

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

Complaint no.	:	4757 of 2024
Date of Filing:		01.10.2024
Date of Decision:		12.12.2025

Upender Pal Singh

Address at: F-121, Regal Garden, Sector-90,
Gurgaon, Haryana

Complainant

Versus

1. M/s Advance India Projects Limited
Office: A-22, Hill View Apartments Vasant
Vihar, New Delhi, West Delhi, Delhi- 110057
2. Anant Raj Limited
Office: Plot no. CP-1, Sector-8, IMT Manesar,
Gurgaon, Haryana

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sukhbir Yadav
Sh. Harshit Batra

Sh. Shivani Dang

Advocate for the complainants
Advocate for the respondent
no. 1
Advocate for the 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	AIPL Joy Square
2.	Location of the project	Sector-63-A, Village-Kadarpur, Gurugram, Haryana.
3.	Nature of the project	Commercial
4.	DTCP license no.	Licence no. 119 of 2011 dated 28.12.2011 Licence No. 71 of 2014 Dated 29.07.2014
5.	Registered/not registered	259 OF 2017 dated 03.10.2017 valid up to 31.12.2022
6.	Allotment letter	18.11.2019 (As on page no. 40 of complaint)
7.	Retail Shop Space no.	SF/101, flor-2 nd , Tower-N/A (As on page no. 48 of complaint)
8.	Retail Shop Space Area	141.76 sq.ft. [Carpet Area] 171.15 sq.ft. [Covered Area]

		342.30 sq.ft. [Super Area] Along with exclusive usage of 01 parking space (As on page no. 51 of complaint)
9.	Agreement For Sale [Between M/s. Advance India Projects Limited (Promoter) , M/s. Anant Raj Limited (Land owner) and complainant]	19.12.2019 (As on page no. 44 of complaint)
10.	Addendum to Agreement To Sell	19.12.2019 (As on page no. 131 of reply)
11.	Assured return	The promoter has agreed to pay Rs.16,271/- (Rupees Sixteen Thousand Two hundred Seventy One Only) per month by way of assured return to the Allottee from 02.11.19 of the succeeding day from the date of receipt & realization of Rs.23,01,829.00 (Rupees Twenty Three Lakhs One Thousand Eight Hundred Twenty Nine Only) (including taxes) from the Allottee, credited to the bank account of the Promoter, till {the construction and services work in the Project is complete in terms of the provisions of the Haryana Building Code for the purpose of filing of application for grant of Occupancy Certificate with DGTC} the date of filing of application by the Promoter for grant of

		Occupancy Certificate with DGTCP. [Emphasis supplied] (As on page no. 134 of reply)
12.	Possession clause	Not available
13.	Due date of possession	19.12.2022 [Calculated 36 months from the date of agreement]
14.	Letter regarding payment of the Assured Returns	06.07.2020 (As on page no. 86 of complaint)
16.	Sale consideration	Rs.46,03,579.01/- (As on page no. 51 of complaint)
17.	Total amount paid by the complainant	Rs.48,66,724.32/- (As per S.O.A dated 05.03.2024 on page no. 83 of complaint)
18.	Application for grant of Occupation certificate	02.06.2023 (As on page no. 135 of reply)
19.	Occupation certificate	09.11.2023 (As on page no. 136 of reply)
20.	Offer of possession [Constructive possession]	08.12.2023 (As on page no. 88 of complaint)
21.	E-mail sent by complainant to the respondent stating about receiving the Offer of possession dated 08.12.2023 on 06.02.2024	06.02.2024 (As on page no. 100 of complaint)

22.	Offer for lease of the unit to "Crickfit 24/7"	06.07.2024 (As on page no. 102 of complaint)
23.	Email of the respondent stating his displeasure on the offer of leasing on low market value	08.07.2024 03.08.2024 03.09.2024

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That the complainant being relied on representation & assurances of the respondent booked a unit in retail shop space for commercial use bearing no. SF/101 on the 2nd floor admeasuring 342.30 sq. ft. super area for a total sale consideration of Rs. 46,03,579/- in project AIPL Joy Square by making the payment of Rs. 3,00,000/- and signed a pre-printed application form. The complainant got one exclusive parking along with his unit and parking slot bearing no. B2-066 has been allotted to him.
 - II. That on 18.11.2019 the respondent issued an allotment letter in favour of the complainant and confirmed the allotment of retail shop no. SF/101 in the project.
 - III. That on 19.12.2019, a pre-printed, arbitrary, unilateral, and ex-facie agreement to sell was executed inter-se the complainant i.e., Upender Pal Singh and the respondent. That after going through the arbitrary clauses of the said ATS, the complainant came to know for the first time that the respondent is not going to give him physical possession of the unit booked by him and the respondent shall give the virtual ownership of the unit to the complainant. The respondents said that

there is no mechanism of alteration in the clauses of the ATS, therefore, the complainant have to sign the said ATS as it is, and in case you wish to withdraw from the project then the earnest money paid by the complainant shall be entirely forfeited. The complainant had no other option left in his hands but to continue with the project, therefore, he had to sign the said ATS under compelling circumstances.

- IV. That no specific date of possession of the said unit has been mentioned anywhere in the ATS which is in contravention of Section 13(2) of the RERA Act. However, as per clause 5 of the said ATS, the Promoter shall abide by the time schedule for completing the Project, handing over the possession of the unit to the allottee and as per clause 7.1 the promoter agrees and understands that timely delivery of possession of the unit to the allottee and the common areas to the association of allottees or the Governmental Authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the agreement .
- V. That as per the registration certificate of the said project issued by HRERA dated 03.10.2017 the project was registered for a period from 03.10.2017 to 31.12.2022. Hence, the deemed date of possession should be on or before 31.12.2022. As per clause 1.9 (i) of the said ATS, "the complainant has exclusive ownership of the unit allotted to him subject to para 5 and para 21 of the said ATS". Furthermore, clause 1.9 (iii) states that, "The allottee shall have exclusive right to use the allotted car parking space(s), if any", and as per clause 1.10, "the promoter and the allottee agrees that the unit along with car parking spaces, if any, shall be treated as a single indivisible unit for

all purposes and none can be transferred by the allottee independent of the other” It is relevant to note here that as per all the clauses mentioned herein, the complainant has the exclusive right to use the unit along with the parking space allotted to him for all purposes. As per the said ATS, the total consideration of the complainant’s unit is Rs.46,03,579/- and the complainant has already paid Rs. 48,66,724/- i.e. more than 100% of total sale consideration as per the statement of account dated 05.03.2024.

- VI. That as per mutually agreed terms, the respondents have to pay a monthly assured return (AR) of Rs 16,271/- against the advance invested money to the complainant from 02.11.2019 till the offer of possession. A letter dated 06.07.2020 was issued by respondent no. 1 to clear the accumulated and future assured returns. The said AR was paid till March 2022 and the respondent stopped the payment of AR thereafter without giving any reason to the complainant.
- VII. That notice for “Offer of Possession” dated 08.12.2023 was delivered to the complainant on 06.02.2024 by Indrapuri Express Courier Services. The complainant also sent an email regarding this veracity of dates of the said offer of possession in his email dated 06.02.2024.
- VIII. That as per buyer agreement physical possession of the unit shall never be given to the allottee. Whereas, as per Clause 21 (k) (ii) of the said ATS, “the allottee can seek physical possession of the Unit in case the entire Unit remains vacant/ unleased for a continuous period of 6 months in any financial years”.
- IX. That the respondents have asked the complainant to execute an indemnity cum undertaking for the possession. The contents of the said indemnity cum undertaking are arbitrary and one-sided in favor

of the respondent party. Furthermore, the said offer of possession is a conditional offer of possession, hence the same is not acceptable and valid offer of possession.

- X. That it has also been agreed between the complainant and the respondents that the respondents shall lease out the unit of the complainant, and the complainant shall get the rental income from his unit. As per clause 21 of the ATS dated 19.12.2019, the complainant has fully authorized the respondents to lease out his unit.
- XI. That the complainant asked several times to the respondents about the lease arrangement for his unit and balance assured returns, however, the respondents never shared any satisfactory word about the same.
- XII. That after a lapse of 1 ½ years, the respondent(s) party sent a letter on 06.07.2024 regarding the leasing of the complainant's unit. As per the said letter, the respondents pretended that they had arranged a lease for the complainant's unit with "Crickfit 24/7" for running their outlet.
- XIII. Moreover, the monthly rental proposed for the said lease is Rs 30/- per sq ft which is considerably lower than the prevailing market rate at the vicinity. The prevailing rate of monthly rental is around Rs 80/- to Rs 110/- per Sq Ft.
- XIV. That from February 2023, the complainant continually asked for the physical possession of the unit and sent several emails to the respondent/builder and asked for incorporation of the relevant clauses in the offer of possession and conveyance deed, but all went

in vain and being in dominant possession the respondent refused to honor the terms of ATS also and threaten to cancel the allotment.

XV. That on 17.06.2021 the complainant sent an email to the respondent and raised query about current status of the project, tentative date of possession and status of OC and payment of assured return. The said email was replied by the respondent on 18.06.2021 and informed that tentative date of possession is April 2022 and application for OC is Jan 2022 and assured return shall be paid shortly.

XVI. That no conveyance deed has been executed so far in favour of the complainant with respect to said unit, the respondents are duty bound to execute the conveyance deed in favour of the complainant for the said unit and to give physical possession of his unit to the complainant.

XVII. That the complainant has been following up with the respondents since long to get physical possession of his unit and has raised objections regarding leasing of the unit at monthly rent below the market price, however, he got nothing but mental harassment as well as financial loss.

C. Relief sought by the complainant:

4. The complainant in the present complaint has seeking the following relief(s).
 - (i) To get the arrears of assured return from 01 Apr 2022 till the actual handover of the unit or delayed possession interest from 01.04.2022 till actual handover of the unit.
 - (ii) To get the conveyance deed executed in his favour in respect of unit allotted to him i.e. SF-101, 2nd Floor, AIPL Joy Square admeasuring

342 Ft along with handing over of the physical possession in the said conveyance deed.

- (iii) To get the physical possession of the said unit after completion of plaster and flooring etc.
- (iv) To get an order in his favor by directing the respondents to give proper electricity, water, and Gas/PNG connection.
- (v) To get an order in his favor by directing the respondent or its nominated maintenance agency to charge maintenance charges after handing over actual possession.
- (vi) To get an order in his favor by directing the respondent to provide a copy of OC.

D. Reply by the respondent no. 1.

5. The respondent no. 1 has contested the complaint on the following grounds.
 - I. That the respondent no. 1 has already offered possession of the unit in question to the complainant who has failed to complete all the formalities and execute the conveyance deed of the unit as such, the respondent no. 1 has already complied with its obligations under the agreement for sale dated 19.12.2019.
 - II. That the complainant is not an "Allottee" but an Investor who has booked the retail shop space in question as a speculative investment in order to earn rental income/profit from the same.
 - III. That the complainant being interested in the real estate development of the respondent no. 1, known under the name and style of "AIPL Joy Square" located at Sector 63-A, Gurugram, Haryana booked a unit in the said project. The Project has all the necessary approvals and permissions. It was granted the license no. 71 of 2014 dated 29.07.2014

from Director, Town and Country Planning, Haryana (DTCP) and is also registered with the Hon'ble Authority vide Registration no. 259 of 2017 dated 03.10.2017. That the respondent no. 2 is the landowner and confirming party to the agreement for sale executed between the parties. No specific relief has been sought from the respondent no. 2 by the complainant hence, the name of the respondent no 2 should be deleted from the arrays of parties.

- IV. That the complainant booked a retail shop space vide an application form, subsequent to which was allotted a unit no. SF/101, on 2nd Floor, Tower Joy Square, tentatively admeasuring super area 342.30 sq. ft. vide allotment letter dated 18.11.2019.
- V. That the complainant, prior to approaching the respondent no. 1, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regards to all aspects of the project, including but not limited to the capacity of the respondent no. 1 to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent no. 1. The complainant consciously and willfully opted for flexi payment plan as per their choice for remittance of the sale consideration for the unit in question and further represented to the respondent no. 1 that they shall remit every installment on time as per the payment schedule.
- VI. That since the very beginning, the intention of the parties has been *ex-facie* and *prima facie* clear to take the constructive possession of the unit to earn the rental income from the unit.
- VII. That the sole intention of booking was to lease the unit and with that understanding, an offer was made by the complainant by filing the

application form, upon the acceptance of which, an allotment was made on 18.11.2019.

- VIII. That thereafter, agreement for sale dated 19.12.2019 was executed between the parties and the same has also been registered before the Sub-Registrar. That the parties also entered into an addendum to agreement for sale dated 19.12.2019. That accordingly, the rights and obligations between the Parties is to be seen from the agreement dated 19.12.2019. At this instance, it is also submitted that the said agreement was executed between the parties, willingly, voluntarily, and without any coercion or undue influence, whatsoever. That the Complainant has, acting on their whims and fancies, wrongfully and *malafidely* challenged the agreement dated 19.12.2019 in their complaint, however, have miserably failed in substantiating the same. That the Complainant allegations of the execution of the agreement under coercion, etc, is gravely unsubstantiated and under no circumstance whatsoever, can the same be accepted.
- IX. That the complainant categorically agreed to lease the unit by entering into a leasing arrangement with the respondent. The Allottee had also understood the general risks involved in giving the premises on lease.
- X. In addition to the above, with respect to the delivery of physical possession of the unit, it has been categorically agreed between the parties that the physical possession of the unit shall be given only if the unit has not been leased, as per clause 21(k)(i) – (iv).
- XI. That from all the above-mentioned, the intention of the parties is *ex facie* clear, from every part of the agreement, with respect to the allottee receiving the constructive possession of the unit and the leasing arrangement between the parties; having executed the agreement with

open eyes and free will, without any coercion or undue influence, of any sort, whatsoever, the same cannot be challenged. That the terms of the agreement need to be upheld as a whole. That complainant cannot be allowed to cherry-pick the clauses that they desire and leave the rest.

- XII. That the relationship between the parties is contractual in nature and is governed by the agreement executed between the parties. The rights and obligations of the parties flow directly from the agreement. The complainant willingly, consciously, and voluntarily entered into the agreement after reading and understanding the contents thereof to their full satisfaction, as is also evident from Clause J of the agreement. Hence, the complainant agreed to be bound by the terms and conditions in the application form and the agreement.
- XIII. That from the clauses reiterated hereinabove, it is clear that the Allottee entered into a future lease agreement with respondent no.1. It is an entrenched principle of law that a lease may be limited to take effect either immediately or from a future date. It is *ex facie* evident that the complainant had entered into a future lease agreement. That the complainant agreed to put the unit on lease after the notice of offer of possession.
- XIV. That as per clause 5 r/w clause 7.1 of the agreement, the possession was proposed to be handed over as per the timelines disclosed at the time of registration of the project with the authority i.e. 31.12.2022 or the extended period as may be intimated and approved by the Authority. That the proposed due date of handing over of possession was subject to force majeure and Court orders, Government policy/ guidelines, and decisions affecting the regular development of the real estate Project.

XV. That the respondent no. 1 was miserably affected by the ban on construction activities, order by the NGT and EPCE, demobilization of labour, etc., being the circumstances beyond the control of the respondent and force majeure circumstances, that the construction was severely affected during this period. That additionally, 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. Therefore, it is safely concluded that the said delay of 124 days in the seamless execution of the Project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay.

- XVI. That there has been no delay in the offer of possession of the unit. The respondent no. 1 vide application dated 26.06.2023 applied for grant of occupation certificate and rightly received the occupancy certificate on 09.11.2023, after which offered the possession on 08.12.2023.
- XVII. That as per clause 7.3 of the agreement, the complainant was obligated to take constructive possession of the unit within 30 days from the notice of offer of possession, however, the same was not done and consequently, reminders dated 14.02.2024 and 04.06.2024 was sent to the complainant requesting the complainant to make payment of the outstanding dues along with the possession documents.
- XVIII. Moreover, in compliance of the terms and conditions agreed between the parties under clause 21 of the agreement, the unit was proposed to be put on lease with a brand known under the name and style of "Crickfit 24/7 (Drivefit)" and the same was communicated to the Complainant vide letter dated 06.07.2024. The unit was proposed to be leased out to "Crickfit 24/7 (Drivefit)" however the same was not effected. That the respondent is rigorously looking for leasing out the unit. That in such circumstances, the complainant cannot be allowed to

go beyond their contractual obligation and the present complaint needs to be dismissed.

- XIX. That the entire grievance of the complainant is with regards to the minimum lease rental 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 for violation of any provision of the RERA Act, 2016.
- XX. That as per clause 1 of the addendum to agreement to sell dated 19.12.2019, respondent no. 1 was only liable to pay the assured return till the date of filing of the application for grant of occupation certificate. The respondent no. 1 had paid the complete payment of assured return as per the terms and conditions of the addendum amounting to Rs. 6,20,401 from Nov 2019 till June 2023 i.e. application for grant of occupation certificate to the complainant.
- XXI. That the payment of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 (the "**BUDS Act**"). That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. The assured returns or assured rentals under the said agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme". Thus. The respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme".

E. Reply by the respondent no. 2.

6. The respondent no. 2 has contested the complaint on the following grounds.
- I. That respondent no. 2 M/s Anant Raj Limited is a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at CP-01, Sector -08, IMT Manesar Haryana-122051 and head office at H-65, Connaught Circus, New Delhi -110001.
 - II. That respondent no. 2 alongwith its associate Companies acquired land measuring 108.125 acres in the revenue estate of Village Kadarapur, Ullahawas and Maidawas, Sector 63A, Gurugram (Haryana) and obtained License Nos. 119 of 2011 and 71 of 2014 from the Director General, Town and Country Planning, Haryana (DGTCP) for the development of a residential colony. As part of Township, zoning plan was approved by the DGTCP for land measuring 2.838 acres for the purpose of commercial building (as Commercial Site-2) under the said Licenses.
 - III. That respondent no. 1 approached respondent no. 2 and entered into a development agreement dated 08.09.2017 with respondent no. 2 for developing a commercial building on the said land measuring 2.838 acres (Commercial Site-2) under the terms and conditions enumerated therein and respondent no. 2 granted, transferred and assigned the exclusive development rights of the commercial building on the said land together with the right to market, advertise the project, sale of the saleable areas/units, lease and license of the leasable areas/units etc. to respondent no. 1.
 - IV. That the present complaint has been filed by the complainant on the basis of false, concocted and distorted facts to harass respondent no. 2. The complainant has no cause of action against respondent no. 2. The

present complaint is not maintainable against respondent no. 2 and is liable to be dismissed.

- V. That the complainant has not approached this Hon'ble Court with clean hands and has tried to mislead the Hon'ble Court by presenting the facts in the most distorted manner. The complainant has suppressed the material facts from this Hon'ble Authority and tried to misuse the process of law by filling the false and frivolous complaint against respondent no. 2.
- VI. That the complainant booked a unit in retail shop space for commercial use bearing no. SF/101 on the 2nd floor admeasuring 342.30 sq. ft. super area for a total sale consideration of Rs. 46,03,579/- in project 'AIPL Joy Square' by making advance payment of Rs 3,00,000/-. The said total sale consideration was inclusive of BSP, DC, PLC, GST and parking. The said project was being promoted and developed by respondent no. 1.
- VII. In pursuance of the booking, an agreement to sell dated 19.12.2019 was entered between the complainant, respondent no. 1 as the promoter and in respondent no.2 as the owner. As per the said agreement, it was respondent no. 1 who was to develop and complete the said project and respondent no. 2 had nothing to do with the development and completion of the said project.
- VIII. That the complainant himself is admitting in the complaint that all interaction of the complainant, right from the beginning, was only with the respondent no. 1 whether it is in relation to booking in the said project and / or in relation to inviting the application of booking in the said project. It is very much clear that no interaction of the complainant is with respondent no. 2 and therefore respondent no. 2 is having no

liability against the complainant. The complainant also made the payments to respondent no. 1 only and as per the version of complainant himself, payment receipt and allotment letter was issued by the respondent no. 1 to the complainant. The said project was launched by respondent no. 1 and admittedly application form for booking in the said project was signed between the complainant and respondent no. 1. Further, the offer of possession was also issued/sent by respondent no.1 to the complainant. There is no privity of contract between the complainant and respondent no. 2. Therefore, the present complaint of the complainant is liable to be dismissed on this ground alone.

- IX. That no communication / correspondence ever took place between the complainant and respondent no. 2 in respect to the unit in the said project ever. Therefore, neither any legal liability of respondent no. 2 is made out nor any cause of action arose against respondent no. 2 and in favour of the complainant. As admitted by the complainant himself that no consideration has ever been received by respondent no. 2 in relation to the said unit and thus no cause of action stands created in relation to said unit in the project against respondent no. 2.
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 these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

8. The respondents have raised an objection that Authority has no jurisdiction to deal with the said complaint. The authority observes

that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

9. 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.

F.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

G. Findings on the Objections raised by Respondent no. 1**G.I Objection regarding the complainant being investor.**

12. The respondent no. 1 has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The authority observed that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status

of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G.II Objection regarding impleadment of Respondent no. 2 i.e., Anant Raj Limited.

14. In the present complaint, the respondent No. 2 has contended that complaint is not maintainable against the respondent no. 2 as the project is being developed and promoted by respondent no. 1. Respondent No. 2 has further stated that pursuant to a Development Agreement executed between Respondent No. 1 and Respondent No. 2, exclusive development rights, including rights of marketing, branding, advertising, transfer, sale of saleable area/units, and lease and license of leasable spaces/units, were granted and assigned to Respondent No. 1 in respect of the commercial project in question. Therefore, Respondent No. 2 claims that it has no direct role in the transactions between the complainant and Respondent No. 1 and is consequently not liable to be made a party.
15. Upon consideration of the material placed on record, the Authority observes that the Builder-Buyer Agreement (BBA) dated 19.12.2019 executed between the complainant and the respondent clearly reflects the involvement of Respondent No. 2, M/s Anant Raj Limited, as it was a confirming party to the said agreement dated 19.12.2019. Further, it is a matter of record that the Occupation Certificate (OC) pertaining to the subject project has been issued in favour of Respondent No. 2, which indicates its direct control, ownership, and statutory responsibility with respect to the project in question.
It is also observed that the application for Extension of Registration of the real estate project under Section 6 of the Real Estate (Regulation

and Development) Act, 2016 has been filed before this Authority by the M/s Advance India Projects Ltd. the extension of registration file submitted by the promoter has been scrutinized and it is found that the project was registered in interim RERA Panchkula vide RC no. 259 of 2017 dated 03.10.2017 valid upto 31.12.2022 + 6 months COVID =30.06.2023. The Authority has returned the application of extension of registration as the M/s Advance India Projects Ltd has failed to submit BIP permission.

16. In view of the above facts, documents and statutory responsibilities placed on record, the Authority concludes that both Respondent No. 1 and Respondent No. 2 are jointly and severally responsible for the obligations arising out of the project, including those towards the complainant under the provisions of the Real Estate (Regulation and Development) Act, 2016. Therefore, the objection raised by Respondent No. 2 is devoid of merit and stands rejected.

H. Findings on the reliefs sought by the complainant:

- (i) **To get the arrears of assured return from 01 Apr 2022 till the actual handover of the unit or delayed possession interest from 01.04.2022 till actual handover of the unit.**

17. The complainant in the present complaint has booked a unit in the project of the respondent namely 'AIPL Joy Square' situated at sector-63 A, Gurugram, Haryana. The complainant was allotted a unit bearing no. SF/101, situated at second floor, admeasuring 141.76 sq. ft. The buyer's agreement for the said unit was executed between the complainant and respondent on 19.12.2019. Thereafter an addendum to agreement to sell was executed between the parties on 19.12.2019. The total sale consideration of the unit was Rs.46,03,579/- and the complainant has paid an amount of Rs.48,66,724/-. As per the clause 1

of the addendum to agreement dated 19.12.2019 the respondent is obligated to pay the Assured return of Rs. 16,271/- per month w.e.f. 02.11.2019 till the date of filing of application by the promoter for grant of occupancy certificate.

18. The complainant is seeking unpaid assured returns on monthly basis as per addendum to agreement dated 19.12.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent has stopped the payment of assured return. The respondent has objected the said and said that they have applied for the grant of occupation certificate on 02.06.2023. Hence, they have paid the assured return from November 2019 till June 2023.
19. The authority after considering all the documents on record, observes that the money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
20. The builder is liable to pay that amount as agreed upon. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.

21. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. That this Authority has also deliberated the issue of assured return in number of case including ***Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)***.

22. In the present complaint, the assured return was payable as per clause 1 of addendum to agreement dated 19.12.2019, which is reproduced below for the ready reference:

Clause 2.

"The promoter has agreed to pay Rs.16,271/- (Rupees Sixteen Thousand Two hundred Seventy One Only) per month by way of assured return to the Allottee from 02.11.19 of the succeeding day from the date of receipt & realization of Rs.23,01,829.00 (Rupees Twenty Three Lakhs One Thousand Eight Hundred Twenty Nine Only) (including taxes) from the Allottee, credited to the bank account of the Promoter, till {the construction and services work in the Project is complete in terms of the provisions of the Haryana Building Code for the purpose of filing of application for grant of Occupancy Certificate with DGTCP} the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP. "

Thus, the assured return was payable @Rs.16,271/- per month w.e.f. 02.11.2019 till the date of the date of filing of application by the promoter for grant of occupancy certificate with DGTCP.

23. In light of the reasons mentioned above, the authority is of the view that as per the addendum to agreement dated 19.12.2019 it was

obligation on the part of the respondent to pay the assured return. The respondent, in its reply, has contended that it has already paid the assured returns to the complainant for the period from November 2019 to June 2023 and has also placed the alleged payment details on record at page no. 151 of its reply. However, after examining the documents placed on record, this Authority is of the considered view that although the respondent has made certain payments during the said period, the respondent was required to pay the assured return @ Rs. 16,271/- per month from November 2019 to June 2023. The record indicates that the respondent has not paid the assured return @ Rs. 16,271/- per month up to August 2021. Accordingly, the Respondent is liable to remit the differential amount to the allottee/complainant from November 2019 till August 2021.

- (ii) **To get the conveyance deed executed in his favour in respect of unit allotted to him i.e. SF-101, 2nd Floor, AIPL Joy Square admeasuring 342 Ft along with handing over of the physical possession in the said conveyance deed.**

24. The complainant is also asking for the relief of conveyance deed getting executed. As per section 11(4) (f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

25. The occupation certificate has been obtained on 09.11.2023 and subsequently unit was offered the constructive possession on 08.12.2023. Therefore, the respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of

stamp duty and registration charges as applicable within three months from the date of this order.

(iii) To get the physical possession of the said unit after completion of plaster and flooring etc.

26. The complainant has sought the relief of physical possession of the unit. The builder-buyer agreement was executed on 19.12.2019 subsequently addendum buyer's agreement was executed on 19.12.2019. The occupation certificate was issued on 09.11.2023. Subsequently, the respondent offered constructive possession to the complainant on 08.12.2023.
27. The complainant contends that clause 21 of the builder-buyer agreement deals with the leasing arrangement and clause 21(k)(ii) specifically provides that the Allottee may seek physical possession of the unit only in the event the entire unit remains vacant and unleased for a continuous period of six months in any financial year. The complainant submits that since the unit has never been leased out after the offer of possession he is entitled to physical possession.
28. The respondent, in its reply, submits that the said unit is exclusively meant for leasing purposes and that only constructive possession can be handed over; physical possession cannot be delivered. The respondent further asserts that the provision for constructive possession is consistently reflected in the application form and in the builder-buyer agreement.
29. The authority after considering all the documents on record observes that as per Clause (k) of the application form, the unit is not meant for self-occupation. Further, Clause 7 of the agreement stipulates that "possession" shall always mean constructive possession of the unit.

Clause 21 of the agreement deals with the leasing arrangement and provides that the complainant shall not claim physical possession.

30. The Authority now proceeds to examine Clause 21(k)(ii), which is reiterated as under:

"That the Allottee can seek physical possession of the Unit only in case the entire Unit remains vacant/unleased for a continuous period of six (6) months in any financial year. It is hereby clarified that in case part of the Unit is leased in combination with other units by way of merging it as part of the larger area whether horizontally and/or vertically, even in such case the Allottee cannot seek physical possession of the part of the Unit remaining vacant/unleased."

31. As per this clause, the Allottee may seek physical possession of the unit only if the entire unit remains vacant and unleased for a continuous period of six months. There is no doubt that the unit has not gone on lease till date and this fact is also admitted by the respondent in its reply. However, a careful interpretation of the clause is necessary. The clause further clarifies that if the unit is leased in combination with other units by way of merging it as part of a larger area whether horizontally or vertically then even in such circumstances the Allottee cannot claim physical possession of the part of the unit that remains vacant or unleased.
32. Clause 21 of the agreement dated 19.12.2019 states that the unit forms part of a larger area in combination with other units, merged horizontally and/or vertically. Therefore, the Allottee is not entitled to seek physical possession of the said unit.
- (iv) **To get an order in his favor by directing the respondents to give proper electricity, water, and Gas/PNG connection.**
 - (v) **To get an order in his favor by directing the respondent or its nominated maintenance agency to charge maintenance charges after handing over actual possession.**

33.

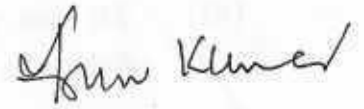
- (vi) **To get an order in his favor by directing the respondent to provide a copy of OC.**

34. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties.

G. Directions of the authority

35. 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):
- The Respondent is liable to remit the differential amount to the allottee/complainant from November 2019 till August 2021.
 - The respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
 - A period of 90 days is given to the respondent to comply with the directions given in this order and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
36. Complaint as well as applications, if any, stands disposed off accordingly.

37. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025



HARERA
GURUGRAM