BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint filed on:	**15.11.2023**
Date of decision :	**13.11.2025**

1. Jagjit Singh Pal
2. Veena Rani Pal
Both R/o: - H.No. B-169, Sector-11, Faidabad, Haryana - 122017 **Complainants**

Versus

1. M/s Advance India Projects Ltd.
Office at: - 232-B, 4th Floor, Okhla Industrial Estate, Phase III, New Delhi-122002.

2. Landmark Apartments Pvt. Ltd.
Office at:- Landmark House 65, Sector-44, Gurugram, Haryana-122003.

3. Daljeet Singh
R/o: - B-3, Ansal Villas Farm Houses Satbari Delhi-110074.

4. Harinder Singh
R/o: - B-3, Ansal Villas Farm Houses Satbari Delhi-110074.

5. Gurdeep Singh
R/o:- J-210 B W 15-A, Western Avenue Sainik Farms Delhi-110062.

6. Bala Krishna Pandey
R/o:- House No. 61-A, Bank Colony Street No. 4, Mandoli, Mandoli Saboli North Delhi- 110093. **Respondents**

7. Saheb Singh
R/o:- 232B, 4th Floor, Okhla Industrial Estate, Phase-III, New Delhi-110020.

CORAM:
Shri Phool Singh Saini **Member**

APPEARANCE:
Ms. Priyanka Agarwal (Advocate) Complainants
Sh. Dhruv Rohatgi (Advocate) Respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed *inter se* them.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	AIPL Joy Street
2.	Project location	Badshahpur, Sector-66, Gurugram, Haryana
3.	Project area	3.9562 acres
4.	Nature of the project	Commercial Project
5.	DTCP license no. and validity status	07 of 2008 dated 21.01.2008 152 of 2008 dated 30.07.2008
6.	Name of licensee	Resolve Estate Pvt. Ltd.
7.	RERA registration details	Registered as 157 of 2017 dated 28.08.2017 valid up to 13.12.2020
8.	Welcome Letter	16.12.2016 [page no. 68 of the complaint]
9.	Allotment letter dated	25.05.2017 [page no. 67 of the reply]

10.	Unit no.	1204, 12th Floor [page no. 79 of the complaint]
11.	Unit area admeasuring	672 sq. ft. (super area) [page no. 79 of the complaint]
12.	Date of execution of flat buyer agreement	30.05.2017 [page no. 75 of complaint]
13.	Possession clause	**1.2** *The allottee agrees and understands that.... **If however, during the process of construction upon the process of construction upon expiry of 42 months or 48 months (including grace period), as the case may be from 1 January 2016**, there, ...xxxx* [page no. 80 of complaint]
14.	Environment Clearance	11.07.2012
15.	Due date of possession	01.07.2019 [As per possession clause of BBA+ grace period of 6 months is provided unconditionally]
16.	Sale consideration	Rs.53,76,000/- [as per payment plan annexed with the buyer's agreement at page no. 98 of the complaint]
17.	Amount paid by the complainant	Rs. 63,83,155/- [As per SOA at page 125 of reply].
18.	Assured Return clause	*32. Where the Allottee has opted for Payment Plan as per Annexure-A attached herewith and accordingly, **the company has agreed to pay Rs. 22,484/- per month by way of assured return to the Allottee from 04.04.2017 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.*

		[page 89 of complaint]
19.	Assures return paid	Rs.13,75,319/- [page no. 132 of the reply]
20.	Occupation certificate	28.09.2020 [page no. 111 of the reply]
21.	Offer of possession (constructive)	05.10.2020 [page 114 of complaint]
22.	Handover of Physical Possession	18.04.2023 [page 131 of reply]
23.	Surrender request made by the complainant	03.04.2023 [page 123 of complaint]

B. Facts of the complaint

3. The complainants have made the following submissions: -

   i. The complainants are law abiding citizens and consumers who have been cheated by the malpractices adopted by the respondent being a developer and promoter of Real estate, since long time. widely published and floated a project namely "AIPL JOY STREET", an integrated commercial colony comprises of retail, shopping, multiplex, commercial offices, etc. In said brochure/published material the cartel of accused persons, firm and companies was introduced and claimed to be a leading real estate company, in business for over 3 decades.

   ii. The project was claimed to consist of fully-equipped gymnasium, swimming pool & recreation, various social activities, etc. In the brochure, the 'AIPL Group' was also claimed to be engaged in development of high-end residential and commercial projects. And Respondent created rosy pictures like Rhythm Residence is brought to you by AIPL in collaboration with Bridge Street Global Hospitality, a leading global provider of serviced apartments and suites. You can invest in any of the suites or luxury studio apartment in Gurgaon on sale at AIPL Joy Street and further lease it out through Bridge Street to optimise the returns on your investment. With this, you can have a regular source of income and an asset that constantly grows in value.

iii. The respondents contacted the complainants repeatedly through phone calls and asked for a meeting. The complainants were told that there are 2 types of service apartments on sale. Rhythm apartments are for self-use and Bridgestreet apartments, which costed Rs 10 lacs more than the self-use apartments, are pre-leased to Bridgestreet for a period of 25 years with guaranteed rental. The respondents even went a step ahead to lure and convince the complainant to make an immediate booking for the Bridgestreet apartment to quickly start rental income as an assured return till possession and rent afterwards for 25 years. Based on the luring talks of the accused persons, and through the advertisements and the brochure circulated, complainants showed interest in purchasing a managed service apartment which was fully loaded with facility and managed by Bridge Street and complainants can take good and hassle-free income in their later age time. Leasing guarantee, high rental income for 25 years and involvement of Bridge Street is only USP of project and reason for buying this apartment.

iv. The project "AIPL JOY Street" is concept-based project and all amenity and service provide company- Bridge Street mention in brochure is integral part and unique selling point of the project. At the time of booking builder created rosy picture and shown collaboration with Bridge Street Global Hospitality, a leading global provider of serviced apartments and suites. And specification of unit was super rich and taken additional amount in the name of Bridgestreet. But at the time of delivery of project no sign of Bridge Street and luxury specification and promise of builder was totally vanish.

v. On promises and commitment made by the respondent, complainant booked a managed service apartment admeasuring 672 sq.ft., unit no-1204 in project "AIPL Joy Street" at sector 66, Gurugram 122102. The initial booking amount of Rs. 5,00,000/- was paid on dated 09/12/2016.

vi. The respondents issued the welcome-letter on dated 16/12/2016 after commencement of RERA Act. The respondent to dupe the complainants in their nefarious net even executed Builder Buyer agreement signed between M/s AIPL and complainants on dated 30/05/2017, just to create a false belief that will deliver the managed service apartment & give the assured return in time bound manner.

vii. Same time & same day respondent induced the complainants to enter into an addendum agreement to the unit buyer's agreement, whereby they confirmed that Respondent have already entered into Co-operation Agreement dated 25.05.2016 with other respondent namely JNB Management ("JNB"), Mrs. Taran Chhabra, Mr. Manjeet Singh Sethi and Bridgestreet Accommodation London Limited ("BGH") for operation and management of serviced apartments on 9th, 10th, 11th and 12th floors of the project. It is pertinent to mention here that by that time i.e. 30/05.2017, complainants had paid substantial amount towards unit i.e. Rs. 5 lacs as booking in December 2016 and 50% payment of property value in March 2017 without receiving any documents of proof like allotment letter or builder buyer agreement, and was given a commitment of guaranteed minimum rental of 9-10% in continuation immediately after assured monthly return stops.

viii. In terms of the clause 32 of the agreement, the respondent are under an obligation to pay fixed assured return amount of Rs 22484/- per month till offer of possession on the monthly basis to the complainants. The respondent in connivance with each other cleverly failed to disclose the factum of the co-operation agreement dated 25.05.2016 executed by and between them at the time of booking of the unit.

ix. The complainant received phone call from AIPL to make the remaining 50 % payment in May 2018 itself which was before due date as AIPL needed money and requested for before time payment. The complainant helped by making the 50% payment before the due date in good faith and trust.

x. In Aug 2019, when the possession was nowhere near, and builder asked for payment of working capital in the name of "Bridgestreet", the complainant again paid the amount on complete trust, even though it was unjustified as the unit was not even near completion at that time and AIPL was asking the innocent buyers to even pay working capital to Bridgestreet to be used to run the service apartment operations, knowing that the apartment was initially sold as a pre-leased apartment.

xi. The unit was sold to the complainants by the respondent for an extra sum of Rs. 10 lac on assurance of guaranteed minimum rental of 9-10%, which was to commence immediately once assured return payment stops. The actual amount of minimum rental was to be confirmed near project completion. However, when the project completed in September, 2020, the respondent informed the complainants that the apartment has been given to Bridgestreet for free at "zero" rental for a period of 25 years with no physical rights of apartment (also mentioned in Cooperation Agreement between AIPL, JNB and Bridgestreet) to the owner i.e., complainant. The respondent induced and forced the complainants to even pay the working capital to run the operations in August, 2019 itself. That as per their fraudulent lease plan once, and if, Bridgestreet makes money then first they will take out their profit share and then distribute among apartment owners, if any amount is left over. This fraud was brought to notice in October 2020 when complainants visited AIPL office to make payment for demand raised on offer of possession. Before this, complainants had trusted AIPL completely and made all payments before time.

xii. The total value of managed service apartment was Rs. 59,74,638/- exclusive of taxes and inclusive of IFMS out of that complainant was paid amount of Rs. 64,48,546.38/- to builder.

xiii. As per BBA clause no. 32 builder has committed assured return of amount of Rs. 22,484/- per month from 04/04/2017 till offer of possession and as per clause no. 33 of BBA builder liable to doing leasing arrangement for buyer.

xiv. Complainants visited AIPL office multiple times to raise concern and every time a new person met them with a cooked-up story and a new explanation, and giving no clarity on unpaid Assured Returns and unpaid rentals. They instead gave rosy promises of a bright future which AIPL never intended to fulfil. And when the complainants visited next time, the last met person was nowhere to be seen. All requests of the complainant to meet senior management and decision makers to resolve their concerns were bluntly refused and AIPL had blocked all access for the innocent buyers to meet any decision makers and Directors, leaving them helpless and harassed. Complainant became highly sceptical as even after repeated requests, AIPL had blocked access to their relevant decision makers and was tactfully deceiving the complainant.

xv. Area of apartment was changed in between and notified through letter. The builder was sent the constrictive offer of possession on dated 05/10/2020. Along with payment details as per payment details provided by the respondent complainants already paid the additional amount of Rs. 23,733/- before the due date of payment.

xvi. The complainants were wrongly charged an amount of Rs. 82,655/- at the time of offer of possession for common area maintenance charges. The innocent buyers paid the money and when later realized and objected to this payment that was wrongly taken, then AIPL agreed to refund this amount verbally and on email in Oct 2020. However, this amount was only returned after around 10 months in August 2021 and that too after so many reminders. Each time they kept on saying that this refund is pending management approval, and this too when AIPL had agreed long back that they had wrongly taken this money. It is the question here that how can somebody take money wrongly and then entire management is not ready to approve the refund, as they were trying their best that somehow the buyers would give up and not ask for the money any further. This is to highlight that the accused persons are a habitual offender and have malafide intention to eat up the hard-earned money of innocent buyers.

xvii. Working capital and software installation charges were taken by AIPL from the complainant in Aug, 2019 and these were refundable. This amount has not been returned till date.

xviii. In March 2023, when the complainant questioned AIPL again on rent of their unit in Bridgestreet apartment, then a mail was sent to the complainant for some other managed service provider "Justa" taking over their unit. The complainant replied that this mail was sent by mistake as their unit is with Bridgestreet. At that time it was disclosed to the innocent buyers that Bridgestreet no longer exists and that AIPL is now thinking of giving the service apartments to "Justa" company. It was pertinent to note here that this service apartment was sold to the complainant under the guise of a "Global Market Leader in hospitality" with a high rent of minimum 9-10 %. And now after 3 years since completion of unit, and around 4 years when AIPL had already taken working capital in the name of "Bridgrestreet" in Aug 2019, and where they have not been giving the promised rent to the innocent buyers, and to add to that the apartment was under accused persons possession, AIPL brought up the name of another service provider who was nowhere near the rosy pictures of a "Global Market Leader and UK based company named Bridgestreet" to which the complainants were lured initially, and the offered rent now was very low as compared to what was promised around "7 years back", when the complainants were tricked to purchase this property at false promises. The complainants were devastated and shocked. The innocent buyers were cheated and all hopes for their bright future was vanished and broken apart. It is pertinent to note here that when the complainants raised their voice against the wrongdoings of AIPL and refused to accept the tricked proposals, then they were threatened with cancellation to their other units in another project of the same builder.

xix. The complaint was shocked to receive the next letter from builder in which clearly mentioned that now company is not giving you leasing option and you will take your physical possession. The complainant had written an email to the builder on 23 April, builder has committed fraud with them. In this email, complainant highlighted the fraud committed by AIPL and as a result, to pressurize and punish the complainant for not accepting its wrongdoings, builder sent pre-termination letter in just 2 days with another units, and that too when they themselves requested complainant for more time. That the Respondent was continue to save himself to answer the wrong doings and harassing the complainants.

xx. The respondent has indulged in all kinds of tricks and blatant illegality, misrepresentation and huge mental and physical harassment of the complainants and their family. All the savored dreams, hopes and expectations of the complainants have been rudely and cruelly been dashed to the ground. After failing to get any response from the respondent to his various posers from time to time, the complainant is eminently justified in seeking refund along with interest.

C. Relief sought by the Complainants:

4. The complainant has sought following relief(s):

I. Direct the respondent to refund the paid amount along with interest from payment to till realisation.

II. Direct the respondent immediately stop the further sell in the project and collection of money and future sell in the project till the outcome of enquiry or future thereon.

III. The Authority maybe pleased to issue the show cause notice for violation of violation of term of RERA Act, revoke the registration certificate, impose heavy penalty for violation of term of registration certificate and Act.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the Respondents:

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

   i. The present complaint is misplaced and misconceived for misjoinder of proper and necessary parties. The respondents no.3 to 7 are not proper and necessary parties as neither is there any allegation nor any liability of the respondents no.3 to 7, in the present complaint as the respondent no.1 company, which is a party to the buyer's agreement is already being represented in the present complaint. The respondent no.1 promoter is the proper party that is required to be proceeded with and the respondents no.3 to 7 are liable to be deleted from the array of parties.

   ii. The complainants are not an "Allottee" but Investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.

   iii. The complainants had approached the respondent through a channel partner after making enquiries on a third party independent online broker *"99acres"* and expressed an interest in booking a serviced apartment in the project developed by the respondent and booked the unit in question, bearing number "1204, 12th floor," ('serviced apartment') admeasuring 672 sq. ft. (tentative area) situated in the project developed by the respondent, known as "AIPL Joy Street" at Sector 65, Gurugram, Haryana. That thereafter the complainants vide application form dated December, 2016 applied to the respondent for provisional allotment of a unit bearing number "1204, 12th Floor," in the said project.

   iv. At this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms. That in the present case, the complainants purchased the unit only on the categorical understanding that the unit shall not be for physical possession. At this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms. That in the present case, the complainants purchased the unit only on the categorical understanding that the unit shall not be for physical possession. The unit allotted was provisional and subject to change as was categorically agreed between the parties. The booking was categorically, willingly and voluntarily made by the complainants with an understanding of the same being for leasing purposes and not self-use, as can be noted in clause 41 of the schedule I of the application form, the complainants had given unfettered right to the respondent to lease the unit and had agreed to not object to the decision of leasing at any point in time. However, despite having booked the unit on these very terms, the complainants have *malafidely* filed the present complaint with the motive to seek wrongful gains over the respondent.

v. Thereafter, buyer's agreement dated 30.05.2017 was executed between the complainants and the respondent. It was further conveyed by the respondent to the complainants that in the event of failure to remit the amounts mentioned in the said notice, the Respondent would be constrained to cancel the provisional allotment of the unit in question.

vi. The project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainants on 16.11.2019, to which the complainants had given their consent and no objection.

vii. The respondent was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour, etc. being circumstances beyond the control of the Respondent and force majeure circumstances, that the construction was severely affected during this period and the same was rightfully intimated to the complainants by the letter dated 30.11.2019.

viii. The arrangement between the parties was to transfer the constructive possession of the unit and the same was categorically agreed between the parties in the application form and the no protest in this regard had ever been raised by the complainants and the same was willingly and voluntarily accepted by the complainants. That the clause 33 of the buyer's agreement *"leasing arrangement"* furthers the constructive possession of the unit. In terms of the unit buyer's agreement, the leasing rights were with the respondent.

ix. The complainants by filing the present complaint and by taking such baseless and untenable pleas are just trying to conceal the material facts in order to somehow cover up their own wrongs, delays and latches and to wriggle out of their contractual obligations by concocting false and frivolous story. Despite all the goodwill gestures extended by the respondent, the complainants is trying to illegal extract benefits from the respondent and their main aim is to cause wrongful gain to herself and wrongful loss to the respondent from time to time. Therefore, the present complaint is filed with grave illegalities and lack of jurisdiction and the same is liable to be dismissed at the very outset and the complainants shall be directed to file, pursue the complaint before the civil court for any dispute arises from the agreement in the form of investment agreement and lease agreement.

x. The respondent had applied for occupation certificate on 16.07.2020. Occupation certificate was thereafter issued in favor of the respondent dated 28.09.2020. That once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project. That since on the day when the respondent applied to the competent authority for the grant of the occupancy certificate, the said commercial unit was complete in all respect.

xi. The complainants were offered possession of the unit in question through letter of offer of possession dated 05.10.2020. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants.

xii. The complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. The complainants needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favor of the complainants. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the alleged refund frivolously and falsely sought by the complainants is illegal and bereft of logic. The complainants are not entitled to contend that they are entitled for any sort of refund even after receipt of offer for possession within stipulated time. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question.

xiii. As per the statement of account, there is an outstanding due of Rs. 27,196/- towards property Tax. Further, an amount of Rs. 3,25,000/- is outstanding at the end of the Complainants towards the stamp duty charges and Rs. 30,003/- towards registration charges along with other ancillary charges towards E-Challan and HVAT Security.

xiv. The present unit, serviced apartment was booked by the complainants and at the time, when the booking was made, there subsisted a Co-operation Agreement dated 25.05.2016, between the respondent, JNB Management and "Bridgestreet Accommodations London Limited" for operation and management of serviced apartments on 9th, 10th, 11th and 12th floors of the project. The said fact was categorically informed to the complainants for complete transparency, which is evident that the complainants executed the addendum agreement dated 30.05.2016 at the same time of signing the buyer's agreement.

xv. The said operation and management company was in the process of taking over the serviced apartments at the project and had commenced deployment works and the things for progressing smoothly. However, to the utter shock and surprise of the respondent, being completely unaware and uninformed, it came to the knowledge of the respondent, due to passage of time, that the

Bridgestreet Hospitality had gone under liquidation. Thus, the respondent, in the interest of the project and the allottees, had to terminate the Co-operation Agreement dated 25.05.2016 with the JNB Managament and the Bridgestreet Hospitality on 29.11.2022.

xvi. The respondent, due to unforeseen circumstances and developments due to termination of the cooperation agreement with JNB and Bridgestreet, held discussions with another well recognized Hotel Operator Brand "Justa" and was able to sign a preliminary Term Sheet with the Brand. Accordingly, the complainants were duly informed of the same vide letter dated 31.03.2023.

xvii. In the interregnum, due to the unprecedented and unforeseen termination of the cooperation agreement with Bridgestreet, the respondent informed to the allottees of the project, giving them options with respect to the serviced apartments seeking their choice from the following options:-

- Allottee may opt for self-use of the serviced apartment, as per his/ her sole discretion.
- Company may go ahead with another operator. However, in such a scenario the allottees may have to pay for upgradation of the specifications in case the same is required by the new operator.
- Allottees may reach out to the company for leasing of their individual apartment, expenses to be borne by the unit holder.

xviii. The respondent, despite the above scenario assured that all the facilities, liabilities and obligations under the executed agreements shall remain binding on both the allottee as well as the respondent. In view thereof, the respondent has duly provided all facilities and amenities to the unit holders, as was promised to them. the respondent in furtherance of the same, sent an e-mail dated 03.04.2023 to the complainants, as a reminder to opt their choice.

xix. However, since most of the allottees opted for the "self use" of the serviced apartment, therefore, the respondent did not proceed with the arrangement with the new hotel operator "Justa", which was duly informed to the complainants vide letter dated 18.04.2023.

xx. In terms of the buyer's agreement, the respondent has not violated any terms of the agreement. The complainants cannot compel the respondent to pursue the leasing arrangement with "Bridgestreet", which is under liquidation. The respondent, as an alternative, had even introduced another hotel operator, but the complainants were not agreeable to the same, which is evident from their own email dated 23.04.2023. In terms of clause 33 of the buyer's agreement, there was no obligation of the respondent to stick to 1 particular brand and the obligation of the respondent was to bring in "any suitable tenant".

xxi. The respondent therefore, had issued letter dated 18.04.2023 to the complainants, wherein it was informed that in view of this above-mentioned chain of events, the physical possession of the unit was being handed over to the allottees, including the complainants.

xxii. This Hon'ble Authority has no jurisdiction to deal with the cases pertaining to leasing. That the Act is entirely silent on the same. That had the legislature intended the jurisdiction of the Act to extend to leasing arrangements, the same would have been incorporated. It is a settled principle that what cannot be attained directly, cannot be attained indirectly. Accordingly, the Hon'ble Authority has no jurisdiction to deal with the present matter and the present complaint need to be dismissed at the outset.

xxiii. On perusal of the reliefs sought by the complainants, it can be seen that the relief of refund and interest have been sought by the complainants. That without prejudice to the above-mentioned, it needs to be categorically noted that giving both interest and refund cannot be justified and amounts to an additional and unequivocal burden on the respondent. Further, the reliefs as sought for by the complainants cannot be granted in view of the fact that the complainants have itself sought for the refund and therefore, it does not lie in the mouth of the complainants seeking interest on the amount paid for the unit in question. There is no default or lapse in so far as the respondent is concerned. The allegations levelled by the complainants are totally baseless.

xxiv. The total sale consideration of the said unit is Rs. 54,93,920/- plus other charges, stamp duty, registration charges etc. The respondent has already credited a sum of Rs. 13,75,319/- as assured returns. As per clause 32 of the said agreement, it was the obligation of the respondent to give the assured returns amounting Rs. 22,484/- from 04.04.2017 till the notice of offer of possession.

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 these undisputed documents and submissions made by the complainants-allottees.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate

Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and*** *reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others***

SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

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

14. The respondent took a stand that the complainant is investor and not allottees 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 respondent to refund the paid amount along with interest from payment to till realisation.

G.II Direct the respondent immediately stops the further sell in the project and collection of money and future sell in the project till the outcome of enquiry or future thereon.

G.III The Authority maybe pleased to issue the show cause notice for violation of violation of term of RERA Act, revoke the registration certificate, impose heavy penalty for violation of term of registration certificate and Act.

16. The complainant was allotted a unit in the project of respondent "AIPL JOY SQUARE" vide allotment letter dated 25.05.2017 for a total sum of Rs. 53,76,000/- and the complainant started paying the amount due against the

allotted unit and paid a total sum of Rs. 63,83,155/-. The complainant intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

> ***Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand of the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

17. The respondent has contended that the unit booked by the complainant is a service apartment and that a constructive offer of possession of the said unit was made on 18.04.2023. Furthermore, an amount of Rs.13,75,319/- has been paid towards the assured return in accordance with the agreed terms of buyer's agreement.

18. The complainant, on the other hand, has asserted that as per the addendum to the buyer's agreement dated 30.05.2016, the subject unit was to be leased out to M/s Bridge Street Global Hospitality. However, the respondent failed to comply with the said stipulation. It is the case of the complainant that subsequently, the respondent, vide an email communication, informed that the unit had been leased out to M/s Justa Hotels & Resorts, which was contrary to the specific terms and conditions of the addendum to the buyer's agreement. The complainant has further alleged that such conduct amounts to misrepresentation on the part of the respondent, as the proposed future leasing to M/s Bridge Street Global Hospitality was one of the material

considerations for booking the unit. Despite repeated assurances, the unit has not been leased to the said entity till date. Owing to such non-compliance and misrepresentation, the complainant has expressed that they are no longer interested in continuing with the project.

19. The respondent, in rebuttal, vide proceedings dated 28.08.2025 has submitted that the unit could not be leased through M/s Bridge Street Global Hospitality as the said company had gone into liquidation. It has been further contended that the complainants were duly offered two options, either to lease the unit through an alternative agency or to seek refund of the amount paid. However, the complainants did not exercise either of the options offered to them.

20. Now when the complainant approached the Authority to seek refund, it is observed that as per clause 4 of the buyer's agreement, the respondent-builder is entitled to forfeit the earnest money of the total sale consideration. The relevant portion of the clause is reproduced herein below:

> *"The Allottee agrees and confirms that out of the total amount(s) paid/payable by the Allottee for the Unit, 10% (ten percent) of the Sale Consideration of the Unit shall be deemed to constitute the Earnest Money to ensure fulfilment of the terms and conditions as contained in the Agreement. In the event. the Allottee faults to perform any obligations or commit breach of any of the terms and conditions mentioned in the Agreement, including but not limited to the occurrence of any event of default as stated in this Agreement, the Allottee agrees, consents and authorizes the Company to cancel the allotment and on such cancellation, the Allottee authorizes the Company to forfeit Earnest Money along with the Non-Refundable Amounts. Thereafter the Allottee shall be left with no right, title, claim, interest and lien on the Unit/Project. This is in addition to any other remedy/right, which the Company may have. If the amount paid by the Allottee is less than the forfeitable amount, then the Allottee undertakes to make good the shortfall of the forfeitable amounts."*

21. The due date of possession as buyer's agreement is 01.07.2019 and the respondent has obtained the OC on 28.09.2020. Though the respondent has offered the possession of the unit to the complainants on 18.04.2023.

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

> ***AMOUNT OF EARNEST MONEY***
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money* ***shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case*** *may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.*

23. **Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount

already paid by them in respect of the subject unit at the prescribed rate of interest as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
25. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 13.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
26. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is liable to refund the amount received from the complainant i.e., Rs. 63,83,155/- after deducting 10% of the sale consideration. The amount already paid towards assured returns (Rs.13,75,319/-) in respect of the said unit be also adjusted from above refundable amount and return the remaining amount along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the

Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender i.e., 03.04.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority

27. 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):

   a. The respondent/promoter is directed to refund the paid-up amount of Rs.63,83,185/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with prescribed rate of interest @ 10.85% p.a. on such balance amount from the date of surrender till the actual date of realization.

   b. The amount paid by the respondents towards assured returns, shall be duly adjusted from the total refundable amount payable to the complainant and the remaining balance shall be refunded by the respondents to the complainants along with interest as prescribed in para 25 of this order.

   c. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.11.2025