

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

Complaint no.	:	2978 of 2024
Date of Filing:		08.07.2024
Date of Decision:		12.12.2025

1. Sunil Kumar Jain
2. Anupam Jain

Address at: 502/23, Heritage City, MG Road,
Gurgaon, Haryana

Complainants

Versus

1. M/s Advance India Projects Limited
Office: AIPL Business Club, 5th Floor, Golf
Course Extension Road, Sector-62, Gurugram,
Haryana

2. M/s Wellworth Projects Developer Private
Limited
Office: 232-B, 4th Floor, Okhal Industrial
Estate, Phase- III, South Delhi, New Delhi -
110020

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Bhrgu Dhami
Sh. Dhruv Rohtagi

Advocate for the complainants
Advocate for the respondents

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:

S.N.	Particulars	Details
1.	Name of the project	AIPL Joy Central, Sector 65, Gurugram.
2.	Nature of project	Commercial Colony
3.	Project area	3.987 acres
4.	DTCP license no.	249 of 2007 issued on 02.11.2007 valid up to 01.11.2024
5.	Name of licensee	M/s Wellworth Project Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	0038, SF (as per agreement dated 14.08.2017 at page no. 69 of complaint)
8.	Area admeasuring	546.72 sq. ft. (as per agreement dated 14.08.2017 at page no. 69 of complaint)
9.	Allotment Letter	30.06.2017 (page no. 37 of complaint)

10.	Date of apartment buyer agreement	14.08.2017 (page no. 64 of complaint)
11.	Agreement for sale	01.10.2021 (Page no. 97 of complaint)
12.	New unit no. as per agreement 01.10.2021	K-16, 2 nd floor, 546.85 sq. ft. super area 103.98 sq. ft. carpet area (page no. 104 of complaint)
13.	Possession clause	Clause 44 <i>Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavors to hand over the possession of the Unit to the Allottee within a period of 54 (fifty four) months, with a further grace period of 6 (six) months, from 1 September 2017.</i> <i>(as per agreement dated 14.08.2017)</i>
14.	Due date of possession	01.09.2022 [Calculated 54 months + 6 months from 01.09.2017]
15.	Assured return clause	32. Assured Return Where the Allottee has opted for Payment Plan as per Annexure-A

		<p>attached herewith and accordingly, the Company has agreed to pay Rs. 24,561/- per month by way of assured return to the Allottee from 15.06.2017 till the date of issue of Notice of possession of the unit. The return shall be inclusive of all taxes whatsoever payable or due on the return.</p> <p><i>(as per agreement dated 14.08.2017)</i></p>
16.	Total sale consideration	<p>Rs. 62,72,518/- (as per payment plan of agreement dated 14.08.2017 on page no. 88 of complaint)</p> <p>Rs. 67,64,712/- (as per payment plan of agreement dated 01.10.2021 on page no. 138 of complaint)</p>
17.	Paid up amount	Rs. 67,64,712/-
18.	Occupation certificate	<p>24.12.2021 (page no. 140 of complaint)</p>
19.	Offer of possession (constructive)	<p>21.01.2022 (page no. 39 of complaint)</p>
20.	Conveyance deed	<p>27.10.2022 (page no. 158 of complaint)</p>
21.	Assured return paid	<p>₹ 20,72,644/- (as per AR calculation sheet at page 118 of reply)</p>

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That the complainants, Sunil Kumar Jain and Anupam Jain, residing at 502/23, Heritage City, M.G. Road, Gurgaon, Haryana - 122009 are joint allottees as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RERA Act"). As allottees, are entitled to the rights and protections granted under the Act, which include timely possession, agreed return on investment, full disclosure of project details, and adherence to the terms of the sale agreement by the developer in entirety.
 - II. That the complainants were made to submit a booking application along with identified unit and unit layout map for food court space unit no FC-38 on second floor measuring 546.72 sq. ft. super area in the project vide cheque dated 12.06.2017 with advance booking amount of Rs. 28,00,000/- This was followed by a detailed payment plan and allotment letter dated 30.06.2017. The booking amount and subsequent demands totalling Rs. 64,64,712/- and Interest-Free.
 - III. Maintenance Deposit of Rs. 54,685/- raised by the respondent were paid on time at due milestones, as evidenced by the enclosed statement of accounts and offer of possession dated 21-01-2022 issued by the respondent and summary of payment made by the complainants as mentioned in letter dated 24-01-2022. These payments included the basic sale price (BSP), car parking, External development charges (EDC), infrastructure development charges (IDC), power backup charges, an interest-free maintenance deposit,

common area maintenance, sinking funds, labour cess, infrastructure augmentation charges, Electric switch in station charges, Sewage charges, electric meter charges, PNG Charges, and PNG security Deposit and other demands, reflecting the complainant's substantial financial commitment to the project, despite the fact that many of these charges are not part of the unit buyer agreement or any other prior commitments by the complainants and legally inadmissible.

- IV. That the respondent changed the allotted unit from no. SF/FC-38 on the 2nd floor, measuring 546.72 sq. ft. to unit no. K-16 on the 2nd floor, measuring 546.85 sq. ft. as communicated in their e-mail dated 06.06.2020. Thus, without any specific reason the respondent unilaterally decided to re-allocate the unit earlier selected as per by complainants in consultations with the Vastu experts and according to the Vastu directions which diminished the unit's selling price causing potential financial losses in lease rentals and resale value. The respondent actions constitute a breach of contract and the respondent are liable to pay compensation for the resultant damages, harassment and mental agony experienced by the complainants.
- V. That clause 32 of the unit buyer's agreement stipulates that an assured return from 15.06.2017 to the date of the offer of possession of the unit, i.e., 21-01-2022 was payable to the complainants. The said assured return is in arrears for which the respondent be directed to pay assured return due with interest up-to-date.

VI. That the respondents have proposed to give constructive possession of the property via a letter of offer dated 21.01.2022. However, despite this proposal the respondent failed to pay the lease rentals for an extended period following the issuance of the occupation certificates dated 24.12.2021 and dated 15.01.2024. This delay and non- payment of assured return / MLC from 15.06.2017 to 15.01.2024 have caused significant financial loss to the complainants, who have invested their hard-earned money into the project. According to Section 18 of the RERA Act, 2016, the promoters are liable to pay interest for every month of delay till the aforesaid date of occupation certificate that is 15.01.2024. The Respondent failure to adhere to this provision has resulted in substantial financial distress and breach of trust for the complainants. Notably the offer of possession was given before the date of occupation certificate was obtained by the Respondent.

VII. That despite numerous personal visits for assured returns in their office even during Covid times, the respondent kept on sending series of e-mails on one pretext or the other as to why they are not in a position to pay the assured returns/MLC i.e. dated 17.06.2024, 18.06.2024, 20.06.2024. However all our e-mails in respect of assured returns / MLC have been blatantly ignored.

VIII. That the respondents actions are a clear indication of their intent to evade responsibility and obligations, showcasing a willful neglect of contractual duties and an appalling lack of integrity. This sustained indifference and dismissive attitude towards our rightful claims exemplify their unprofessionalism and unethical business practices.

- IX. That on January 21, 2022 the respondent issued a notice of offer of possession. This notice and agreement for sale dated 01.10.2022 marked a significant departure from the terms originally agreed upon in the unit buyer agreement. Notably, the term "Constructive Possession" was introduced for the first time, altering the nature of possession from physical to constructive.
- X. That we present this petition against the respondent for their blatant dishonesty and failure to honor their commitments. According to their communication dated 24.07.2023, the unit in question was purportedly leased for a period of nine years starting from 15.01.2024. However despite our communication dated 18.06.2024, 20.06.2024 from respondent and our further e-mails dated 21.06.2024, the respondent have failed to provide the registered lease agreement for our records and information.
- XI. This deliberate withholding of the lease agreement and non-payment of any lease rentals to date exemplifies the respondent company's flagrant disregard for their contractual obligations. Such actions reflect their intent to deceive and defraud, showcasing an alarming level of unprofessionalism and unethical conduct.
- XII. That as per the provision of RERA Act, the possession should have been given within three years from the date of agreement i.e. 14.08.2020. The offer of possession was received vide dated 21.01.2022 resulting in a delay of 17.5 months.
- XIII. That the respondents are responsible for inordinate delay in leasing the unit since the constructive possession was with the Respondents only.

XIV. From the date of offer of possession 21-01-2022 up till 30-06-2024, the lease rental should be paid on month on month basis at the same rates that of assured return, which has not been done till date.

XV. That the respondent compelled the complainants to execute an ill-worded indemnity bond. This bond ask the complainants to indemnify the respondent and to 'express satisfaction' that the complainants have inspected the unit and are completely satisfied with various aspects such as size, area, dimension, and location, quality of construction, materials used, and services provided in accordance with the buyer's agreement. This bond also places unwarranted responsibility on the complainants for any violation of building bye-laws, plans, rules, regulations, and consequences arising therefrom. This demand for an indemnity bond is not only improper but also contrary to the spirit of the buyer's agreement.

XVI. Despite numerous violations by the respondents, the complainants have diligently paid all demands whenever raised. It was under false verbal promises and emails, that the complainants agreed to execute the conveyance deed on 27.10.2022, in the office of the concerned Sub Registrar, Gurugram.

C. Relief sought by the complainant:

4. The complainant in the present complaint has seeking the following relief(s).

- I. Directions to the respondents to pay the outstanding assured return from 15.06.2017 to 15.01.2024 to the complainants, amounting to Rs. 16,34,534/- including interest as per the prevailing rate under the RERA Act until the date of refund as mandated by Section 18.

- II. Direction to the respondents to compensate for delay in possession of 17.5 months along with interest on the investment of Rs.62,17,165/- made by the complainants from 14.08.2020 till 15.01.2024 of Rs. 24,55,895/-.
- III. Directions to the respondents to refund with interest certain charges which are not part of the agreements namely common area maintenance, sinking funds, labour cess, Infrastructure augmentation charges, Electric switch in station charges, Sewage charges, electric meter charges, PNG Charges, and PNG security Deposit and other demands being Rs. 3,14,868/- as per offer of possession letter dated 21.01.2022 along with interest from the date of payment made by complainants total Rs. 4,01,457/-.
- IV. Direction to the respondents to pay for the lease rental at the same rate of assured return from the date of final occupancy certificate i.e. 15.01.2024 up till 30.06.2024 along with interest Rs. 2,94,850/-.
- V. Award pendente lite interest @18% p.a.
- VI. A direction may be issued by this Hon'ble court to show proofs of formations of Association of owners and proceedings of general body meetings of such association formed by the respondent.
- VII. Direction to the respondent to provide the complainants with complete and accurate documentation related to the project, including a properly executed agreement for sale that complies with Section 13 of the RERA Act.
- VIII. That as required under the HAOA 1983 the Respondent be directed to execute a "deed of Apartment" of each unit holder

including the Respondent showing there in undivided interest in the land of each unit holder.

IX. Award compensation for harassment and mental agony also of Rs. 25,00,000/-for the financial losses, mental agony, and harassment suffered by the complainants due to the Respondent actions of not paying the assured returns on time and for the delay in project completion and for the change in unit allocation without assigning any specific reason.

X. Litigation fee of Rs. 1,00,000/-.

D. Reply by the respondents.

5. The respondents have contested the complaint on the following grounds.

- I. That the complainants have been enjoying the said unit without any demur/protest. The possession was offered to the complainants on 21.01.2022 and thereafter, executed a conveyance deed dated 27.10.2022. The lack of bonafide of the complainants is apparent that after conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondents, they chose to remain silent for such a long period and have approached authority to extort money. The complainants chose to never raise any claim towards delay possession charges or any other claim. Hence, it is clear from the lack of any documentary proof, whereby the complainants may have raised any such additional claims.
- II. Thus, it is abundantly clear that the execution of conveyance deed was without any undue influence and coercion. The present complaint is an afterthought with malafide intent to enrich themselves.

- III. That the complainants are not an "Allottee(s)" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
- IV. That the complainants had approached the respondents no.1 and expressed an interest in booking a unit in the commercial project developed by the respondents and booked the unit in question, bearing number "SF/FC-38", on the second floor, admeasuring 546.72 sq. ft. situated in the project developed by the respondent, known as "AIPL Joy Central" at Sector 65, Gurugram, Haryana. That thereafter the complainants vide application form applied to the respondents for provisional allotment of a unit bearing number "SF/FC-38" in the said project. The complainants prior to approaching the respondents, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondents to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondents. The complainants consciously and willfully opted for a payment plan as per their choice for remittance of the sale consideration for the unit in question and further represented to the respondents that they shall remit every installment on time as per the payment schedule.
- V. That at this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms.
- VI. That in the present case, the complainants purchased the unit only on the categorical understanding that the unit shall not be for physical possession.

VII. That pursuant to the execution of the application form, the respondent had no reason to suspect the bonafide of the complainants and thus, in view of the commitments made by the complainants to make timely payments, the respondent provisionally allotted food court unit no. "SF/FC/0038," in the said project. The respondents were provisionally allotted a unit admeasuring approx. 546.72 sq. ft. on the second floor in the said project vide provisional allotment letter dated 30.06.2017.

VIII. That as can be noted from the clause 43 of the application form, the complainants had given unfettered right to the respondents to lease the unit and had agreed to not object to the decision of leasing at any point in time.

IX. That pursuant to the execution of the application form, the complainants paid the booking amount of Rs 8,58,849/- to the respondents vide cheque on 27.05.2017. The respondents no.1 had no reason to suspect the bonafide of the complainants and the allotment letter dated 30.06.2017 was issued to the complainants.

X. That the buyers agreement was executed between the parties on 14.08.2017. The said agreement were duly signed by the complainants after properly understanding each and every clause contained in the agreement. The complainants were neither forced nor influenced by the respondent developer to sign the said agreement. The complainants who after understanding the clauses, signed the said agreement in their complete senses. The buyer's agreement duly covers all the obligations, liabilities and rights of both the parties and the consequences of any breach of the agreed terms.

XI. That the project underwent a change/ modification and upon the same being done, objections/ suggestions for approval of building plans

were invited from the complainants on 21.11.2019, to which the complainants never raised any objection.

XII. That the respondent was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour, etc being circumstances beyond the control of the respondent and force majeure circumstances, that the construction was severely affected during this period and the same was rightfully intimated to the complainants by the letter dated 30.11.2019. Despite all these factors, the respondent completed the construction within the stipulated time and offered the possession before the agreed due date of delivery.

XIII. That meanwhile, for the overall betterment of the project and due to the requirement of the Governmental Authority, there were some change in the area of the unit allotted to the complainants and the unit area was altered from 50.79 sq.mtrs. to 50.80 sq.mtrs., which was in terms of clause 10 of the buyer's agreement. Further, the unit numbering was also changed and the food court unit no. 0038 on Second Floor of AIPL Joy Central, allotted to the complainants was re-numbered as K-16. The above facts were duly intimated to the complainants vide letter dated 21.05.2020.

XIV. That the payment of assured returns was subject to force majeure conditions and applicable laws, orders, notifications, etc, affecting the construction of the project and for such period, assured returns were not to become due and payable by the promoter and the promoter was not liable to pay assured return for such period.

XV. That due to the COVID-19 pandemic, whole nation was under the complete lockdown and all activities including the construction of the

said project was under a complete standstill. The respondent was also severally affected by the adverse effects of the Covid pandemic. Yet, despite the same, the respondent maintained on its commitment of payment of assured return. That on 06.07.2020, the payment of assured returns was divided in two parts of 50% each and the same were made payable in the following manner:

a. Payment of Part-I AR

- Part-I AR shall be due every month from the succeeding date of the Lockdown Period (AR Restart Date).
- 45 days period from the AR Restart Date shall be moratorium period for payment of Part-I AR. The cumulative Part-I AR of the Moratorium Period shall be paid in 4 equal installments along with the assured return of 4 months starting from the end of the Moratorium Period,
- The payment of assured return as per the monthly payment cycle shall resume from 46th day from the AR Restart Date.

b. Adjustment of Part II AR:

- The balance 50% assured return shall accrue from the succeeding date of the lockdown period along with an interest@12% till (a) due date of next installment; or (b) till the date of filing of application for grant of occupancy certificate for the unit/project, whichever is earlier, shall be accumulated and adjusted from the demand amount due at next installment or demand amount due on date of filing of application for grant of occupancy certificate/offer of possession for the unit/project, as the case may be.

XVI. That till June 2019, the assured returns were given through cheques and post June 2019, the electronic clearing services were made mandatory.

XVII. That however, at the present instance, after the implementation of the BUDS Act, the payment of assured returns were impacted. That after banning of the assured returns from the BUDS Act, there exists no liability of the respondent to pay the assured returns.

XVIII. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 09.05.2021. Occupation certificate was thereafter issued in favour of the respondent dated 24.12.2021. That once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

XIX. That the arrangement between the parties was to transfer the constructive possession of the unit and the same was categorically

agreed between the parties in the application form and the no protest in this regard had ever been raised by the complainants and the same was willingly and voluntarily accepted by the complainants. That the clause 33 of the buyer's agreement dated 14.08.2017 "leasing arrangement" further the arrangement of constructive possession of the unit. In terms of the unit buyer's agreement, the leasing rights were with the respondents. The said leasing arrangement and constructive possession arrangement was even fortified in the clause 10 of the conveyance deed dated 27.10.2022.

- XX. That subsequently, the parties novated the buyer's agreement dated 14.08.2017 and entered into an agreement to sell dated 01.10.2021, thereby, superseding the earlier buyer's agreement dated 14.08.2017.
- XXI. That the complainants by filing the present complaint and by taking such baseless and untenable pleas are just trying to conceal the material facts in order to somehow cover up their own wrongs, delays and latches and to wriggle out of their contractual obligations by concocting false and frivolous story. Despite all the goodwill gestures extended by the respondents, the complainants is trying to illegally extract benefits from the respondents and their main aim is to cause wrongful gain to herself and wrongful loss to the respondents from time to time. Therefore, the present complaint is filed with grave illegalities and lack of jurisdiction and the same is liable to be dismissed at the very outset and the complainants shall be directed to file, pursue the complaint before the civil court for any dispute arises from the agreement in the form of investment agreement and lease agreement.

XXII. That pursuant to the receipt of the occupation certificate, the complainants were offered constructive possession of the unit in question through letter of offer of possession dated 21.01.2022. The complainants were called upon to remit balance payment including other charges and to complete the necessary formalities/documentation necessary for constructive handover of the unit in question to the complainants.

XXIII. That the respondents earnestly requested the complainants to obtain constructive possession of the unit in question and to further complete all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondents and threatened the respondents with institution of unwarranted litigation.

XXIV. That owing to such non-responsive attitude of the complainants, the respondent sent a reminder letter for offer of possession dated 08.11.2023 to the complainants, calling upon them to comply with the offer of possession, to clear the outstanding dues, complete the necessary formalities and to take possession of the unit allotted to them. However, the complainants have paid no heed to the said reminders and continue to be in default, thereby causing loss to the respondent.

XXV. That the complainants duly executed an indemnity bond -cum undertaking dated 19.01.2022 in favor of respondents and the complainants have accepted the constructive possession of the said unit after being completely satisfied with all as aspects of the said unit. The complainants also specifically undertook that they would not demand the physical possession of the said unit.

XXVI. That the respondents have duly fulfilled all the obligations as per the buyer's agreement dated 14.08.2017 and as per agreement to sell dated 01.10.2021, has executed the conveyance deed in favor of complainants vide conveyance deed dated 27.10.2022. That as per clause 3 of the said conveyance deed the respondents have already adjusted the penalty on account of delay in handing over of possession of said unit and no claim whatsoever remains in favor of the complainant.

XXVII. That the total sale consideration of the said unit is Rs. 76,72,500/- plus other charges, stamp duty, registration charges etc. The respondents has already credited a sum of Rs. 14,30,332/- as assured returns. As per clause 32 of the buyer's agreement dated 14.08.2017, it was the obligation of the Respondents to give the assured returns amounting Rs. 24,561/- till the notice of offer of possession. That in terms of the said arrangement, the respondents have paid a total amount of Rs. 13,83,360/- and the balance has been adjusted against the final demand. The agreement to sell dated 01.10.2021, superseded the earlier buyer's agreement dated 14.08.2017 and was signed by the complainants with open eyes, without any undue influence, coercion, misrepresentation or concealment. Thus, the complainants, cannot at this stage, assert any claim of assured return, as the buyer's agreement dated 14.08.2017 was superseded and novated by the agreement to sell dated 01.10.2021. Without Prejudice, it is submitted that the claim of Assured Return is an independent claim, and this Hon'ble Authority lacks the jurisdiction to adjudicate the present claim. Even otherwise, the present claim of assured return is a stale claim and after the execution of the conveyance deed and indemnity bond by the

complainants, they are estopped from raising these claims at this stage.

6. 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.

E. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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 objections raised by respondents.

G.I Objection regarding the complainant being investor.

11. 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;"

12. 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. Findings on the reliefs sought by the complainant:

(i) **Direct the respondents to pay the outstanding assured return from 15.06.2017 to 15.01.2024 to the complainants, amounting to Rs. 16,34,534/- including interest as per the prevailing rate under the RERA Act until the date of refund as mandated by Section 18.**

(ii) **Direct the respondents to compensate for delay in possession of 17.5 months along with interest on the investment of Rs. 62,17,165/- made by the complainants from 14.08.2020 till 15.01.2024 of Rs. 24,55,895 /-.**

13. In the present complaint, the complainant booked a unit in the project of the respondent namely, AIPL Joy Central, situated at Sector- 65 of Gurugram. The complainant was allotted a unit bearing no. SF-0038 on 2nd Floor admeasuring 546.72 sq. ft. vide allotment letter dated 30.06.2017. Subsequently the builder buyer agreement was executed between the parties on 14.08.2017. As per the payment plan annexed

with builder buyer agreement dated 14.08.2017 the total sale consideration of the unit was Rs. 62,72,518/-. That on 01.10.2021 new agreement for sale was executed between the parties and subsequently nit no. was also changed from SF-0038 to K-16 on 2nd floor, admeasuring 546.85 sq. of super area. The respondent has obtained the occupation certificate on 24.12.2021 and subsequently offered the constructive possession of the unit on 27.10.2022.

14. The complainant in the present complaint has sought relief regarding payment of assured as well as Delay possession charges. The Authority observes that buyer's agreement dated 14.08.2017 contains a clause no. 32 regarding payment of assured return and clause 44 of the regarding delay possession charges. The said clauses are reiterated as under:

32. Assured Return

Where the Allottee has opted for Payment Plan as per Annexure-A attached herewith and accordingly, the Company has agreed to pay Rs. 24,561/- per month by way of assured return to the Allottee from 15.06.2017 till the date of issue of Notice of possession of the unit. The return shall be inclusive of all taxes whatsoever payable or due on the return.

Clause 44

Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavors to hand over the possession of the Unit to the Allottee within a period of 54 (fifty four) months, with a further grace period of 6 (six) months, from 1 September 2017.

15. As per the said clause 32 of the builder buyer agreement dated 14.08.2017 the respondents are liable to pay the assured return of Rs. 24,561/- per month from 15.06.2017 till the date of issuance of notice of possession.

16. As per the clause 44 of the builder buyer agreement dated 14.08.2017 the possession has to be handed over within 54 months with a further grace period of 6 months from September 2017. Hence the due date comes out to be 01.09.2022. The occupation certificate for the unit was received on 24.12.2021 and subsequently unit was offered on 21.01.2022. Hence, there was no delay in handing over the possession of the unit.

17. As far the issue w.r.t the assured return is concerned the Authority is of the view that since a new agreement has been executed between the parties on 01.10.2021 the clause regarding the payment of assured return existed in earlier agreement dated 14.08.2017 has now become ineffective. The new agreement dated 01.10.2021 does not contain any clause related to assured return. Moreover, clause 24 of this new agreement clearly states that it will supersede (override) all previous agreements. Furthermore, the complainants themselves after understanding the agreement with their free will has signed the new agreement dated 01.10.2021, which means they voluntarily accepted its terms and conditions. In view of this, the earlier agreement including the assured-return clause stands superseded and therefore the claim for assured return is no longer admissible.

(iii) **Directions to the respondents to refund with interest certain charges which are not part of the agreements namely common area maintenance, sinking funds, labour cess, Infrastructure augmentation charges, Electric switch in station charges, Sewage charges, electric meter charges, PNG Charges, and PNG security Deposit and other demands being Rs. 3,14,868/- as per offer of possession letter dated 21.01.2022 along with interest from the date of payment made by complainants total Rs. 4,01,457/-.**

18. As far as common issues with regard to common area maintenance, sinking funds, labour cess, Infrastructure augmentation charges, Electric switch in station charges, Sewage charges, electric meter charges, PNG Charges, and PNG security Deposit and other demands are concerned, the same cannot be dealt after execution of conveyance deed as obligation of promoter ends on the execution of conveyance deed.

(iv) **Direction to the respondents to pay for the lease rental at the same rate of assured return from the date of final occupancy certificate i.e. 15.01.2024 up till 30.06.2024 along with interest Rs. 2,94,850/-.**

(v) **Award pendente lite interest @18% p.a.**

19. The complainant is claiming lease rental on the basis of clause 19 of the agreement to sale dated 01.10.2021, which provides that there would be a leasing arrangement and the promoter was liable to lease out the said unit. However, in the agreement there is no specific clause regarding the payment of lease rental which the respondent/promoter is required to pay to the Allottee.

20. However, clause 19(g) stipulates that the lease/license deed shall provide for payment of rent and other amounts by the tenant/lessee/licensee directly to the promoter, who shall thereafter remit the proportionate rent to the Allottee after deducting the expenses and costs towards managing the leasing arrangement and collection of rentals, which presently amount to Rs. 2/- (Rupees Two only) per sq. ft. per month of the Unit's super area, excluding applicable taxes and cesses. The clause further states that such charges are subject to subsequent revision, of which the promoter shall inform the Allottee in an appropriate manner and such revision shall be binding on the Allottee. All payments to the Allottee shall be subject to tax

deduction at source in accordance with applicable laws. Thus, in view of Clause 19(g), the respondent is contractually obligated to remit the lease rental to the complainant once the unit is leased out, after making permissible deductions and is therefore liable to pay the said lease rental in terms of the agreement.

- (vi) A direction may be issued by this Hon'ble court to show proofs of formations of Association of owners and proceedings of general body meetings of such association formed by the respondent.**
- (vii) Direction to the respondent to provide the complainants with complete and accurate documentation related to the project, including a properly executed agreement for sale that complies with Section 13 of the RERA Act.**
- (viii) The Respondent be directed to execute a "deed of Apartment" of each unit holder including the Respondent showing there in undivided interest in the land of each unit holder.**

21. 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.

- (ix) Award compensation for harassment and mental agony also of Rs. 25,00,000/-for the financial losses, mental agony, and harassment suffered by the complainants due to the Respondent actions of not paying the assured returns on time and for the delay in project completion and for the change in unit allocation without assigning any specific reason.**
- (x) Litigation fee of Rs. 1,00,000/-.**

22. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and**

Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), 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 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

23. 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):
 - i. The respondent is liable to pay the said lease rental in terms of the agreement.
24. Complaint as well as applications, if any, stands disposed off accordingly.
25. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025