

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

|                     |              |
|---------------------|--------------|
| Complaint no. :     | 5865 of 2024 |
| Date of complaint : | 26.11.2024   |
| Order Pronounce On: | 12.08.2025   |

Jaya Pandey & Prakash C Pandey  
R/o: A-88, 2<sup>nd</sup> floor, SS Group, The Palladians,  
Sector 47, Mayfield Gardens, Gurugram

**Complainant**

Versus

M/s Advance India Projects Ltd.  
Office at: 232B, 4<sup>th</sup> floor, Okhla Industrial Estate,  
Phase III, New Delhi-110020

**Respondent****Coram:**

Sh. Arun Kumar  
Sh. Ashok Sangwan

**Chairperson  
Member****APPEARANCE:**

Sh. Akash Khattar (Advocate)  
Sh. Venket Rao (Advocate)

**Complainant  
Respondent****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:

| Sno. | Particulars                                | Details                                                                                                                                                                                                                                                                                            |
|------|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.   | Name of the project                        | AIPL Joy Street                                                                                                                                                                                                                                                                                    |
| 2.   | Project location                           | Sector 66, Village Medawas & Badshahpur, Gurugram, Haryana                                                                                                                                                                                                                                         |
| 3.   | Project type                               | Commercial                                                                                                                                                                                                                                                                                         |
| 4.   | DTCP License                               | 7 of 2008 dated 21.01.2008                                                                                                                                                                                                                                                                         |
| 5.   | RERA registration                          | 157 of 2017 dated 28.08.2017 valid up to 31.12.2020                                                                                                                                                                                                                                                |
| 6.   | Date of allotment with erstwhile allottee  | 03.09.2018<br>[pg. 38 of complaint]                                                                                                                                                                                                                                                                |
| 7.   | Date of allotment with Subsequent allottee | 12.02.2019<br>[pg. 40 of the complaint]                                                                                                                                                                                                                                                            |
| 8.   | Date of agreement for sale                 | 26.04.2019<br>(As per page no. 43 of the complaint)                                                                                                                                                                                                                                                |
| 9.   | Unit no.                                   | FF-030 on 1 <sup>st</sup> floor<br>(As per page no. 41 of the complaint)                                                                                                                                                                                                                           |
| 10.  | Unit area admeasuring                      | 525.50 sq. ft. (carpet area)<br>1124.62sq. ft. (super area)<br>(As per page no. 41 of the complaint)                                                                                                                                                                                               |
| 11.  | Possession clause                          | <i>7.1 The allottee agrees and understands that timely delivery of possession of the unit to the allottee and the common areas to the association of allottee or the Government Authority, as the case may be, as provided under the Rule 2(1)(f) of Rules, 2017, is the essence of agreement.</i> |
| 12.  | Due date of possession                     | 31.12.2020+ 6 months covid =31.06.2021                                                                                                                                                                                                                                                             |
| 13.  | Total sale consideration                   | Rs.1,29,93,859/- (including Development charges)<br>(As per page no. 49 of the complaint)                                                                                                                                                                                                          |
| 14.  | Amount paid by the complainant             | Rs.1,29,93,859/-                                                                                                                                                                                                                                                                                   |
| 15.  | Conveyance Deed                            | 04.10.2023<br>(at page no. 125 of complaint)                                                                                                                                                                                                                                                       |
| 16.  | Occupation certificate                     | 28.09.2020                                                                                                                                                                                                                                                                                         |

|     |                     |                                                     |
|-----|---------------------|-----------------------------------------------------|
| 17. | Offer of possession | 03.10.2020<br>(As per page no. 84 of the complaint) |
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**B. Facts of the complaint:**

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

- a. The Respondent Company announced the launch of "AIPL JoyStreet". The Complainants while searching for a commercial space were lured by the advertisements/ brochures/ sales representative of the Respondent Company. The agents and officers of the Respondent Company told the Complainants about the moonshine reputation of the Respondent Company and the agents of the Respondent Company made huge presentations about the project mentioned above and also assured that they have delivered several projects in the National Capital Region prior to this project. The Respondent Company handed over one brochure to the Complainants, which projected a very interesting and saleable plan and outlay of the said project and went on to incite the Complainants to part with their hard-earned money by way of making payments.
- b. The Respondent Company claimed that they have taken all due approvals, sanctions and government permissions towards the development and construction of "AIPL JoyStreet" project and after representing through brochures, about the facilities to be provided, the Respondent Company managed to impress the Complainants, who then decided to invest their hard-earned money in purchasing the unit at "AIPL JoyStreet" project.
- c. The Complainants herein are law abiding citizens and reside at the abovementioned address. The Complainants vide Letter dated 12.02.2019, were assigned the allotted booking in 'AIPL JoyStreet'

bearing booking id: JOY/RET/0499 and the same was agreed upon by the Respondent Company.

- d. That on 25.04.2019, the Complainants and the Respondent along with the Owner, i.e. Landmark Apartments Private Limited, entered into a Builder Buyer Agreement No. 1124 bearing stamp id: GOY2019D627 ("BBA") for Unit No. FF/030 at AIPL JoyStreet. However, it is pertinent to mention herein that the Respondent Company, as a part of their larger conspiracy, induced the Complainants to sign on dotted lines of the BBA despite there being absurd clauses in the same which were not acceptable to the Complainants. The Respondent Company had assured that such clauses are standard and do not affect the rights of the Complainants.
- e. However, the Complainants later realized that the Respondent Company had added a clause in the BBA whereby it was mentioned that the Respondent Company shall only hand over the constructive possession of the Unit and not physical possession of the same. The Complainants opposed the said clause at every juncture and repeatedly asked the Respondent Company to complete the construction of the Unit and Project in a timely manner and thereby handover the physical possession of the Unit after execution of the Conveyance Deed in favour of the Complainants.
- f. That on 28.09.2020, the Respondent Company vide Memo No. ZP-483/SD(DK)/2020/17009 dated 28.09.2020, received the Occupation Certificate for their project "AIPL JoyStreet" from the Director, Town & Country Planning Department, Nagar Yojana Bhavan, Plot No. 3, Block-A, Sector 18-A, Madhya Marg, Chandigarh.

- g. Accordingly, the Respondent Company vide Letter dated 03.10.2020 issued a notice for offer of possession to the Complainants along with the two milestone-based invoices bearing invoice no's. A/JOY/2021/0608 (On Offer of Possession) & A/JOY/2021/0609 (Additional Charges-On Offer of Possession). Furthermore, the Respondent Company without any consultation with the Complainants imposed several demands such as sinking fund, labour cess, common area maintenance charges, infrastructure augmentation charges, electric switch in station and deposit charges and sewage/ storm water/ water connection charge, electric switch-in-station & deposit charges, electric meter charges and registration charges.
- h. Thereafter, the Respondent Company, in furtherance of their conspiracy to extract unjust amounts from the Complainants, raised multiple Property Tax Demand Notes in favor of the Complainants vide Debit Note No's. 0399, 0239 amounting to a total of INR 44,536/- even before the actual physical possession of the premises was granted to the Complainants. It is imperative to reiterate herein that till date neither the Respondent Company has handed over the physical possession of the Unit nor the Complainants have been able to put the said Unit to use for the purpose of earning their livelihood in any manner. The erstwhile offer for possession was nothing but a hoax in order to overcome the legal responsibility of the Respondent Company to offer the possession immediately after receiving the Occupation Certificate.
- i. Furthermore, upon receiving the demand note for Property Tax from the Respondent Company, on 06.10.2021 the Complainants reached out to the Respondent Company informing them of their intention to deposit the Property Tax directly with Municipal Corporation of

Gurgaon, to which, the Respondent Company responded on 07.10.2021, with malafide intention, assuring the Complainants that they have deposited the Property Tax for the Financial Year 2020-2021 & 2021-2022 with the authorities and going forward the Property Tax shall be directly deposited with the MCG, upon execution of the sale deed, by the Complainants only. That it is pertinent to note here that the Respondent Company has themselves admitted that the Property Tax shall become due only upon execution of the Sale Deed, which was eventually executed on 16.02.2024, and still the complainants were forced to pay the property tax without any execution of sale deed.

- j. The Complainants in reference to the abovementioned Demand Notes and in the expectation that upon clearing such demands they shall be provided with clear and peaceful physical possession of the premises, cleared the dues vide receipt no's. 23-07-184795, 23-07-184793, 23-07-184794 all dated 24.07.2023. To add to the grievances of the Complainants, such payment towards the alleged Property Tax demands were also made by the Complainants in the account of the Respondent Company and not to the authorities directly, thereby once again leaving the Complainants in a limbo regarding the appropriation of such funds.
- k. It is imperative to state herein that as per law and even as per the standard practices, the Allottees of any property are not liable to pay any Property Tax till the time they have become lawful Owners of the Unit, i.e. a Conveyance Deed is executed in their favour. Contrary to such position, the Respondent Company had not even handed over possession to the Complainants, much less executing the Conveyance Deed in their favour. However, the Complainants are yet to receive the

peaceful and vacant possession of the premises even after adhering to each and every demand of the Respondent Company.

- l. That after the payment of each and every demand letter, the Complainants were in the hope that they will get possession of their Unit soon, but the assumptions of the Complainants were shattered and scattered as the Respondent Company left no stone unturned to cheat the Complainants and extract money from the Complainants, when all the while, the development on the site and the actions of the Respondent Company was not in line with the assurances made by the Respondent Company. All this while, the Complainants continuously approached the Respondent Company time and again requesting them to execute the Conveyance Deed and also handover the physical possession of the Unit along with all the basic amenities so that the Complainants could put the Unit to use and put a stop to the financial losses.
- m. That due to frustration, inordinate delays on the end of the Respondent Company and the lackadaisical approach and attitude the Complainants addressed a Letter dated 12.08.2023 to the Directors & Promoters of AIPL raising the concerns regarding the Mismanagement and Unauthorized activities being conducted at the AIPL JoyStreet Commercial Building. Even after such attempts the Respondent Company had failed to provide a reply to the said letter or even take any necessary actions to cure the difficulties mentioned in the letter.
- n. Thereafter on 15.01.2024, the Complainants received another letter from the Respondent Company informing the Complainant that there official Property ID has been made for payment of property tax with the Municipal Corporation of Gurgaon ("MCG"). Furthermore, to the utter shock and disbelief of the Complainants upon logging in on the MCG

portal they learnt that the Property Tax is still due to be paid and the Respondent Company has deceitfully collected tax from the Complainants but have not deposited the same with the proper authority.

- o. Thereafter, vide Email dated 17.01.2024 the Complainant raised there queries relating to the property tax due with Municipal Corporation Gurugram ("MCG") and the taxes paid to the Respondent Company, but the Respondent Company failed miserably to provide any justification or refund the excess amount for the same. Therefore, to protect themselves from any further penalty the Complainants were constrained to pay the Property Tax vide Receipt No. G05012240009134 amounting to INR 15,887.81/-.
- p. That finally, after much persuasion, on 15.02.2024, the Complainants and the Respondent executed a Conveyance Deed no. 16898 bearing stamp id: GOD2023J1709 for Unit No. FF/030 at AIPL JoyStreet in favour of the Complainants.
- q. However, despite the execution of the Conveyance Deed, the Respondent Company till date has failed to provide the physical possession to the Complainants for them to occupy the unit. It is apparent that the said Unit has not been in possession of / under the use of the Complainants however, the Respondent Company has been extracting illegal monies under one pretext or the other. Furthermore, in view of Clause 32 of the Conveyance Deed, the Complainants were responsible for payment of property tax only after they have been handed over physical possession of the said unit or the execution of the said Conveyance Deed. However, the Complainants had been forced to

- pay Property Tax for the said Unit for the period commencing the year 2020, despite not being able to take possession of/ use the said Unit.
- r. Further, in view of the Clause K of the Conveyance Deed, it was agreed that the Complainants shall execute a Maintenance Agreement with the designated maintenance agency and pay the necessary maintenance charges. However, in such regard, it is imperative to note that the said maintenance charges can only be legally levied after the possession has been handed over by the Respondent Company. To the contrary, the Respondent Company is attempting to harass the Complainants in a two-fold manner by firstly levying maintenance charges even for the period prior to the execution of the Conveyance Deed and secondly, the said maintenance could not have been in any case charged, before the actual and physical handover of the possession of the said Unit, only post which the Complainants would have used the Unit and paid for maintenance of the same.
- s. In any case, neither the possession of the said Unit has been handed over to the Complainants nor any maintenance agreement has been shared with the Complainants, by the Respondent Company or any agency for them to review and take the necessary steps. In fact, a bare perusal of the demands raised in such regard shows that the maintenance charges have been unilaterally and arbitrarily increased at various instances, without the knowledge and consent of the Unit owners, including but not limited to the Complainants.
- t. That as per the terms of the Conveyance Deed it was also the responsibility of the Respondent Company to grant a water connection for the said Unit for the complainants. However, the Respondent company has not only failed to install water outlet and inlet in the unit

but have also denied the request made by the Complainants to install the same. That, the Complainants reached out the Respondent Company on various occasions for grant of formal handover of Unit No. FF/030 despite the registration of the Conveyance Deed. Furthermore, the Complainants even demanded various agreed upon documents that were to be shared by the Respondent Company to the Complainants post the registration of the Conveyance Deed. That it is pertinent to mention here that the Respondent Company has time and again failed to provide the Complainants with the vacant physical possession of the premises.

- u. Thereafter, on 23.04.2024 to the shock of the Complainants, vide email dated 23.04.2024, the Respondent Company raised an exemplary and arbitrary demand of INR 2,86,298/- towards alleged dues for Common Area Maintenance, Electricity, DG and other charges and granted the complainants a period of 7 (Seven) days to clear the said dues and if they failed to do so they were threatened with disconnection of electricity supply and other services to their premises. However, it is pertinent to mention here that the Respondent Company has failed to even install necessary equipment, including but not limited to, Electricity Meter, Water Connection and drainage for the said unit. That these charges imposed by the Respondent Company are completely arbitrary and bad in law as these charges are computed without any connection and at the whim of the Respondent Company as till date there are no proper meters, for calculation of electricity consumption and water consumption, are installed in the said unit. That, adding to the misery of the Complainants, the Respondent Company are holding them hostage for the bare minimum for them to make the unit functional and are again

demanding additional charges for installation of these meters. That the Complainants are not liable to pay the same as the Complainants have never been handed over the physical and functional possession of the Unit and hence, there lies no question of clearing any dues related to usage of the Unit.

- v. The Respondent Company has made several such demands only to harass and trouble the Complainants. That the complainants provided a detailed reply to the said email vide Email dated 23.04.2024 outlining the grievances and how the said charges will become due only upon grant of physical possession.
- w. That on various instances the Respondent Company sent threatening emails to the Complainants stating that if the maintenance charges are not paid, they Respondent Company shall not handover the premises to the Complainants and also, they shall disconnect the electricity connection of the premises. That in reply to these emails the Complainants have raised their concerns as to the justification of these charges and the Respondent Company has failed to provide them with any reply. Even after multiple reminders and emails from the Complainants, the Respondent Company has failed to justify these charges and also to even have an amicable discussion with the Complainants to find a suitable solution.
- x. That the Complainant has not filed any other Complaint, with respect to the said unit, before any other forum against the erring Respondent and no other case is pending before any other court of law. The Complainants after losing all the hope from the Respondent Company, after being mentally tortured and also losing considerable amount, are

constrained to approach this Hon'ble Authority for redressal of their grievance. Hence the present Complaint.

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

4. The complainant has sought following relief(s).
  - a. Direct the Respondent to handover the physical and vacant possession of Unit FF/030 to the Complainants;
  - b. Direct the Respondent to refund the excess amount charged by the Respondent Company towards alleged property tax which was paid by the Complainants directly to the Respondent Company, i.e. INR 44,536/- , along with interest at the rate of 18% per annum from the date of payment;
  - c. Direct the Respondent to refund the amount paid by the Complainants to the MCG in the form of Property Tax, i.e. INR 15,887.81/-, along with interest at the rate of 18% per annum from the date of payment as the Complainants have not been handed over physical possession of the Unit till date;
  - d. Direct the Respondent to cancel the unjust and arbitrary demand raised on the Complainant in the form of maintenance charges and not withhold possession due to these unpaid dues;
  - e. Direct the Respondent to install the necessary water inlets and outlet points for drainage in the said unit;
  - f. Direct the Respondent to remove the signage of any other entity from the crown of the Unit No. FF/030;
  - g. Direct the Respondent to refund the amount paid, i.e. INR 23,340/- towards labour cess;
  - h. Direct the Respondent to pay compensation to the Complainants for delay in handing over of possession which has led to mental distress and

financial losses, as damages calculated at the rate of 18% per annum on the total consideration paid by the Complainants towards the Unit from 03.10.2020, i.e. the date of Offer for Possession issued by the Respondent Company;

- i. Hold the Respondent guilty of indulging into unfair practices to the Complainants and award a compensation of INR 50,00,000/- towards loss of profits;
- j. Award litigation cost to the Complainants.

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 Mr. Varun Sachdeva and Mr. Raja Singh (hereinafter referred to as the "*original allottee*") with the intention of earning a lease rental invested in the instant project and submitted an application form dated 15.02.2018 whereby, the original allottees requested the respondent to allot a unit bearing no. FF/030, admeasuring 1124.62 sq. ft. (super area) on 1<sup>st</sup> Floor (hereinafter referred to as the "*subject unit/unit*") in the commercial real estate project of the respondent namely "AIPL Joystreet" (hereinafter after referred to as the "*Project*").
- b. Considering the request of the original allottees, the subject unit was allotted to the original allottees *vide* allotment letter dated 03.09.2018. That after allotment of the subject unit in favour of the original allottees, a request for endorsement/transfer of the subject in favour of the present complainants i.e., Ms. Jaya Pandey and Mr. Prakash C Pandey, was received from the original allottees. Accordingly, an

acknowledgement receipt for request of transfer/endorsement of the subject unit was issued by the respondent on 05.02.2019. That on completion of requisite formalities, the subject unit was endorsed in favour of the present complainants and a letter dated 12.02.2019, recording the endorsement of the subject unit in favour of the present complainants was issued.

- c. Thereafter an agreement for sale dated 26.04.2019 (hereinafter referred to as the “*AFS*”) was executed between the complainants and the respondent and the same was registered before the sub-registrar, Badshahpur. In the meanwhile, upon completion of construction and development of the project an application was made before the competent authority on 17.07.2020 for issuance of the occupation certificate and the same was granted by the competent authority on 28.09.2020.
- d. After receipt of occupation certificate, the respondent issued a notice of offer of constructive possession dated 03.10.2020, wherein respondent apprised the complainants about the receipt of the occupation certificate and requested the complainants to complete the requisite formalities for handover of ‘constructive possession’ of the unit and execution of conveyance deed. Thereafter, a conveyance deed dated 15.02.2024 was also executed between the complainants and the respondent.
- e. That the present complaint has been preferred by the complainants before the Ld. Authority on frivolous and unsustainable grounds and the complainant has not approached the Ld. Authority with clean hands and is trying to suppress the material facts relevant to this matter. The complainant is making false, misleading, fatuous, baseless and

unsubstantiated allegations against the respondent with malicious intent and with the sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law, is devoid of merits and is fit to be dismissed *in limine*.

- f. That the complainant no.2 being a channel partner of the respondent company was well aware of the project of the respondent, its specifications, perks etc. In view of which, the complainant no.2 along with his wife i.e., complainant no.1 applied for a total of 4 units in various projects of the respondent, including the subject unit in the present project. Further, he has also facilitated sales of other units in the projects of the respondent to the others buyers.
- g. It is not out of place to mention herein that though the complainants had a total of 4 units in various project of the respondent, however, they continuously defaulted in making timely payments in respect of all their allotted units. Therefore, due to the default in making payments, two (2) of their units have already been cancelled. Further, the complainant no.2 had been blacklisted as a real estate agent by the respondent for all its projects, as the complainant no.2 was involved in illegal activities. Since, the units of the complainants were cancelled and the complainant no.2 being blacklisted as a real estate agent, the complainants have initiated false and frivolous complaints before this Ld. Authority, the Ld. consumer courts and other forums. Thus, it is evident that the sole purpose of filing the present complaint is nothing but an attempt of the complainants to extract unjust enrichment from the respondent.
- h. It is pertinent to mention herein that the respondent being a responsible developer has registered the instant project with the Ld. Authority, Panchkula (Interim RERA Authority for the state of Haryana in the year

2017) and accordingly, a registration certificate bearing no. 157 of 2017 dated 28.08.2017 was granted to the respondent. That the registration of the instant project was valid till 31.12.2020. That the respondent post completion of the project, had submitted an application dated 17.07.2020 for the issuance of the occupation certificate before the competent authority and the same was granted by the Ld. Authority on 28.09.2020.

- i. It is not out of place to mention herein that the respondent is one of the few developer/builders who have obtained the occupation certificate without any delay. Therefore, the allegations of the complainants that the respondent is involved in unethical/unfair practise is devoid of merits. It is humbly submitted that in terms of the original understanding between the parties, the respondent offered the constructive possession of the unit to the complainants on 03.10.2020 upon receipt of the occupation certificate on 28.09.2020 in terms of the AFS. That as per **clause 7.2** of the AFS, it was mutually agreed that after obtaining the occupation certificate, the respondent shall send the notice of offer of possession of the unit within 3 months from the date of approval of the occupation certificate. Hence, as per the agreed terms and conditions of the AFS, the due date in the present case is **28.11.2020** i.e., three months from the date of 28.09.2020. Therefore, it is evident that the constructive possession of the subject unit was offered way before the due date as agreed under the AFS.
- j. Without prejudice to the rights of the respondent and without accepting the averments made in the complaint, even if for the sake of arguments, if the due date of possession is calculated from the date of execution of the AFS as per the judgment of the Hon'ble Supreme Court in the matter

of "*Fortune Infrastructure and Ors. vs Trevor D'Lima and Ors.*" then also the due date of possession comes to **25.04.2022**. It is reiterated herein that the Respondent has already offered the possession of the Unit on 03.10.2020 after receiving the Occupation Certificate. Thus, it is evident that the Offer of Possession as per the agreed terms and conditions of the AFS has been made way before the expiry of due date of possession.

- k. In fact, since as per the original understanding between the Parties, the subject Unit was booked with the sole intention of earning lease rental by getting the Unit leased out through Respondent, the Respondent despite facing force majeure situations which arose on account of the COVID-19 Pandemic leading stalling of all activities across the entire world for a brief amount of time, tried to lease out the Unit of the Complainant to "THE SLEEP COMPANY" for which a Letter of Intent was also executed with the Prospective Lessee. This development was duly intimated to the Complainants *vide* Letter dated 21.09.2022. However, the Letter of Intent did not finally culminate into a Lease Agreement due to non-cooperation of the Complainants.
- l. It is humbly submitted that since the Complainants, who have also booked 3 more Units (1 in AIPL Joy Central, 2 in AIPL Joy Square) defaulted in making timely payments against all the Units booked. Therefore, the Respondent informed the Complainants if the dues are not paid as per the terms and conditions of the AFS of their respective units then the Respondent shall be constrained to cancel the allotment of the Complainants in terms with the respective AFS. That the Complainants with *malafide* intention of hiding their wrongdoings and defaults, and to pressurize the Respondent to not cancel their Allotment,

started pressurizing the Respondent in handing over the physical possession of the subject Unit. That the Complainant No. 2 being a channel partner of the Respondent was well aware that in commercial real estate projects, the Units of the Buyers are generally put on lease in combination with other units to bigger brands, therefore, the Complainants, in order to hide their default and to pressurize the Respondent, started creating nuisance, thereby hampering the leasing of all the other units in the instant Project, with the *malafide* intention of extracting unjust enrichment from the Respondent.

- m. It is humbly submitted that even after the offer of possession the Complainants were not coming forward to complete the requisite formalities, therefore, the Respondent vide Letters dated 09.12.2022, 11.01.2023, 15.03.2023, 05.05.2023 requested the Complainants to come forward to complete the requisite formalities and take possession of their Unit, however, to the utter shock of the Respondent the Complainants failed to do so. In the meanwhile, on 17.08.2023 the Complainants executed Indemnity Bond cum Undertaking wherein in **Clause 2** the Complainants categorically accepted that they have been offered the physical possession of the Unit and that they would execute the maintenance agreement. It was also undertaken in the said Indemnity that the Complainants would pay all stamp duty and registration fee for getting the Conveyance Deed executed and registered.
- n. Thereafter, after much persuasion the Complainants finally paid the stamp duty and registration fee and the Conveyance Deed was executed on 15.02.2024. However, after executed of the Conveyance Deed dated 15.02.2024 the Complainants have not come forward to take the



physical possession of the Unit. In fact, to the shock and surprise of the Respondent the Complainants sent an arbitrary email on 01.03.2024 demanding for physical possession of the Unit, which is exactly what the Respondent has been requesting the Complainants for so long. Thereafter, the Respondent even sent emails dated 27.05.2024, 06.12.2024 and letter dated 12.12.2024 to the Complainants requesting them to take the physical possession of the Unit. But the Complainants for the reasons nest known to them have not yet come forward to take the physical possession of the Unit.

- o. It is pertinent to mention herein that it was agreed that the Respondent shall pay the Complainants Assured Return. Accordingly, the Respondent as per the agreed terms and conditions, paid an amount of Rs. 29,26,758/- as Assured Return to the Complainants till the Offer of Possession. However, the Complainants with a *malafide* intention did not disclose the amount which was received by the Complainants as an Assured Return. That from a mere perusal of the aforementioned submissions, it is abundantly clear that the Complainants are doing nothing more than intentionally raising frivolous and misleading allegations against the Respondent in order to extort monies and make unlawful gains.
- p. It is most humbly submitted that the provisions of the RERA Act, 2016 only apply to the **Allottees, Promoters/Developers and Real Estate Agents**. That in the present case the Conveyance Deed of the subject Unit has already been executed on **15.02.2024**, hence, after the execution of the Conveyance Deed, the present Complainants have become the Owners of the subject Unit. That as per the provision of the RERA Act, 2016 the Complainants do not fall under the definition of the

**'Allottees, Promoters/Developers and Real Estate Agents'** who are entitled to seek redressal of their grievances under the RERA Act, 2016. Therefore, the Ld. Authority constituted under the provisions of the RERA Act, 2016 cannot exercise its power, control and jurisdiction over the **"Owners"** of a Flat/Shop/Space in a real estate project who is not an Allottee under the provision of the RERA Act, 2016.

- q. That in consonance with the terms and conditions of the AFS, it was the obligation of the Complainants to pay the taxes to the concerned Government Authorities, therefore, the Respondent being a responsible developer had raised demands with respect to the Taxes for the subject Unit of the Complainants. That the Complainants without any protest have made a payment as per the demands raised by the Respondent. That the Respondent has further paid the taxes to the concerned Government Bodies.
- r. It is noted herein that the Complainants vide email dated 06.10.2021, have expressed their desire to deposit the taxes directly to Municipal Corporation of Gurugram (MCG). Since, the Respondent had already deposited the taxes for the Financial Year 20-21 and Financial Year 21-22, for the subject Unit along with other units of the Project, therefore, the Respondent informed the same to the Complainants vide email dated 07.10.2021 (Annexed as Annexure C-7 @ Pg. 111 of Complaint) and further informed the Complainants that after the execution of the Conveyance Deed, the Complainants can pay the property taxes directly to MCG and vide the said email the Respondent has also provided the payment proof of the property taxes for the FY 2020-2021 and FY 2021-2022.

- s. Furthermore, the Respondent being a responsible developer, has also provided the Property ID of the subject Unit to the Complainants *vide* Letter dated 15.01.2024 for payment of the Taxes. That the alleged payment of Rs. 15,887,81/- by the complainants to MCG was to be paid by the complainants themselves, that the said payment was never demanded by the respondent hence, there arises no obligation of the respondent to pay the said amount to the MCG or refund the same to the complainants. That the payments received by the respondent in lieu of the taxes have already been paid by the respondent to the concerned authorities and receipt of which has already been provided to the complainants *vide* email dated 07.10.2021 and the further proof has already been annexed with the present reply.
- t. It is most humbly submitted that the Complainants with a *malafide* intention of extracting unjust enrichment from the Respondent are raising the false and frivolous allegation with respect to the payment of taxes. That in view of the payment proof annexed in the present reply with respect to payment of property tax the reliefs sought in para 'b' and 'c' are not maintainable. That the relief sought by the Complainants in para d of the relief sought are not maintainable. It is most humbly submitted that under **Clause 11** of the AFS, it was categorically agreed between the Complainants and the Respondent that it shall be incumbent upon the Complainants to pay the maintenance charges of the subject Unit post issuance of the Occupation Certificate.
- u. That post-issuance of Occupation Certificate and offer of constructive possession, the Complainants, as per clause 11 of the AFS are liable to pay the maintenance charges. Therefore, the Respondent in terms with the clauses of the AFS raised demand letters for payment of outstanding

maintenance dues. However, despite receiving the said demands the Complainants failed to make payments towards the outstanding maintenance dues.

- v. That the Complainants *malafide* intention of evading the responsibility of making payments towards the outstanding maintenance charges is raising false and frivolous allegations with respect to the demand of maintenance charges. It is reiterated herein that the said demand is raised in consonance with the agreed terms and conditions of the AFS therefore, the Complainants are bound to pay the same. Furthermore, it is most humbly submitted that the issue of maintenance is not covered under the ambit of the RERA Act, 2016 therefore, the Ld. Authority is not empowered to adjudicate the issue pertaining to maintenance charges. Therefore, the reliefs sought in para 'd' of relief sought and all the allegations with respect to the same are not maintainable and are devoid of merits.

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 handover the physical and vacant possession of unit FF/030 to the complainants;**

**F.II. Direct the respondent to pay compensation to the complainants for delay in handing over of possession which has led to mental distress and financial losses, as damages calculated at the rate of 18% per annum on the total consideration paid by the complainants towards the unit from 03.10.2020, i.e. the date of offer for possession issued by the respondent company;**

10. In the present complaint, the original allottee booked the unit bearing no. FF-030, 1<sup>st</sup> floor in the year 2018. Thereafter, the said unit was endorsed by the respondent in favour of the complainant on 12.02.2019. The registered buyer's agreement was executed in this regard on 26.04.2019. As per clause 7.1 of the said agreement the due date of possession comes out to be

31.06.2021. The respondent subsequently obtained the Occupation Certificate from the competent authority on 28.09.2020 and offered possession of the unit to the complainant on 03.10.2020 i.e., before the due date of handing over of possession. Thereafter, the conveyance deed was executed between the parties on 04.10.2023.

11. Accordingly, no delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement executed between the parties is established. Therefore, no case of delay possession charges payable under section 18 of the Act, 2016 is made out.

**F.III. Direct the Respondent to refund the excess amount charged by the Respondent Company towards alleged property tax which was paid by the Complainants directly to the Respondent Company, i.e. INR 44,536/-, along with interest at the rate of 18% per annum from the date of payment;**

**F.IV. Direct the Respondent to refund the amount paid by the Complainants to the MCG in the form of Property Tax, i.e. INR 15,887.81/-, along with interest at the rate of 18% per annum from the date of payment as the Complainants have not been handed over physical possession of the Unit till date;**

**F.V. Direct the Respondent to cancel the unjust and arbitrary demand raised on the Complainant in the form of maintenance charges and not withhold possession due to these unpaid dues;**

**F.VI. Direct the Respondent to install the necessary water inlets and outlet points for drainage in the said unit;**

**F.VII. Direct the Respondent to remove the signage of any other entity from the crown of the Unit No. FF/030;**

**F.VIII. Direct the Respondent to refund the amount paid, i.e. INR 23,340/- towards labour cess.**

12. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. In the above-mentioned relief sought by the complainants the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed except for the

statutory rights under the Act of 2016. The complainants could have asked for the claim before the conveyance deed got executed between the parties.

14. Moreover, the clause 13 of the conveyance deed dated 01.08.2019 is also relevant and reproduced hereunder for ready reference:

*13. That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself / herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment, etc., therein.*

15. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

**F.IX. Hold the Respondent guilty of indulging into unfair practices to the Complainants and award a compensation of INR 50,00,000/- towards loss of profits.**  
**F.X. Direct the respondent to pay ₹1.0 lac as the litigation cost.**

16. In the above-mentioned relief, the complainants sought the compensation and Hon'ble Supreme Court of India in case titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357***), has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive

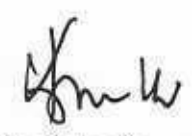
jurisdiction to deal with the complaints in respect of compensation & legal expenses.

The complaint stands dismissed.

File be consigned to registry.



**(Ashok Sangwan)**  
Member



**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025

