

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

Complaint no.	:	4097 of 2023
Date of filing:		20.09.2023
Date of order	:	29.07.2025

Mr. Shakun Dhingra

Mrs. Isha Rakheja

Both RR/O: A-215, 4th floor, Sushant Lok 2, Sector 55,
Gurugram, Haryana

Complainants

Versus

M/s Advance India Projects Limited

Regd. office: 232-B, 4th floor, Okhla Industrial Estate,
Phase-III, New Delhi-110020

Respondent

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

APPEARANCE:	
Complainant in person	Complainants
Sh. Gunjan Kumar (Advocate)	Respondent

ORDER

- 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:

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joy Square", Sector-63A, Gurgaon
2.	Nature of project	Commercial site in Residential plotted colony of 2.838 acres
3.	RERA registered/not registered	259 OF 2017 dated 03.10.2017 valid up to 31.12.2022
4.	DTPC License no.	119 of 2011 dated 28.12.2011 valid up to 27.12.2019 71 of 2014 dated 29.07.2014 valid up to 28.07.2024
	Licensed area	108.125 acres
	Name of licensee	BIP holder Anant Raj Ltd.
5.	Unit no.	SF-088 on 2 nd floor [annexure 1 of complaint]
6.	Unit area admeasuring	652 sq. ft. [Super area] [annexure 1 of complaint]
7.	Allotment letter	05.06.2023 [annexure 1 of complaint]
8.	Date of registered builder buyer agreement	28.06.2023 [annexure 3 of complaint]
9.	Total sale consideration	₹ 41,62,368/- [TSC] [page no. 50 of reply]
10.	Amount paid by the complainant	₹ 11,15,807/- [As per SOA dated 20.07.2023 at annexure 1 of complaint]
11.	Possession clause	Clause 5 <i>The promoter shall abide by the time schedule for completing the said</i>



		<p><i>Unit/Project, handing over the possession of the said 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 area to the association of allottees or the governmental authority, as the case may be, as provided under rule 2(1)(f) of the Rules or as disclosed at the time of registration of the project with the authority i.e., 30.06.2023 (including extension granted by RERA by invoking "Force Majeure" clause) or such other extended period as may be intimated and approved by the authority from time to time. The completion of the project shall mean grant of occupation certificate for the said unit/project. It is agreed between the parties that for that purpose of this agreement "handing over the possession of the said unit" shall mean issuance of notice of offer of possession of the unit by the promoter to the allottee.</i></p>
12.	Due date of possession	30.06.2023
13.	Application for grant of OC	02.06.2023 [Page 100 of reply]
14.	Occupation certificate	09.11.2023 [pg. 106 of reply]
15.	Addendum to agreement for sale w.r.t. physical possession shall not be given to the allottee	28.06.2023 [Annexure 3 of complaint]
16.	Addendum to agreement for sale w.r.t. penalty (as per clause 1 & 2) if respondent applies for OC after 02.12.2023 then the	28.06.2023 [Page 96, Annexure R5 of reply]



	company will pay penalty of Rs. 36.18/- per sq. ft. on super area till the date of filing application. if respondent applies for OC before 02.12.2023 then the allottee will pay incentive of Rs. 36.18/- per sq. ft. per month on super area for the period of preponement.	
17.	Offer of possession	03.05.2024

B. Facts of the complaint

3. The complainants have submitted as under:

- a. Basis the intimation of the rates and other charges of the shop, we given a token amount of ₹2,00,000/- on 14th March 2023 through cheque drawn on AU Bank Limited for a shop No. SF/088 total cost of which was informed to be ₹42,38,000/- plus applicable GST. Basis the discussion happened with the Builder sales team; we booked this shop along with 1 other shop in my name and my younger daughter Isha Rakheja. My elder daughter also booked the middle shop No. SF/088 along with her husband Mr. Raman Marwah to have a bigger unit of 3 adjoining shops.
- b. At that time when we visited the site before booking, the project structure was prepared, and I was informed that it will take another 8-10 months to get the project completed. I had paid an amount of ₹2,00,000/- on 14th March 2023 as a booking amount and balance ₹9,15,807/- afterwards in May 2023 end as part of my payment plan.



- c. At the time of making the payment in May 2023 end also, we checked for the status of the project and visited the site. There was some construction going on at that time also and the sales Head Mr. Apoorv informed us that they are trying to apply for the OC after Diwali (around Nov -Dec 2023) and will try to deliver the shop around March -April 2024.
- d. Since, this was a commercial project, we were informed that the Builder assist in getting the lease of the shops in most of the cases as they have a dedicated lease team who assist all shop Buyers to help in getting a good rental for their shops. In case, any Buyer wanted to open his/her own shop or want to lease himself, they can inform the Builder and they can give it on rent directly or can open his own shop. But, since they are in commercial real estate, they can get better rentals to customers due to their brand value and marketing team. Furthermore, in case any brand requires any larger space, they can also help them to club some of the shops to have a bigger space as per their requirements, therefore they are in better position to get more brands with better rentals then individual Buyer who had a limited shop space.
- e. It was also informed to us that they will not be giving Assure return in this project as they had kept the price as ₹5100 per sq. feet against the market rate of ₹9,000- 10,000 per sq. ft for the builders who give assured returns out of the additional amount taken from the buyers only due to such huge rate difference.
- f. Thereafter, after payment of initial 30% amount, we got calls from the CRM team for BBA registration date around 25th June 2023 and we agreed to get the BBA registered on 28th June 2023 for these 2

shops and on 3rd July 2023 for the shop in my son- in law Raman Marwah name. We had not provided the copy of BBA agreement in advance with an excuse that it will be a standard RERA approved BBA agreement as per law and you can verify the details of your unit at the time of BBA registration.

- g. On 28th June 2023, when we reached for the BBA registration of 2 shops in name of my name along with 2 daughters Ashma Marwah & Isha Rakheja who was also a joint Buyer in one of the shops, we were provided with the copy of the BBA agreement to verify the personal details. The BBA agreement was as per the RERA approved format but to our dismay and surprise, there was 2 addendums attached to the BBA agreement which they asked us to sign which were contrary to what was agreed at the time of the booking.
- h. One of the Addendum to the BBA had a Clause No. 1 of payment of ₹36.18/- per square feet per month in case the Builder apply for the OC before 2nd December 2023 as an Incentive payment while there is no Assured Return payable to us anytime for this shop. It is important to note that this amount will be ₹23,590/- per month and total amount will be approx. ₹1,29,745/- for approx. 5.5 months when they had fraudulently filed the OC with DTCP on 16th June 2023.
- i. Second Addendum has clause relating to the lease rights to be given to the builder to get the lease done for our shops. In this addendum, we were bound to agree to the irrevocable rights to be given to the Builder to get the lease done for our shops as per his sole discretion and we will be bound by his terms of rentals as well as any additional marketing/sales charges to be payable to him for helping in such

lease process. Furthermore, there was additional amount of ₹300/- per sq. ft. to be levied on us as "Mall Operation & Marketing Charges" which were not informed to us at the time of booking of the shop.

- j. On seeing these onerous charges and clauses, I immediately reach out to the Sales Head Mr. Apoorv and my broker Mr. Jitender to clarify these charges and lease related clauses which were not agreed by us. We had also sent an email on 2nd July 2023 regarding these additional charges of Rs. 300 for which we were neither provided any confirmation at that time nor we had not received any confirmation from them after 28th June 2023 when 2 shops BBA were registered. As we had already paid hefty amount for bookings of these 3 shops, we had no other option but to get our BBA registered and then after sending mails to the Company on 2nd July 2023, we got the BBA for my elder daughter Ashma Marwah 3rd shop registered on 3rd July 2023.
- k. It is pertinent to mention that these Addendums were not part of the registered BBA but were removed from the 3 sets of the BBA Agreements before registration. The Builder's lawyer had illegally annexed these addendums to the entire 3 sets of the BBA agreement so that the Buyers will sign the same as part of the RERA approved BBA format without realising that these addendums have clauses which were illegal, unethical and against the RERA law. In most of the cases, the Buyers sign on the BBA agreements at the time of registration without going through the entire agreement but just by verifying their personal details on 1st page with details of the property relying on the fact that these BBA agreements are as per the approved formats under RERA Act. After our repeated mail and

meetings, they agreed to waive off these additional Rs.300/- psf charges for all our units which were not informed and agreed by us at the time of the booking.

- l. Thereafter, to our sudden shock and dismay, we received a demand notice on 18th July 2023 asking us to pay the entire balance amount of Rs. 30,80,108/- towards the 100% cost of the shop by 2nd August 2023 which was due to be payable on application of the OC of the project. We immediately reach out to the Broker and the Sales Head Mr. Apoorv to check the status of the same and they informed that they will reach out to us after checking internally. After 2 days, we were informed that I need to connect with CRM team directly for this as the OC application has already been filed with the DTCP, Chandigarh on 16th June 2023 and only CRM team can help us with the payment time extension.
- m. We met the Sales head Mr. Apoorv with our broker Mr. Jitender many times along with meeting the CRM team to show that the current pictures of the project which we had taken on same day of our first meeting on 25th July 2023 which clearly shows that the project is nowhere near completion and/or OC application and there are at least 5-6 months' time required for the project to reach for the OC application stage. The project is at the stage of just structure with no tile work has been started yet. We had sent them mails regarding the same with these pictures of the project mentioning that these are not the OC status of the project and they need to explain how they had applied to the OC at this stage of project. The CRM team in reply of my email shared an application acknowledged copy dated 6th

June 2023 which they had filed with DTCP Chandigarh on 16th June 2023.

- n. We would like to inform that we had to take loan on this property which will be allowed by bank at the time of OC for commercial projects. So, the bank will be able to remit the funds only when the OC stage would be reached and the OC application will be filed as of the actual stage as per law and not so much before the OC stage. The bank will not approve the disbursement request after inspection of the project.
- o. When we were not given any resolution even after multiple mails and meetings, we went to DTCP office Chandigarh and met Mr. R.S. Bhatt, District Town Planner, DTCP Office, Sector- 18A, Chandigarh and raised this issue with him. I also showed him all current pictures of the project which clearly shows that the project is not even anywhere near to the completion and OC application. I had also filed an RTI application with DTCP office, Chandigarh to seek clarification in this regard.
- p. It is clearly evident from all the fact above that the Builder has filed this OC application fraudulently to demand 100% payment of these units from all the Buyers without reaching the OC stage of the project. This is an unethical, illegal demand to force the innocent Buyers to pay such a hefty amount at least 6-8 months in advance of the project completion stage. It is also evident that the Builders has fraudulently annexed addendum to the BBA to get some of the terms executed with the innocent buyers which were not agreed by them and the same could not be part of the BBA as well as application form to demand more money from these buyers at the time of possession.

It is also evident that the Builder had unilaterally got all rights in his favor for the lease hold of these units without giving any right to the buyers in regard to their shops, thereby forcing the buyers to bend to their unethical terms at the time of lease and thereafter.

- q. It is clearly evident from all the fact above that the Builder has filed this OC application fraudulently to demand 100% payment of these units from all the Buyers without reaching the OC stage of the project. This is an unethical, illegal demand to force the innocent Buyers to pay such a hefty amount at least 6-8 months in advance of the project completion stage.
- r. It is also evident that the Builders has fraudulently annexed addendum to the BBA to get some of the terms executed with the innocent buyers which were not agreed by them and the same could not be part of the BBA as well as application form to demand more money from these buyers at the time of possession.
- s. It is also evident that the Builder had unilaterally got all rights in his favor for the lease hold of these units without giving any right to the buyers in regard to their shops, thereby forcing the buyers to bend to their unethical terms at the time of lease and thereafter.

C. Relief sought by the complainants:

- 4. The complainants have sought following relief(s):
 - a. To instruct the builder to revoke the current demand which needs to be payable at the time of the OC and will raise this only when OC is received to avoid any ambiguity.
 - b. To instruct Builder not to levy interest etc. on this instalment as it was raised prior to actual date of demand which will fall due at the time of the receipt of the OC.

- c. To cancel and set aside the 2 Addendums signed illegally at the time of the BBA registration regarding payment of the Incentive payment and irrevocably giving Lease rights to builders as their terms were not agreed between the parties at the time of the booking.
 - d. To give GST Input credit in the next demand to be raised at the time of the receipt of the OC.
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

6. The respondent has contested the complaint on the following grounds:

- a. That Ms. Shakun Dhingra and Ms. Isha Rakheja (herein after referred to as the "Complainants") vide Booking Application Form dated 14.03.2023 applied for booking of a Unit bearing No. SF/088, admeasuring 290 sq. ft. carpet area approximately (hereinafter referred to as the "Unit"), in the commercial project "AIPL Joy Square".
- b. That in pursuant to the Application Form dated 14.03.2023, the subject Unit was provisionally allotted to the Complainants on 01.06.2023. Thereafter, an Agreement for Sale dated 28.06.2023 (hereinafter referred to as the "AFS") was executed between the Complainants and the Respondent along with an Addendum to Agreement for Sale dated 28.06.2023 (hereinafter referred to as the "Addendum Agreement dated 28.06.2023"). It is pertinent to

mention that another standalone Agreement dated 28.06.2023 was executed between the Parties.

- c. That the present Complaint has been preferred by the Complainant on frivolous and unsustainable grounds and the Complainant has not approached this Hon'ble Authority with clean hands and is trying to suppress material facts relevant to the matter. The Complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the Respondent with malicious intent and sole purpose of extracting unlawful gains from the Respondent. The instant Complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed in limine.
- d. It is important to bring it to the knowledge of the Ld. Authority that the present Complaint is an utter abuse of the process of law as some of the relief sought by the Complainants have already become infructuous and others are not maintainable. That details as to how the reliefs sought by the Complainant have become infructuous in the ensuing paragraphs. That the Complainants had wilfully executed an Agreement for Sale dated 28.06.2023, wherein as per as "Schedule-D" the Complainants had opted for a Milestone Linked Payment Plan whereby payments were to be made on achieving of certain milestones.
- e. Further, as per the agreed terms and conditions of the Agreement for Sale dated 28.06.2023, the Occupation Certificate for the instant Project was to be obtained by 30.06.2023 which was subject to force majeure situations and extension granted by this Ld. Authority. That the Respondent being a responsible developer, after completion of the construction of the Project & to fulfilled the requirements of the

getting the Occupancy Certificate, submitted an application for the grant of the Occupation Certificate before the Competent Authority on 06.06.2023.

- f. Since the Application for the grant of the Occupation Certificate was made by the Respondent on 06.06.2023, the Respondent in adherence with the agreed terms and conditions of the Agreement for Sale dated 28.06.2023 raised Invoice dated 18.07.2023 calling upon the Complainant to pay the instalment amounts which became due on the achievement of Milestone 'On Application of Occupancy Certificate'. That in response to the aforesaid email dated 19.07.2023, the Respondent sent an email on 19.07.2023 itself and clarified that the Invoice dated 18.07.2023 has been raised as per the agreed payment plan and further shared a copy of the Application for grant of Occupation Certificate for the perusal of the Complainants.
- g. That the Complainants post receiving the Respondent's email dated 19.07.2023 sent a reply to the said email on 19.07.2023 itself, wherein the Complainants once again alleged that Occupation Certificate was to apply in November -December 2023 and further threatened the Respondent that they will approach the DTCP and ask them how the DTCP can accept the application of Occupation Certificate. Thereafter, Ms. Ashma Marwah once again sent an email on 25.07.2023 on behalf of the Complainants alleging that the Occupancy Certificate was to be applied around November 2023 and further expressed their inability to pay the outstanding amounts and informed the Respondent that they planned to pay the outstanding amounts around November 2023. That the Respondent vide Email

dated 26.07.2023 informed the Complainants that the demands are raised as per the agreed payment plan and requested them to make payments to avoid delay charges.

- h. It is important to bring it to the knowledge of the Ld. Authority that the Competent Authority post considering the Application dated 06.06.2023 for grant of Occupation Certificate, had issued an Occupation Certificate dated 09.11.2023 vide Memo No. ZP-780-Vol.-II/JD(RA)/2023/38323. Since the Occupation Certificate has already been received, as on date the relief sought in para 1 of the Relief sought has become infructuous. It is noteworthy to mention herein that in the Relief No.1 the Complainants themselves are seeking relief that demands should be raised only when the Occupation Certificate is issued meaning thereby that the Complainants are expressing their intent to pay the said demands after the issuance of the Occupation Certificate. That given the circumstances an Occupation Certificate has already been issued on 09.11.2023 therefore the said demands stand payable as per the averments of the Complainants with delay payment interest thereon.
- i. That the Hon'ble High Court of Madras, in the matter of "The Mudaliar Education Trust vs N.M. Sundarar", has held that a litigation which concerns a matter that had taken place in the past cannot be allowed since there would be no effective progress and the suit would just remain pending in the court of law. Since such suit would serve no purpose, it will become infructuous. It is to be noted that the relief no 2 is a two-fold relief. The said relief alleges two "Addendums" being signed by the Complainants and request the

same to be set aside. However, it is humbly submitted that there are no two "Addendums". That the Addendum to the Agreement to Sale dated 28.06.2023 pertains to payment of Assured Return, Leasing Rights and levying of 'Mall operations and Marketing Charges'. Since the Complainants did not opt for Assured Return Plan and opted for only Leasing of the Unit, therefore, only the clauses pertaining to Leasing Rights and levying of 'Mall operations and Marketing Charges' of the Addendum are relevant for the Complainants.

- j. Secondly, the Agreement dated 28.06.2023 is an absolutely separate standalone agreement. In this agreement, it was mutually agreed between the parties that in case the Application for grant of Occupation Certificate is submitted to the Competent Authority post 02.12.2023, then in such case, the Respondent will pay a penalty equivalent to Rs. 36.18/- per sq. ft. per month on the basis of super area till date of filing of Application for grant of Occupation Certificate. It was further agreed that in case, the said Application is submitted to the Competent Authority before 02.12.2023 then the Complainants will pay to the Respondent an incentive of Rs. 36.18/- per sq. ft. per month for the for the period of preponement.
- k. It is important to bring it to the knowledge of the Ld. Authority that when the Complainants were contemplating on booking of the Unit, the Respondent had duly informed the Complainants that they could either opt for leasing/rental of the Unit or use the Unit for their own shop. Accordingly, at the time of booking of the subject Unit, the Complainant intimated to the Respondent that they don't have experience and knowledge of the leasing and hence, requested the Respondent to lease the subject unit and expressed their desire to

grant the Respondent the Lease Right and to authorized the Respondent to negotiate and finalize the leasing arrangement of the subject Unit on behalf of the Complainants. That the same is categorically acknowledged by the Complainants in para (k) of the Booking Form. This was done because the Complainants have booked the subject unit with the sole purpose of earning a return through leasing the subject Unit. That in accordance with the requests of the Complainants, on 28.06.2023 an 'Addendum to the Agreement for Sale' was mutually executed between the Complainants and the Respondent. That vide the said Addendum Agreement dated 28.06.2023, the Complainants granted unconditional, unequivocal and irrevocable rights to the Respondent to lease the subject Unit to prospective lessee in Clause 5 Leasing Arrangement.

- l. That the said Agreements were mutually executed at the own volition of the Complainants. It is reiterated herein that the Complainants at the time of booking of the subject unit, have expressed their desire to authorize the Respondent to handle and deal with the leasing of the subject unit. Therefore, the Complainants have entered into an Addendum to Agreement for Sale whereby they have granted the Respondent the leasing right of the subject unit. Thus, by no stretch of the imagination it can be said that the Addendum to Agreement for Sale and Agreement dated 28.06.2023 has been signed illegally or the terms were not agreed between the parties at the time of booking of the subject unit.
- m. Considering the fact that the Complainants have mutually agreed and entered into the Addendum to Agreement for Sale and

Agreement dated 28.06.2022, and now when the project is complete and the Occupation Certificate has already been issued by the DTCP, the Complainants cannot dispute the said Agreements and cannot challenge the same. That the Complainants are bound to perform the Agreements which they have signed. Thus, the Relief sought by the Complainants in para 2 with respect to "Addendum Agreement dated 28.06.2023" is not maintainable.

- n. That the Hon'ble Supreme Court in the case of "Bharti Knitting Co. vs. DHL Worldwide Courier" [(1996) 4 SCC 704] has observed that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.
- o. Further, the Hon'ble Supreme Court in the case of "Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors," [AIR (1990) SC 699] held that the contract, which frequently contains many conditions, is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect. It is humbly submitted that this Agreement is not any AFS or any "Addendum" to the AFS. It is merely a

contractual understanding between the Parties. Therefore, the same is not within the ambit of the jurisdiction of the Ld. Authority.

- p. Further, vide the present Complaint, the Complainants are alleging that the Respondent will charge Rs. 36.19/- per square feet per month for approximately 5.5 months from the Complainants towards incentive payments in terms of the Agreement dated 28.07.2023. However, the Complainants have failed to place on record any such demand letter/email etc. whereby the Respondent is raising the said alleged demands from the Complainants. Further, the Complainants are also alleging that the 'mall operation and marketing charges' will also be charged by the Respondent. It is reiterated herein that the Complainants have completely failed to showcase even a single demand letter whereby the Respondent has raised the aforementioned demands. Therefore, there has arisen no cause of action for the Complainants to seek any relief thereof.
- q. It is humbly submitted that after making an Application for grant of Occupancy Certificate, the Respondent has only raised an Invoice dated 18.07.2023 and called upon the Complainants to clear the outstanding amounts which were to be paid on the achievement of milestone 'On Application of Occupancy Certificate'. That the said Invoice does not contain any demand pertaining to 'Mall Operation and Marketing Charges' or the incentive to be paid for the issuance of Occupation Certificate before 02.12.2023. Therefore, it is evident that there arises no cause of action in favour of the Complainants to file the present Complaint.
- r. It is humbly submitted that Order VII Rule 11 (a) the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"), provides the

provision for rejection of a plaint on the ground of non-disclosure of cause of action. That under Order VII Rule 11 (a), it is the duty of the Courts to reject a Complaint/Plaint if the same is filed without any cause of action. Pertinently, since the present Complaint is filed by the Complainants without having any cause of action, therefore, the same is liable to be rejected under Order VII Rule 11 (a) of the CPC.

- s. That the Hon'ble Supreme Court of India in the matter of "Colonel Sharwan Kumar Jaipuriya @ Sarwan Kumar Jaipuriya vs Krishna Nandan Singh & Anr." [Civil Appeal No. 6760 of 2019] while setting aside an Impugned Order, allowed the Application filed under Order 7 Rule 11 and rejected the Plaint on the ground of non-disclosure of cause of action. In view of the aforementioned submissions, the present Complaint is liable to be dismissed under the provisions of Order VII Rule 11 of the CPC, on the ground of failure to disclose the cause of action and that no cause of action has arisen in favour of the Complainant to file the present Complaint.
- t. It is most humbly submitted that Final Demands against the total sale consideration of the Unit has not been raised. That as and when the said demand would be raised all the necessary and suitable adjustments, if any, will be made. It is noted herein that the Complainants are seeking the aforementioned relief on the basis of assumptions and presumptions. Without prejudice to any averments made in the complaint, it is most humbly submitted that Relief with respect to GST Input Credit pertains to future action and as stated above when the final demands will be raised, then all the adjustments if any, would be made and the Complainants would be intimated accordingly.

- u. The Hon'ble Allahabad High Court in the matter of "Harilal Saini vs Union of India" [Writ Petition no 39196 of 2012] has held that no order can be passed in the absence of supporting evidence and merely on the basis of presumption and in case same is pass then that shall be arbitrariness of the court. In view of the aforementioned submissions, it is evident that relief 3 of the Complaint pertains to future action and it is sought merely on the basis of assumption and presumption and hence, this relief is not maintainable.
- v. Pertinently, on a careful reading of the Complaint on demurrer, it is evident that the Complainants by clever drafting have not cited any provisions of the RERA Act, 2016 which has been violated by the Respondent nor has demonstrated how this Ld. Authority enjoys any subject matter jurisdiction to entertain the present Complaint. In these circumstances, the Respondent is formally raising objections with regard to the jurisdiction of the Ld. Authority, before proceeding further with the adjudication of the present Complaint, the existence of the jurisdiction fact must be decided first by any order to that effect.
- w. That in terms of the principles of law, the Respondent is constrained to submit that the entire complaint does not make out any of the conditions precedent specified in various provisions of the RERA Act, 2016, so as to invest this Ld. Authority with the jurisdiction, and a bounden duty, therefore, remains cast upon this Ld. Authority to nip this complaint in the bud, as it does not fall within its jurisdiction. It is reiterated herein that as per the mutually agreed payment plan the Complainants were obligated to make payments on the achievement of milestone 'On Application of Occupancy Certificate'.

That the respondent in adherence with the applicable laws, rules and regulations has submitted an application for the grant of occupation certificate before the competent authority on 06.06.2023.

- x. Thereafter, the respondent in accordance with the payment schedule has raised a demand vide invoice dated 18.07.2023 and called upon the complainants to make payments which were due on the achievement of milestone 'On Application of Occupancy Certificate'. That post sending the invoice dated 18.07.2023 the respondent has also sent reminder letters date 03.08.2023 and 13.08.2023 to the complainants for making payment of the outstanding amounts. That as per the agreed terms of the AFS, it was the duty of the Complainants to make payments towards the Sale Consideration of the subject Unit. However, the Complainants blatantly ignored the Invoice dated 18.07.2023 and subsequent reminders.
- y. It is reiterated herein that the Complainants instead of making payments against the Invoice dated 18.07.2023, started raising arbitrary objections that they were informed that the Application for grant of the Occupancy Certificate was to be allegedly applied around Nov-Dec 2023. It is also reiterated that the Complainants in order to wriggle out of their obligations have also threatened the Respondent that they will approach the DTCP and inquire from them how could the DTCP accept the Application of the Respondent.
- z. It is most humbly submitted that the present Complaint is preferred by the Complainants on false, vague and wrong allegations, with a motive to extract illegitimate monetary benefit from the Respondent and to wriggle out her obligations under AFS, Addendum to

Agreement for Sale and Agreement dated 28.06.2023. That if the relief so prayed forth by the Complainants are granted by the Ld. Authority, then such relief will lead to great injustice towards the Respondent.

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

E. Jurisdiction of the authority

9. 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

10. 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

11. 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.*

12. 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 relief sought by the complainant.

F.I. To instruct the builder to revoke the current demand which needs to be payable at the time of the OC and will raise this only when OC is received to avoid any ambiguity.

F.II. To instruct Builder not to levy interest etc. on this instalment as it was raised prior to actual date of demand which will fall due at the time of the receipt of the OC.

F.III. To cancel and set aside the 2 Addendums signed illegally at the time of the BBA registration regarding payment of the Incentive payment and irrevocably giving Lease rights to builders as their terms were not agreed between the parties at the time of the booking.

F.IV. To give GST Input credit in the next demand to be raised at the time of the receipt of the OC.

13. In the present matter the authority observed that the registered buyers' agreement was executed inter se parties on 28.06.2023. Clause 5 provides for the handing over of possession of the subject unit by 30.06.2023. As per the documents available on record the respondent offered the possession of the unit on 03.05.2024 after obtaining OC from the competent authority on 09.11.2023. Accordingly, the demand raised by the respondent up on receipt of occupation certificate is valid.



14. Furthermore, the complainant has signed addendum agreements dated 28.06.2023 with the respondent fully aware of the repercussions thereof. Accordingly, the plea to set aside the said agreements is not tenable at this stage. So far as interest levied by the respondent upon delayed payments is concerned, both the parties are liable to pay equitable rate of interest in terms of Section 2(za) of the Act, 2016 read with Rule 15 of the Rules 2017.
15. Complaint stands disposed of in terms of the above observations. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2025