# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

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| Complaint no. | : | 1993 of 2024 |
| Date of complaint | : | 29.05.2024 |
| Order Pronounce On: | | 09.09.2025 |

Brij Mohan Negi
**R/o:** A-1/85, Chanakya Place-I, Pankha Road, West Delhi, Delhi-110059

**Complainant**

Versus

M/s Advance India Projects Ltd.
**Office at**: 232B, 4th floor, Okhla Industrial Estate, Phase III, New Delhi-110020
M/s Anant Raj Ltd.
Registered Office at: Plot no. CP-1, Sector 8, IMT Manesar, Haryana-122051

**Respondents**

**Coram:**
Sh. Arun Kumar — **Chairperson**
Sh. Ashok Sangwan — **Member**

**APPEARANCE:**
Sh. Gaurav Rawat (Advocate) — **Complainant**
Sh. Harshit Batra (Advocate) — **Respondent no. 1**
Sh. Gaurav Bhushan (Advocate) — **Respondent no. 2**

## ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made 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, delay period, if any, have been detailed in the following tabular form:

| S.No. | Particulars | Details |
|---|---|---|
| 1. | Name of the project | AIPL Joy Square, Sector 63 A, Gurugram, Haryana |
| 2. | Nature of the project | Commercial Complex |
| 3. | DTCP License No. | 119 of 2011 dated 28.12.2011.<br>71 of 2014 dated 29.07.2014 |
| 4. | RERA Registration | 259 of 2017 dated 31.12.2022 |
| 5. | Unit no. | 316, 3rd Floor<br>(Page no. 31 of complaint) |
| 6. | Unit admeasuring | 320 sq. ft.<br>(Page no. 43 of complaint) |
| 7. | Date of execution of builder buyer agreement | 11.04.2023<br>(Page 41 of complaint) |
| 8. | Possession clause | **7.2**<br>*Procedure for taking possession of the Said Unit - The Promoter, upon obtaining the grant of Occupancy Certificate by 30th June 2023 or as may be further extended/ amended by the RERA authority, in respect of the Project, shall offer in writing the possession of the Said Unit within 3 (three) months from the date of receipt of such approval, to the Allottee as per terms of this Agreement ("Notice of Offer of Possession of the Unit")*<br>(Page no. 52 of complaint) |
| 9. | Due date of delivery of possession | 30.06.2023<br>(As per possession clause of BBA) |

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| 10. | Sales consideration | Rs. 64,88,692/-<br>(As per page no. 45 of complaint) |
| 11. | Total amount paid by the complainant | Rs. 50,56,584/-<br>(As per SOA at page 80 of complaint) |
| 12. | Demand/Reminders dates | 20.11.2023, 06.12.2023, 16.12.2023, 10.01.2024, 17.02.2024 |
| 13. | Offer of possession | 01.02.2024<br>(Page 188 of reply) |
| 14. | Pre-Termination Letter | 24.01.2024<br>(Page no. 82 of complaint) |
| 15. | Final Termination Letter | 17.04.2024<br>(Page no. 91 of complaint) |
| 16. | Application of OC | 02.06.2023<br>(pg. 113 of reply) |
| 17. | Occupation Certificate | 09.11.2023<br>(Page 114 of reply) |
| 18. | Conveyance deed in favour of 3rd party | 06.03.2025 |

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:

a. That the respondent advertised his project – AIPL JOY SQUARE located at Sector-63A, Gurugram. That based on the advertisements of the Respondent Company, complainants booked a Serviced Apartment of area admeasuring 725.08 Sq. ft., by paying the booking amount of Rs. 5,00,000/-. That the Respondent issued the Allotment letter on dated 02.12.2019 after commencement of RERA Act. and allotted the shop no. 316, 3rd floor, admeasuring 725.08 sq. ft. in Project AIPL JOY SQUARE Sector 63A.

b. As per the Allotment Letter, the total sale consideration of the Unit was Rs. 58,66,622.28/- including BSP, Development Charges and IFMS. That the Respondent Company was liable to pay Assured Returns of Rs.32,221/- per month from 23.11.2019 till the date of application of Occupation Certificate. That the Respondent Company kept on raising demands without executing any agreement to Sell, despite multiple requests of the Complainant and the Complainant kept on making payments as and when demanded by the Respondent Company. The Respondent Company also kept on defaulting in regular payments of the Assured Returns on one pretext or another.

c. That the Respondent Company accepted a payment of more than 75% of the Total Sale Consideration despite the fact that as per Section 13 of the RERA Act, 2016, the Builder cannot accept a deposit of more than 10% without the execution of Agreement for sale first. That an agreement dated 11.04.2021 was executed between the parties as per which, the Respondent Company agreed that in case the date of Application for grant of Occupation Certificate is post 10.05.2021, the Respondent Company will pay a compensation of Rs.10.76/- per sq. ft. till the actual date of application for grant of Occupation Certificate.

d. That the Respondent Company stopped paying Assured Returns since April 2022 without giving any cogent reasons and kept on using delaying tactics in execution of the Agreement to Sell despite multiple requests of the Complainant and receiving more than 75% of the Total Sale Consideration.

e. That the Hon'ble Supreme Court of India, while exercising its civil appellate jurisdiction in civil appeal no(s). 3533-3534 of 2017 m/s. Fortune Infrastructure appellant(s) (now known as m/s. Hicon Infrastructure) & anr. Versus Trevor D'lima & Ors. Respondent(s), The Hon'ble court upheld the impugned order of NCDRC giving reasoning that the appellant did not give any valid reason as to why the delay happened concerning the transfer of the flat to the respondent, they have waited for a reasonable amount of time for the completion of contract. There was a contractual obligation between the parties and, the compensation should be awarded to the respondent based on the deficiency of service.

f. Thus, in light of the aforesaid Judgment, the Respondent Company was liable to handover the possession of the Unit in question by 19.11.2022, (calculated from the date of booking, as no BBA was executed till date) but the Respondent Company failed to do so. That the respondent to dupe the complainants in their nefarious net finally executed Builder Buyer Agreement Signed Between the Respondents and the Complainant on dated 13.02.2023, just to create a false belief that they will deliver the Shop & give the Assured return in time bound manner. Builder executed the Agreement after the RERA Act but Agreement was not in a prescribed format as mentioned in the RERA Act.

g. That the Respondent Company on false pretexts of Covid-19 and soon completion of construction, tricked the Complainant into signing a Relinquishment/Waiver of balance Assured Returns till 30.09.2022 vide Letter dated 16.03.2023. Addendum to Agreement for Sale was entered between the parties, as per which, it was admitted that the Respondent Company was liable to pay monthly Assured Return of Rs. 32,221 from 23.11.2019.

h. That the Respondent Company kept on using dilly-dallying tactics and did not pay any heed to the Complainant's concerns regarding Possession of his Unit or the arrears of the Assured Returns. The Respondent Company sent a statement of Account dated 01.12.2023, as per which, the Respondent has arbitrarily increased the total sale consideration to Rs. 65,61,268.72/- and adjusted only a sum of Rs. 800,103/- towards arrears of Assured returns and raised a whooping demand of Rs. 15,04,949/- as final demand, which is absolutely illegal and arbitrary.

i. That when the Complainant objected to the aforesaid illegal demand of the Respondent Company, the Respondent Company sent a Pre-Termination Letter dated 24.01.2024 to the Complainant, in order to intimidate him to succumb to their illegal demands. That the Complainant visited the Project site several times in order to amicable settle the issues, however, the Respondent Company did not pay any heed to the same.

j. The Complainant was also shocked and surprised to see that the Respondent company has raised the final demand but the Unit in question was in absolutely raw condition. That the Complainant was shocked and surprised to see that the Respondent Company unilaterally terminated the Allotment of the Complainant vide Termination Letter dated 17.04.2024, without refunding a single penny.

k. That the Complainant sent a letter dated 29.04.2024 via email to the Respondent Company objecting to the illegal termination and asking the Respondent Company to recall the same.

l. That the respondent after deterrent legislation still were involved in looting the public including the complainants. And that the respondent had already acquired the proficiency to throw dust in the eyes of the law and Hon'ble Authority. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the shop which is the subject matter of this complaint is situated in Sector – 63A, Gurugram which is within the jurisdiction of this Hon'ble Authority.

m. The respondent has indulged in all kinds of tricks and blatant illegality, misrepresentation and huge mental and physical harassment of the complainant and his family. All the savoured dreams, hopes and expectations of the complainant 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 possession of shop.

**C. Relief sought by the complainant:**

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

   a. I request the Hon'ble Regulatory Authority to direct the respondent to quash the termination of shop.

   b. I request the Hon'ble Regulatory Authority to direct the respondent to Adjust the unpaid Assured return in the demand.

   c. I request the Hon'ble Regulatory Authority to direct the respondent to Adjust the Delayed possession charges in the demand.

   d. I request the Hon'ble Regulatory Authority to direct the respondent to immediately handover the possession of Shop.

   e. I request the Hon'ble Regulatory Authority to direct the respondent to immediately Quash the illegal charges and Delayed interest in offer of possession.

   f. I request the Hon'ble Regulatory Authority to direct the respondent to immediately revise the Account statement after quashing the illegal charges and Delayed interest in offer of possession and adjustment of assured return and DPC.

   g. I request the Hon'ble Regulatory Authority to direct the respondent to execute conveyance deed in the favour of complainants

h. I request to Authority 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.

i. I request the Hon'ble Regulatory Authority to issue the show cause notice for violation of terms of RERA Act.

j. I request the Hon'ble Regulatory Authority to revoke the registration certificate

k. I request the Hon'ble Regulatory Authority to form high end committee which will produce the report about violation of terms of Act and Registration certificate.

l. I request the Hon'ble Regulatory Authority to imposed 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 respondent.**

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

a. That at the very outset, it is submitted that the present complaint is untenable both in facts and law and is liable to be dismissed at the very outset. The claims of the Complainant are not genuine and have been outreached and concocted, thus, by reason of approaching the Hon'ble Authority with unclean hands and suppressing material facts. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Agreement for Sale dated 10.09.2021, as shall be evident from the submissions made in the following paras of the present reply. The Respondent No. 1 craves leave of this Hon'ble Authority to refer and rely upon the terms and conditions set out in the Agreement in detail at the time of hearing of the present complaint, so as to bring out mutual obligations and responsibilities of the Respondent No. 1 as well as the Complainant.

b. That the Complainant is estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the possession was offered to the Complainant on 01.02.2021. The Complainant has refrained from taking the possession of the Unit in question due to his own selfish motives, based on incorrect facts, interpretation and is now trying to take undue advantage of clerical mistakes. That the Complainant is in default of their obligations under the Agreement and as such has disentitled himself from claiming any relief under the said Agreement. That the Complainant is estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the Complainant is not the "Allottees" but were Investors who have booked the retail unit in question as a speculative investment in order to earn rental income/profit from its resale.

c. That the Complainant being interested in the project of the Respondent No.1 know under name and style of "AIPL Joy Square" (the "Project") booked a unit in the said project vide an Application Form dated 18.11.2019 which was accepted by the Respondent No. 1 and a retail shop bearing unit no. 316 on 3rd Floor tentatively admeasuring 330 sq. ft. (the "Unit") was allotted to the Complainant vide Allotment letter dated 02.12.2019. The parties agreed to make the payment for the Unit on a time-linked payment plan.

d. Thereafter, an agreement for sale was shared with the complainant for signing and the complainant was requested by the respondent no. 1 to executed the buyer's agreement by providing the registration charges for enabling the respondent no. 1 to generate the online challan and schedule the registration of the agreement as per RERA norms. That the respondent no. 1 sent multiple emails to the complainant in this regard requesting the complainant to provide the registration charges to the respondent no. 1. the respondent no.1 also informed the complainant that the respondent no. 1 shall be able to schedule the registration of the agreement post lockdown the restrictions are up lifted and the we move towards normally.

e. That however, after multiple reminders the complainant finally executed the agreement for sale on 11.04.2023 (the "BBA or Agreement"). That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. That the parties also entered into addendum to agreement for sale on 11.04.2023. That the complainant had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainant. That the bonafide of the respondent no. 1 is also essential to be highlighted at this instance, who had served a number of reminders to the complainant to ensure that the payments are made in a timely fashion.

f. That it is pertinent to mention that complainant is a habitual defaulter who has been in default of payments since the very beginning as is evident from the table above. The complainant had made last payment on 03.12.2019 i.e. at the stage "30 days from date of booking" and thereafter stopped making payment of the instalments. That the complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders from the respondent no. 1.

g. The above-mentioned provisions note the mandatory obligation of the complainant to make the due payments against the unit, which under no circumstance whatsoever, can be escaped. As is widely known and understood that the continuous flow of funds is pertinent to the real estate industry, it is submitted that upon the failure of the complainant in making due payments as per the schedule agreed upon, it has a cascading effect on the operations and the cost for the proper execution of the project increases exponentially and further causes enormous business losses to the respondent. That upon delay being caused by the complainant on payment of different instalments, they were served with various reminders as noted in the table.

h. That it is submitted that by not making the due payments, not only have the complainant violated the agreement but also the Real Estate (Regulation and Development) Act, 2016, under which, the complainant was obligated to make payment and despite repeated reminders and various opportunities, miserably failed to do. Accordingly, the complainant stood in fundamental breach of the agreement and the Act. The Hon'ble Supreme Court noted in case Saradmani Kandappan and Ors., Vs S. Rajalakshmi and Ors, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18 held that the payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

i. That without prejudice to the contentions of the respondent no. 1, it is most humbly submitted that the respondent no. 1 has ensured its utmost bonafide and lawful conduct since the very beginning. There is no delay in the development of project, which was duly, timely, efficiently and effectively completed as per the agreed timelines. That as per clause 5 of the agreement, the respondent no. 1 proposed to offer the possession of the unit as provided under Rule 2(1)(f) of Rules or as disclosed at the time of registration of the project with the Authority i.e. 30th June 2023 or such other extended period as may be intimated and approved by Authority from time to time. It is further provided in the agreement that time period for offer of possession shall stand extended in case the regular development/construction of the project is adversely impacted/hampered/stopped including but not limited to complete stoppage of work or partial stoppage of work, due to fire, earthquake, tempest, flood, lightning, violence/ war or any army or mob or enemies of the country or by any other irresistible force, strike, ban/ restrictions imposed by NGT or any statutory authority under any Applicable law(s), Epidemic, Pandemic, lockdown declared by the Central/State Government due to any epidemic/pandemic, and/or any situation beyond the reasonable control of the promoter. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent no. 1 and compel the respondent no.1 to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

j. At this stage, it is categorical to note that the respondent no. 1 was faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. The time taken by the respondent no. 1 to develop the project is the usual time taken to develop a project of such a large scale and despite all the force majeure circumstances, the respondent no. 1 completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done.

k. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. It is also to be noted that on the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing Projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

l. That from the facts indicated above and documents appended, it is comprehensively established that a period of 297 days was consumed on account of circumstances beyond the power and control of the Respondent No. 1, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent no. 1 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the due date. In a similar case where such orders were brought before the Hon'ble Authority in the complaint no. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period on the basis of bans and order of various Authorities, Courts and Tribunals and hence, the benefit of the above affected 297 days need to be rightly given to the respondent no. 1.

m. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent-builder. That it must also be noted that the respondent no. 1 had the right to suspend the construction of the project upon happening of circumstances beyond the control of the respondent-builder as per clause 5, however, despite all the hardships faced by the respondent no. 1, the respondent no.1 did not suspend the construction and managed to keep the project afloat through all the adversities.

n. It is further submitted that despite there being a number of defaulters in the project, the respondent no.1 had to infuse funds into the project and have diligently developed the project in question. That it must be noted by the Hon'ble Authority that despite the default caused, the respondent no.1 applied for occupation certificate in respect of the said unit on 16.06.2023 and the same was thereafter issued vide memo bearing no. ZP-780-Vol.-II/JD(RA)/2023/38323) dated 09.11.2023. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent-builder 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-builder cannot exercise any influence. As far as the respondent no. 1 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 no.1 in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent no.1 is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

o. That it is submitted that the complainant was duly informed that the respondent no. 1 has applied for grant of occupation certificate vide letter dated 25.08.2023 and is in process of receipt of occupation certificate and handing over of possession. That even after the defaults of the complainant the respondent no. 1 completed the construction of the unit and offered the possession of the unit to the complainant on 01.02.2024 and earnestly requested the complainant to take possession of the unit after remittance of the balance sales consideration of the unit.

p. That it is submitted that as the complainant failed to make timely payment of the instalments as evident from the table above and the last payment made by the complainant was on 03.12.2019 i.e. at the stage "30 days from date of booking". The complainant was multiple reminders and also served a pre-termination notice dated 24.01.2024 to the complainant. That the complainant was duly communicated that the failure to abide by the pre-termination letter and remittance of the balance sale consideration of the unit within 7 days from the date of receiving the notice, the respondent no.1 shall have the right to cancel the allotment of the complainant and forfeit the earnest money along with the non-refundable amount as per the terms and condition of the agreement. However, the complainant failed to abide by the pre-termination letter sent to him hence, the respondent no. 1 was constrained to terminate the allotment of the complainant and the same was communicated to the complainant along with the calculation of forfeiture amount of the unit vide intimation of termination letter dated 17.04.2024.

q. That accordingly, after termination of the allotment of the unit, the complainant has been left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit of the complainant, solely due to the default of the complainant, the respondent no.1 is well within their right to forfeit the earnest amount along with interest component on delayed payment and non-payment of any dues payable by the allottee. That the Hon'ble Authority in the case titled as Nick Mehta v Haamid Real Estates Pvt. Ltd. 1662 of 2022, dated 03.03.2023, has allowed the deduction of VAT, statutory dues and 0.5% brokerage. That similarly, the same should be allowed in the present case. Moreover, the Hon'ble Haryana Real Estate Appellate Tribunal in Ravinder Pal Singh vs Emaar MGF land Ltd. Appeal No.255 of 2019 has allowed the forfeiture of earnest money along with "the statutory dues already deposited with the government". Accordingly, the termination has been validly made and now, the complainant has no right or lien over the unit and hence, the present complaint is bound to be dismissed.

r. That the complainant is praying for the relief of assured returns which is beyond the jurisdiction that this Ld. Authority. 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 ("Act") for violation of any provision of the Act. 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 with jurisdiction to grant "commitment amount/Assured Returns".

s. That it is in the humble submission of the respondent no.1 that the Banning of Unregulated Deposit Scheme Act, 2019 ("BUDS Act") was notified by the Government of India on 31.07.2019 effective from 21.02.2019. As a consequence of the above, the assured return linked to sale consideration under the said agreement/ addendum to agreement falls under the ambit of deposit and the same falls under the ambit of Unregulated Deposit Scheme. In pursuant to the provisions of Section 3 of the BUDS Act, all unregulated deposit schemes have been barred and all such transactions which fall under the ambit of unregulated deposit schemes have to be stopped. Thus, the respondent no. 1 is barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme". That it is reiterated that the issues so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the Answering Respondent into succumbing to the pressure so created by the Complainant in filing this complaint before this Authority and seeking the reliefs which the Complainant is not entitled to raise before this Ld. Authority.

t. Therefore, if Depositor accepts any deposit, it immediately required to take prior approval from the Regulator as mentioned under Schedule I of the BUDS Act. And therefore, for the present matter, the Regulator shall be Ministry of Corporate Affairs as provided under last entry of Schedule I. Therefore, if the Respondent continues paying the Assured Returns which is deposit as per the relevant provisions of the Companies Act and BUDS Act, the same will be contravention of the provisions of the Acts and the Respondent will be exposed to the penal provisions thereunder.

u. That a similar clause and ambit is seen within the Haryana Protection of Interest of Depositors in the Financial Establishment Act, 2013 (the "Haryana PIDFEA"). The Act defines a financial establishment under section 2(d) and notes that any company that accepts deposits under any scheme, arrangement or in any other manner is a financial establishment, and the payment of deposits like assured returns falls within the definition of deposit under section 2(b) of the Haryana PIDFEA. The Act notes the appointment of a competent authority by the district magistrate to undergo the procedure of the Act.

v. That it is also most humbly submitted before the Ld. Authority that the Respondent No. 1 was always prompt in making the payment of assured returns as agreed between the parties. It is not out of the place to mention that the Respondent No. 1 herein had been paying the assured return for every month to the Complainant since November 2019. It is to note, that as on date, the Complainant herein had already received an amount of Rs. 14,60,534 as assured return as agreed by the Respondent under the aforesaid agreement.

w. That it is pertinent to note that the obligation of the payment of the Assured Return by the Respondent No. 1 was subject to the Allottees making timely payments as per the agreed payment plan but the Complainant had defaulted in making payment and the last payment made by the Complainant was on 03.12.2019 i.e. at the stage "30 days from date of booking", hence, the Respondent No. 1 was not be liable to pay the Assured Return beyond the said period of defaults of the Complainant as per clause 3.1 of the Addendum to agreement to sale, however, the Respondent No. 1 in bonafide had made payments of assured return to the Complainants till June 2023.

x. That at this stage, it is relevant to note that the payment of the said Assured Return was not absolute and subject to the happening of the events, as mentioned in clause 3.2 of the Addendum, as noted above. That in 2020 and thereafter in 2021, the world had faced the advent of Covid–19 which had put all the commercial activities at halt and a national wide lockdown had been imposed. That the construction of the project was also affected by the construction bans and the financial meltdown of the market. The happening of such events fell under the clause 3.2, as noted above and hence, a moratorium had been affected for the period between April 2020 – August 2020, February 2021 to July 2021, till September 2021. In this regard letters dated 06.07.2020 was sent to the Complainant wherein it was communicated to the Complainant that the assured return for the lockdown period i.e. 22.03.2020 till 15.06.2020 shall be payable by the Respondent No. 2 in 2 parts. That it is also submitted that the construction of the project was affected by Covid-19 and other force majeure circumstances and vide letters dated 27.01.2022 and 12.05.2022 it was agreed between the parties Complainant had waived off the assured return for the period of 01.09.2021 till 31.12.2021 and 01.01.2022 till 31.03.2022 respectively.

y. That it is pertinent to mention here that the Complainant never made any protest to the said letters. That the Complainant has now turned around and falsely filed the Complainant against the Respondent No.1. The Complainant himself agreed to waive off the assured return amount for the said period and now has come before this Hon'ble Authority without bring correct facts on record. That on the basis of the above made submissions the present complaint is liable to be dismissed.

7. Copies of all the relevant documents have been filed and placed on 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 complainants.

## E. Jurisdiction of the authority

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### E.I Territorial jurisdiction

7. 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

8. 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.*

9. 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.

**F. Findings on the relief sought by the complainant.**

**F.I. Direct the respondent to quash the termination of shop.**

10. The complainant was allotted a unit in the project of respondent "AIPL Joy Square" in at sector 63A, Gurgaon. The buyer's agreement was executed inter-se parties on 11.04.2023 and the complainants paid a total sum of ₹50,56,584/- against a total sale consideration of ₹64,88,692/-.

11. The respondent offered possession of the subject unit on 01.02.2024 after obtaining the Occupation Certificate from the competent authority on 09.11.2023, and accordingly raised a demand for the installment due under the payment plan opted by the complainant, which became payable upon issuance of the Occupation Certificate. Despite issuing several reminders for payment of the outstanding dues dated 06.12.2023, 16.12.2023, 10.01.2024, and 17.02.2024, the complainant failed to make the required payment. Consequently, after serving a pre-termination notice dated 24.01.2024, the respondent terminated the allotment of the unit on 17.04.2024 due to non-payment of the outstanding installments.

12. The complainant objected to the offer of possession, alleging that the unit was not in a habitable condition and, therefore, no payment was due. After careful consideration of the facts, the Authority is of the view that the

complainants–allottees are obligated to pay the outstanding dues as per the terms agreed upon in the Agreement dated 11.04.2023 i.e., upon application for the Occupation Certificate before the competent authority. Under Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, every allottee who has entered into an agreement under Section 13 is required to make payments in the manner and within the time specified in the agreement. In the present case, the complainants–allottees failed to adhere to the terms of the agreement despite multiple reminders issued by the respondent. As the respondent applied for the Occupation Certificate before the competent authority on 02.06.2023 and obtained the Occupation Certificate on 09.11.2023 and thereafter offered possession on 01.02.2024, the subsequent termination of the unit due to the complainant's default in payment is justified. Therefore, the cancellation of the unit dated 17.04.2024 is held to be valid.

13. Now when the complainants approached the Authority to seek delay possession charges and possession, it is observed that the unit was terminated due to default on part of the complainants. Since the third-party rights pertaining to the unit has already been created on 06.03.2025, the Authority is of view that a promoter cannot retain the amount paid by the complainant after the unit got terminated and the complainants herein are entitled for refund after deduction of earnest money under clause 9.3 (c) of BBA.

14. 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 ors. VS. Sarah C. ors., (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 flat 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 a 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-

> *"5. 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."*

15. 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 cannot retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants i.e., ₹64,88,692/- after deducting 10% of the sale

consideration 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 cancellation i.e., 17.04.2024 till the actual date of refund of the amount within timelines given in rule 16 of the Haryana Rules 2017 ibid.

**F.II. Direct the respondent to adjust the unpaid assured return in the demand.**

**F.III. Direct the respondent to adjust the delayed possession charges in the demand.**

**F.IV. Direct the respondent to immediately handover the possession of Shop.**

**F.V. Direct the respondent to immediately quash the illegal charges and delayed interest in offer of possession.**

**F.VI. Direct the respondent to immediately revise the account statement after quashing the illegal charges and delayed interest in offer of possession and adjustment of assured return and DPC.**

**F.VII. Direct the respondent to execute conveyance deed in the favour of complainants**

**F.VIII. Restrain the respondent to further sell in the project and collection of money and future sell in the project till the outcome of enquiry or future thereon.**

**F.IX. I request the Hon'ble Regulatory Authority to issue the show cause notice for violation of terms of RERA Act.**

**F.X. I request the Hon'ble Regulatory Authority to revoke the registration certificate**

**F.XI. I request the Hon'ble Regulatory Authority to form high end committee which will produce the report about violation of terms of Act and Registration certificate.**

**F.XII. I request the Hon'ble Regulatory Authority to imposed heavy penalty for violation of term of registration certificate and Act.**

16. The reliefs mentioned above are rendered redundant in light of the foregoing findings.

## G. Directions of the authority

17. 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 is directed to refund the paid-up amount of ₹50,56,584/- after deducting the earnest money which shall not exceed the 10% of the sale consideration of ₹64,88,692/- along with the interest at the prescribed rate i.e., 10.85% on the such balance amount from date of cancellation i.e., 17.04.2024 till actual date of realization.

b. 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.

18. Complaint stands disposed of.

19. File be consigned to registry

**(Ashok Sangwan)**
Member

**(Arun Kumar)**
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 09.09.2025**