsequently, the legal heirs of Mr. Rishi Soni has agreed to record the name of his son Mr. Nikhil Soni as the owner in respect of the subject unit. The respondents also accepted the same and assigned the rights/benefits for the subject unit in favour of Mr. Nikhil Soni.

h. That the present complainants had made all the payments well on time as and when demanded by the respondent builder. It is a matter of fact that the complainants had made a payment of Rs.1,30,78,986/- towards the total sale consideration of the subject unit. That further as per clause 32 of the buyer's agreement dated 21.08.2017, the company has agreed to pay Rs. 99,990/- per month by way of assured return to the allottee from 28.04.2017 till the date of offer of possession of the unit. It is of immense importance to submit here that no valid/ lawful offer of possession has been made to the complainants till date. In light of the submissions made above, the respondent's company is liable to pay assured return to the tune of Rs. 99,990/- per month till the date a valid/ lawful offer of possession is made to the present complainants.

i. That the leasing is done without taking any permission of the complainants; even the complainants were not asked about the leasing rate and terms. In simple words, leasing process is completely arbitrary and unlawful where there is no say of the owners of the unit i.e., the present complainants. That the respondents cannot charge Holding charges from the present complainants as per the law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated

14.12.2020, the holding charges shall also not be charged by the respondent builder at any point of time even if they are part of the agreement.

j. That CAM charges should be charged from the date of handing over of the actual physical possession of the subject unit. That due to the acts of the respondents and the deceitful intent as evident from the facts outlined above, the complainants have been unnecessarily harassed mentally as well as financially, and therefore the opposite party is liable to compensate the complainants on account of the aforesaid unfair trade practice. Without prejudice to the above, the Complainants reserves the right to file a complaint before the Hon'ble Adjudicating Officer for compensation.

C. Relief sought by the complainants:

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

a. Direct the Respondents to pay assured return to the tune of Rs.99,990/- as promised in the clause 32 of the buyer's agreement till actual handing over of the physical possession of the subject unit;

b. Direct the respondent to make a fresh and lawful offer of possession of the subject unit along with 01 car parking space to the present complainants;

c. Direct the respondent to withdraw all the illegal/ unlawful demands as Sinking Fund, Labour-cess, Infrastructure Augmentation Charges, Electric switch-in station & Deposit Charges, Sewage/ Storm Water/ Water Connection charges, Electric Meter Charges;

d. Direct the respondent to not charge "Holding charges" from the complainants;

e. Direct the respondent to not charge anything from the present complainants which is not part of the agreement.

5. On the date of hearing, the authority explained to the respondent /promoters 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 no. 1

6. The respondent no. 1 has contested the complaint on the following grounds:

a. That the complainants are not an "Allottees" but investors who had booked the retail unit in question as a speculative investment in order to earn rental income/profit from its resale.

b. That the original purchasers, Mr. Sandeep Seth and Late Mr. Rishi Soni, being interested in the real estate development of the respondent No.1, known under the name and style of "AIPL JOY CENTRAL" located at Sector 65, Gurugram, Haryana ("Project") booked a unit on 20.01.2017. It is submitted that the Original Purchasers prior to approaching the Respondent No. 1, had conducted extensive and independent enquiries regarding the Project and it was only after the they were fully satisfied with regards to all aspects of the project and the unit, that the original purchasers took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondents No.1.

c. That it needs to be categorically noted that since the very beginning, the intention of the parties has been *ex facie* and prima facie clear to take the constructive possession of the unit to earn the rental income from the unit. The booking of the unit by the complainant was made with the said categorical understanding, as noted in clause 43 of the Application form.

d. That the sole intention of booking was to lease the unit and with that understanding, an offer was made by the Complainants by filing the Application form, upon the acceptance of which, an allotment of a provisional retail shop unit bearing no. 67, Ground Floor having Super

Area 787 sq. ft. (now, 792.10 sq. ft.), located on Ground Floor ("**the Unit**") was made vide an Allotment letter dated 28.04.2017. That thereafter, the Unit Buyer's Agreement was executed between the parties on 21.08.2017 (the "**Agreement**") was executed between the Parties.

e. That at the outset it is submitted that the Project underwent a change in the building plans, upon which, objections/suggestion for the approval of the building plan was rightly invited from the Original Purchasers vide letter dated 21.11.2019, however no objections were received by the Respondents. That thereafter, the unit of the Original Allottees was renumbered from GF-67 to GF-93 and the same was rightly communicated to the Complainant on vide letter 20.01.2022.

f. That it needs to be categorically noted that since the very beginning, the intention of the Parties has been *ex facie* and prima facie clear to take the constructive possession of the Unit to earn the rental income from the Unit and not the physical possession. The Booking of the Unit by the Complainant was made with the said categorical understanding, as noted in clause 41 of the Application form.

g. That without prejudice to the rights and contentions of the Respondent No. 1, it is categorical to note that such intention to out the Unit on lease was not only in the Application Form but also under the Agreement dated 21.08.2017 under Clause 33 which categorically mentions that at the request of the Complainants, the Respondent No. 1 agrees to put the unit on lease.

h. That in addition to the above and the categorical understanding between the Parties, it was on the request of the allottee that the Promoter has agreed to put the Unit in combination with other units for their leasing. That Original Purchasers subsequently, categorically agreed to lease the

Unit by entering into a leasing arrangement with the Respondent no.1. The Original Purchaser had also understood the general risks involved in giving the premises on lease.

i. That from all the above-mentioned, the intention of the Parties is *ex facie* clear, from every part of the Agreement, with respect to the Complainants receiving the constructive possession of the Unit and the leasing arrangement between the Parties; having executed the Agreement with open eyes and free will, without any coercion or undue influence, of any sort, whatsoever, the same cannot be challenged. That the terms of the Agreement need to be upheld as a whole. That Complainants cannot be allowed to cherry pick the clauses that they like and leave the rest.

j. That from the clause reiterated hereinabove, it is clear that the Original Purchasers and subsequently the Complainants entered into a future lease agreement with the Respondent No. 1. It is an entrenched principle of law that a lease may be limited to take effect either immediately or from a future date. It is *ex facie* evident that the Complainants had entered into a future lease agreement. That the Complainants agreed to put the Unit on lease after the notice of offer of possession. That by virtue of such an agreement, the Complainants-Allottee enjoys the rights of the lessor and hence, enjoys the constructive possession of the Unit, after the notice of offer of possession.

k. That it needs to be categorically noted that a lessor is always considered to part with the physical possession of the property and stay in constructive possession through the lessee. That such a relationship is valid and has been recognised in law at various occasions.

l. That as is evident from the Clause 44 of the Agreement the Respondent No.1 was to deliver the possession of the unit in 54 months with further

grace period of 6 months. It is submitted that the due was subjected to allottees not being in default of any part of the Agreement including but not limited to the timely payment of the total price and also having complied with all the formalities and documentations and various ***force majeure*** conditions.

m. That at the juncture, it is pertinent to note that the notice of offer of possession was issued on 24.03.2022 i.e., almost 6 months ahead of the due date. Thus, present complaint is not maintainable and hence cannot be continued and is entitled to be dismissed.

n. That even though the Respondent as deeply aggrieved with a number of unforeseeable circumstances causing hindrance in the continuous construction of the Project, like the ban on construction activities, orders by the NGT and EPCA, demobilisation of labour, the grave effect of the corona virus pandemic etc being circumstances beyond the control of the Respondent and force majeure circumstances. Nonetheless, the Respondent completed the construction and rightfully applied for occupancy certificate on 09.05.2021 and rightfully obtained the same on 24.12.2021.

o. That thereafter, the Respondent rightly issued the legal and valid notice of offer of possession on 24.03.2022. That now after occupation certificate has been granted Allottees cannot refuse to take possession and this contention has been supported by the judgements of Hon'ble Supreme Court and Hon'ble National Consumer Disputes Redressal Commission in a plethora of judgements, a few of which have been noted hereinbelow.

p. That it is amply clear that the possession of the Unit has been rightly offered after the receipt of occupancy certificate and the Complainants were under the obligation to the take the possession of the unit. Further,

the Complainants have also been intimated about the car parking allocation vide letter dated 10.08.2022.

q. That it is categorically pertinent to note at this stance that no protest of any kind, whatsoever, has been raised by the Complainants in the acceptance to the terms and conditions of the Application Form or the Agreement and hence, the same cannot be denied. That moreover, it is pertinent to note that as per clause 11 of the Agreement, the Complainants were obligated to take possession of the Unit within 30 days from the date of notice of offer of possession which was to be made after the receipt of the occupancy certificate only.

r. That the Complainants stand in default of taking the offer of possession and making the due payments. The *malafide* conduct of the Complainants are evident from the fact that the Complainants have enjoyed the payments of assured returns and failed to comply with their obligations to make full payment. That as on 16.10.2023, the Complainants had only made payment of Rs. 1,30,57,517.69 out of the total sales Consideration of Rs. 1,39,21,320.19.

s. That moreover it is submitted that the all the charges demanded by the Respondent are as per the terms and conditions and clauses of the Application Form, Allotment Letter and the Agreement. It is further submitted that the Complainants were aware that they are liable to pay the other charges as define under the agreement along with the basic sales price of the unit. That thus, it is clearly evident from the as stated above that the charges provided are authentic, legitimated and valid as they form part of the Agreement executed between the parties and the Complainants are liable to make the payment.

t. That moreover, in compliance of the terms and conditions between the Parties, the Unit was put on lease with a brand known under the name and style of "Bluestone" and the same was communicated to the Complainants vide letter dated 28.012.2022. That the lease has been operation since 10.10.2023 and the Complainants have been taking the benefit of the rent since.

u. That furthermore, it is a matter of fact that the Parties agreed for the payment of assured returns as per clause 32 of the Agreement. That it is further submitted that the Respondent has duly fulfilled their obligation of payment of assured returns from April 2016 to Dec 2021. The Respondent has duly fulfilled its obligation of the payment of assured returns and total amount of Rs. 45,73,288/- has been paid to the Complainant till Aug 2021. Moreover, for the period of Oct 2021 to Dec 2021 that assured return has been credited to the Account of the Complainants as evident from s.no. 16,17 and 18 of the Statement of Account annexed herein.

v. That as noted above, the obligations of the payment of the assured return have been duly fulfilled by the Respondent till Nov 2019, however due to change in the preposition of the law the same was stopped. Moreover, it is submitted that this issue of assured returns cannot be dealt with by the Ld. Authority, who does not have the jurisdiction to deal with the said issue.

w. 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 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".

x. That the non-payment of assured return post Nov, 2019 as alleged by the Complainant in his complaint is bad in law. It is pertinent to mention herein that the payment of assured return is not maintainable before the Ld. Authority upon enactment 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. It is stated that 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". Thus, the Respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme". In this regard, it is most humbly submitted as under:

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 on the basis of those undisputed documents and submissions made by the parties.

8. The present complaint was filed on 29.05.2023 in the authority. The notice for hearing was duly served to respondent no. 2. However, despite providing enough opportunity for filing the reply, no written reply has been filed by the respondent no. 2. Thus, keeping in view the opportunity given to the respondent no. 2, has failed to file the reply in the registry. Therefore, in view of the above-mentioned fact, the defence of the respondent no. 2 was hereby

struck off by the authority on 04.04.2024. Further, respondent no. 2 also failed to put in appearance before the authority, the matter was proceeded ex-parte against respondent no. 2 on 04.04.2024.

9. Written submissions filed by the parties are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

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. I Territorial jurisdiction

11. 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

12. 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.*

13. 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

14. The respondent took a stand that the complainants are investors 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 the relief sought by the complainant.

G.I. Direct the Respondents to pay assured return to the tune of Rs.99,990/- as promised in the clause 32 of the buyer's agreement till actual handing over of the physical possession of the subject unit;

G.II. Direct the respondent to make a fresh and lawful offer of possession of the subject unit along with 01 car parking space to the present complainants.

16. In the present matter the authority observed that the buyers' agreement executed inter se parties on 21.08.2017. Clause 44 provides for the handing over of possession of the subject unit within a period of 54 months with a further grace six months from 1st September 2017. The period of 54 months expires on 01.03.2022. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of handing over of possession of the subject unit comes out to be 01.09.2022. As per the documents available on record the respondent offered the possession of the unit on 24.03.2022 after obtaining OC from the competent authority on 24.12.2021.

17. Before adjudicating upon the relief of assured return it would be relevant to give observation upon the validity of the offer of possession dated 24.03.2022.

18. The complainants in the present matter have pleaded that the respondent offered the constructive offer of possession whereas the respondent as per the BBA was obligated to offer the actual physical possession of the unit. On the contrary the respondent, contended that as per clause 33 there was a leasing arrangement between the parties and moreover as per application form it was clearly written in clause 43 that the said unit is not for self-occupation rather is for the purpose of leasing.

19. The authority herein observes that the complainants were very well aware of the fact that the said unit was not for the purpose of self-occupation rather is to be put on lease as clear from clause 43 of application form and 33 of the agreement. Further nowhere in the agreement it is specifically mentioned that the respondent shall handover the actual physical possession of the unit rather the terminology used is handing over of possession. The relevant clauses are produced herein below for the ready reference:

> *"**Clause 43***
> *The applicant has clearly understood that the unit is not for the purpose of self-occupation and use by the applicant and is for the purpose of leasing to third parties along with combined units as larger area. The applicant has given unfettered rights to the company to lease out the unit along with other combined units as a larger area on the terms and conditions that the company would deem fit. The applicant shall at no point of time object to any such decision of leasing by the company.*
> ***Clause 33***
> *At the request of the allottee, the company agrees to put the unit, individually or in combination with other adjoining units, on lease, for and on behalf of the allottee, from the date of signing of this agreement. The allottee has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Company....."*

20. Accordingly, the physical possession was never the intent of the respondent and therefore, the constructive possession of the unit dated 24.03.2022 is valid. The complainants are also seeking assured returns on monthly basis as per the builder buyer agreement.

21. As per the builder buyer the agreement executed between the parties on 21.08.2017, the possession of the subject unit was to be delivered within stipulated time i.e., 01.09.2022. The assured return was to be paid as per clause 32 of the BBA. The relevant clause is reproduced below for the ready reference:

> *"32*
> *Where the Allottee has opted for Payment Plan as per Annexure-A attached herewith and accordingly, the company has agreed to pay*

₹21,263/- per month by way of assured return to the Allottee from 28.04.2017 till date of issue of notice of Possession of the Unit. The return shall be inclusive of all taxes whatsoever payable or due on the return."

22. The assured return in this case is payable as per 32 of the agreement dated 21.08.2017. The respondent agreed to pay an amount of ₹21,263/- per month from 28.04.2017 till the date of notice of possession of the unit i.e., by 24.03.2022 as an assured return. The respondents have paid an assured return of ₹45,73,288/- till the offer of possession. Accordingly, no liability to pay assured returns remains pending on part of the respondents in terms of the BBA. Therefore, the above-mentioned reliefs sought by the complainants are hereby declined by the Authority.

G.III. Direct the respondent to withdraw all the illegal/ unlawful demands as Sinking Fund, Labour-cess, Infrastructure Augmentation Charges, Electric switch-in station & Deposit Charges, Sewage/ Storm Water/ Water Connection charges, Electric Meter Charges.

G.IV. Direct the respondent to not charge "Holding charges" from the complainants.

G.V. Direct the respondent to not charge anything from the present complainants which is not part of the agreement.

23. As far as Holding charges and labour cess is concerned the respondent cannot charge the same even if the same is part of BBA. Furthermore, the respondent shall not charge anything which is not the part of the BBA.

24. Ordered accordingly, the complaint stands disposed of.

25. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2025