BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**6085 of 2024**
Date of Filing:	**11.12.2024**
Date of Decision:	**12.12.2025**

1. Jaya Pandey
2. Prakash C Pandey

Address at: A-88, Second Floor, SS Group, The Palladians, Sector-47, Mayfield Gardens, Gurugram - 122018 **Complainants**

Versus

M/s Advance India Projects Limited
Office: A-22, Hill View Apartments Vasant Vihar, New Delhi, West Delhi, Delhi- 110057 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:

Sh. Akash Khattar Advocate for the complainants
Sh. Venket Rao Advocate for the 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:

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joy Central", Sector-65, Gurgaon
2.	Nature of project	Commercial colony
3.	RERA registered/not registered	Not registered
4.	DTCP License no.	249 of 2007 dated 02.11.2007 valid upto 01.11.2025
5.	Unit no.	0091 on ground floor [Page no. 54 of complaint]
6.	Unit area admeasuring	1386 sq. ft. [Super area] [Page no. 54 of complaint]
7.	Allotment Letter	16.06.2017 (Page no. 43 of the complaint)
8.	Date of buyer's agreement	24.08.2017 (Page no. 52 of complaint)
9.	Possession clause as per original BBA	**44** *The company endeavours to hand over the possession of the unit to the allottee within a period of 54 months with a further grace period of 6 months from 1 September 2017.*

		(as per agreement dated 24.08.2017 at page no. 71 of complaint)
10.	Assured return clause	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. 53,725/- per month by way of assured return to the Allottee from 09.06.2017 till the date of issuance of Notice of Possession of the Unit.* (as per agreement dated 24.08.2017 at page no. 68 of complaint)
11.	Addendum to unit buyer's agreement	28.05.2019 (page no. 81 of complaint)
12.	Clause of penalty in addendum To BBA	1. That it has been agreed by the Allottee that in case the Notice of Offer of Possession is issued prior to 24.04.2020 in such case the allottee will pay to the Company an incentive of Rs. 48.70/- per sq. ft. per month for the period of pre-ponment. 2. That it has been agreed by the Company that in case Notice of Offer of Possession is issued post 24.04.2020, in such case, the Company will pay to the Allottee penalty of Rs. 48.70/- per sq. ft. per month till the issue of Notice of Offer of Possession.

		(as per Addendum to unit buyer's agreement dated 28.05.2019 at page 82 of complaint)
13.	Renumbering of unit From unit no. 0091 to GF-120	20.05.2020 (page no. 86 of complaint)
14.	Agreement for sale for new unit	07.01.2021 (page no. 94 of complaint)
15.	Total sale consideration	Rs.2,93,43,006/- [As per payment plan on page no. 135 of complaint]
16.	Amount paid by the complainants	Rs. 3,23,62,028/- [As per SOA dated 24.07.2023 on page no. 220 of complaint]
17.	Due date of possession	07.01.2024 **[Calculated as per *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]*]**
18.	Occupation certificate	24.12.2021 [Page no. 155 of complaint]
19.	Offer of possession to the complainants for unit no. GF-120, ground floor	21.01.2022 [Page no. 158 of complaint]
20.	Lease deed with Geetanjali Salon	28.09.2023 (Page no. 9 of additional reply filed by respondent)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

I. That the complainants vide application dated 24.04.2017 had applied for a unit at "AIPL Joy Central" for a basic sale price of Rs. 2,82,67,470/- and vide allotment letter dated 16.06.2017 the respondent had issued the allotment letter for unit no. 0091 being a commercial space and admeasuring 1,386 sq. ft. in favor of the complainants.

II. However, in the most *malafide* manner, the respondent has miserably failed to pass on the GST input credit to the complainants under Section 171 of the CGST Act, have the conveyance deed duly executed and deliver the physical possession of the said unit and in addition raising unjust demands in the form of interest, illegal maintenance charges without even handing over the possession to the complainants. These illegal acts of the respondent has caused huge monetary losses along with mental distress to the complainants.

III. That on 24.04.2017, the complainants and the respondent entered into a unit buyer agreement for unit no. 0091 at AIPL Joy Central. Furthermore, vide letter dated 28.08.2017 the respondent shared the duly executed unit buyer's agreement dated 24.08.2017 between both the parties.

IV. That on 28.05.2019, the complainants agreed to execute an addendum to the unit buyer agreement, wherein the respondent company added a new clause that the complainants shall be liable to pay the respondent company an incentive of Rs. 48.70/- per sq. ft. if the notice of offer of possession is issued prior to 24th April 2020.

V. That the respondent to waive their obligation of payment of assured returns to the complainants sent a letter dated 30.11.2019 to complainants stating that due to the orders passed by the national green tribunal and the Hon'ble Supreme Court of India had put a ban on

construction activities as directed by the EPCA from 04.11.2019 to 05.12.2019 and it was contended by the respondent that owing to such bans on construction since 2016 the project is to be delayed by 60 (Sixty) days and furthermore that the respondent shall adjust the 60 days assured return equally over a period of 06 Months starting 01.11.2019.

VI. That vide letter dated 20.05.2020, the respondent informed the complainants that the said unit has been renumbered to 'GF-120' and further informed them that as per the requirement of the Governmental Authority, there has been changes made to the unit allotted to the complainants. The revised area of the said unit was 1385.90 sq ft. Furthermore, the respondent arbitrarily also changes the layout of the said shop due to which there are structural pillars inside the shop.

VII. Furthermore, the respondent sent out another letter dated 08.06.2020, informing the complainants that owing to the complete lockdown in the country due to unforeseen challenges, the respondent was not able to deliver the possession of the unit to the complainants by 24.04.2020, and therefore owing to the terms of the addendum to the unit buyers agreement, the respondent was liable to pay a penalty to the complainants.

VIII. Subsequently, vide letter dated 06.07.2020, the respondent again waived off their liability for payment of assured returns and divided the payment of the returns in two separate timelines for payment. The respondent has time and again waived off their liability without any just discussion with the complainants or even giving them a chance to be heard.

IX. That the respondent provided a discount of Rs. 43,90,000/- as retention discount to the complainants in lieu of retaining the said unit during the unprecedented covid period. That complainants, upon receiving the discount receipt from the respondent learned that the respondent has also charged a GST of Rs. 4,70,357/-.

X. That on 07.01.2021 after several verbal and written follow ups with the respondent, the complainants and the respondent along with the confirming party, i.e. Wellworth Project Developers Private Limited, entered into an agreement to sell for unit no. GF-120 at AIPL Joy Central.

XI. That on 24.12.2021, the respondent after much delay vide memo no. ZP-322-Vol.-II/AD(RA)/2021/32717 dated 24.12.2021, received the occupation certificate for their project.

XII. Accordingly, the respondent vide letter dated 21.01.2022 issued a notice for offer of possession to the complainants along with the two milestone based invoices. The respondent without any consultation with the complainants imposed several demands such as sinking fund, labour cess, advance 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.

XIII. Subsequently, upon perusal of the inovices issued by the respondent company, the complainants learned that the respondent has failed to adjust the GST Credit, which was due to the complainants under Section 171 of the CGST Act.

XIV. That upon perusal of the accounts by them it has been revealed that the sum of Rs. 49,23,132/- is outstanding and is to be paid immediately by the complainants.

C. Relief sought by the complainants:

4. The complainants in the present complaint have seeking the following relief(s).

(i) Direct the respondent to handover the physical and vacant possession of unit GF-120 to the complainants in terms of the original unit buyer's agreement.

(ii) Direct the respondent to pay the assured return and the assured return penalty of 4.5 months which was arbitrarily waived off by the respondent company.

(iii) 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 22.01.2022, i.e. the date of offer for possession issued by the respondent company.

(iv) Direct the respondent to execute the conveyance deed with regards to the said unit GF-120 with the complainants.

(v) Direct the respondent to cancel the unjust and arbitrary demand raised on the complainants in the form of maintenance charges, interest on maintenance charges and not hold possession due to these unpaid dues.

(vi) Direct the respondent to cancel the arbitrary interest charges imposed on alleged delay in payment with regards to the said unit.

(vii) Direct the respondent to refund the amounts paid, i.e. Rs. 21,537/- and Rs. 3,17,262/- paid towards labour cess and sinking fund.

(viii) Direct the respondent to refund the GST input Credit that is legally due to the complainants along with the statement of accounts to the complainants and order an investigation on the respondent for non-compliance of Section 171 of the CGST Act with all unit holders in the said project and also initiate an investigation under the GST Act and national anti-profiteering measures against the respondent.

(ix) Direct the respondent to refund the Rs. 4,70,357/- being GST charged illegally on the discount provided by the respondent.

(x) Hold the respondent guilty of indulging into unfair practices to the complainants and award a compensation of Rs. 50,00,000/- towards loss of profits.

(xi) Award litigation cost to the complainants.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.

I. That the complainants with the intention of earning lease rental invested in the instant project and submitted an application form dated 24.04.2017 whereby, the complainants requested the respondent to allot a unit bearing no. 0091, admeasuring 1,386 sq. ft. (super area) in the commercial real estate project of the respondent namely "AIPL Joy Central".

II. Considering the request of the complainants the subject unit was allotted to the complainants vide allotment letter dated 16.06.2017. Thereafter a unit buyer agreement dated 24.08.2017 was executed between the complainants and the respondent.

III. Subsequently, an addendum to the agreement dated 28.05.2019 was also executed between the complainants and the respondent. It was mutually agreed that in case the notice of possession of the unit is issue prior to 24.04.2020 then in such a case, the complainants will pay to the respondent an incentive of Rs. 48.70/- per sq ft. per month for the period of preponement and if the respondent issues the notice for possession after the above said date, the respondent will pay a penalty of Rs.48.70/-per sq ft. per month till issue of notice of offer of possession.

IV. In the meanwhile, due to requirements and regulations of competent authorities and for the overall betterment of the project the unit no. of the complainants were re-numbered from 0091 to GF-120 which was intimated to the complainants vide letter dated 20.05.2020.

V. Thereafter, since the unit number was changed and as per prevailing governmental and legal mandates especially rules and regulations laid down under the Real Estate (Regulation & Development) Act, 2016 requiring all agreement for sale to be registered, the complainants and the respondent entered into a new agreement for sale dated 07.01.2021.

VI. That upon the completion of construction of the project, the occupation certificate was granted by the competent authority on 24.12.2021. After receipt of occupation certificate, the respondent issued a notice of offer of constructive possession dated 21.01.2022, 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. However, the complainants with malafide intentions have failed to take over the constructive possession of the unit till date.

VII. That the Co-Allottee Mr. Prakash C Pandey is a real estate agent and runs a consulting firm, namely "Curoso Consulting Private Limited". He was also a channel partner of the respondent.

VIII. That the primary understanding between the complainants and the respondent with respect to the unit was that the complainants wanted to earn maximum returns on their investment by way of receiving lease rental benefits and assured returns. Therefore, it was agreed by the complainants that the Unit was booked solely for earning lease rental and not self-use.

IX. That the booking application, the BBA and AFS, it is evident that the complainants have invested in the instant project with the sole motive of earning lease rental by getting the subject unit leased through respondent. That it was never agreed between the complainants and the respondent that the physical possession of the subject unit shall be handed over to the complainants or the complainants shall lease out the subject unit by themselves.

X. That the arrangement between the parties was to transfer the constructive possession of the subject unit and the same was categorically acknowledged in application form and re-confirmed between the parties by executing the addendum agreement.

XI. That since the complainants, who have also booked 3 more units with the respondent in their other projects (i.e 1 Unit in AIPL Joy Street , 2 units 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.

XII. That as per clause 5 of the AFS it was mutually agreed that the respondent shall handover the possession of the unit to the complainants by 31.12.2022.

XIII. That the respondent offered the constructive possession of the unit to the complainants on 21.01.2022 upon receipt of the occupation certificate on 24.12.2021. Therefore, it is evident that the constructive possession of the subject unit was offered way before the due date as agreed under the AFS, hence there is no delay on the part of the respondent.

XIV. That in terms of clause 32 of the bba executed with the complainants, it was agreed that the respondent shall pay the complainants assured return. Further, without admitting anything in particular as alleged in the complaint, the complainants and the respondent on a special understating entered into an addendum to unit buyers' agreement dated 28.05.2019 where the respondent agreed to pay penalty to the complainants if the respondent issued the notice of possession to the complainants after 24.04.2020.

XV. Accordingly, the respondent as per the agreed terms and conditions, paid an amount of Rs. 48,99,712/- as assured return and penalty to the complainants till the date of the occupation certificate dated 24.12.2021. However, the complainants with a *malafide* intention did not disclose the amount which was received by the complainants as an assured return.

XVI. That the complainants in their complaint as well as relief sought by the complainants under present complaint have pointed out that the respondent have failed to provide the GST credit to the complainants as per section 171 of the Central Goods and Service Tax (CGST) Act, 2017. The respondent, being cognizant of their responsibilities and acting in a

manner consistent with their duties, have duly granted a total Goods and Services Tax (GST) input credit amounting to ₹6,82,725.79/- to the complainants, which fact is further evidenced at serial no. 40 in the annexed statement of accounts.

XVII. That since the complainant no.2 was a real estate agent and a channel partner of the respondent, who had faced financial difficulty during the covid period and could not pay the dues towards all their units booked with the respondent. In fact, due to the default in payment 2 units located in another project of the respondent were cancelled. Therefore, on multiple occasions at the special request of the complainants, huge discounts were provided as an exceptional measure.

XVIII. That the first discount was provided on 31.12.2020 of an amount of Rs.43,90,000/-. The same is evident from serial no. 11 of the statement of accounts attached with the reply. This discount was intimated to the complainants at first, however, due to certain miscommunication a letter dated 15.04.2023 was sent which wrongly stated that no such discount has been provided. However, subsequently vide letter dated 06.05.2023 it was clarified that the said discount has been provided.

XIX. That the second discount was provided on 26.03.2022 for an amount of Rs.3,20,000/- . The same is reflected at serial no. 53 of the statement of accounts. This discount was provided to the complainants at a very request and as a one-time exception.

XX. That the respondent has provided multiple discounts to the complainants and also adjusted pending dues with the assured return payable by the respondent to the complainants. Despite the discounts and the adjustments of the assured return, there is still a huge

outstanding amount of ₹21,40,355/- which is pending payment by the complainants.

XXI. Further, since the complainants are habitual defaulters who have not paid the dues in a timely manner, therefore, the respondent was constrained to issue multiple reminder letters to the complainants after offer of possession to clear their dues on 14.01.2025, 11.12.2024, 11.04.2024, 08.11.2023, 15.03.2023, 11.01.2023, 10.11.2022, 20.06.2022, 21.02.2022, 11.02.2022, 21.01.2022.

XXII. That the complainants, despite receiving the aforementioned reminder letters miserably failed to pay the outstanding dues on time. That the same is violation of Section 19 (6) of the RERA Act, 2016 which lays the duty on the Allottee to make necessary payments pertaining to the allotment of the unit as per the payment schedule agreed under the agreement.

XXIII. That the complainants have failed to pay the timely instalments, therefore, as per the agreed terms and conditions of the agreement and Section 19 (7) of the RERA Act, 2016, the complainants are under a bounden duty to pay the interest on the delayed payments. Hence, the relief sought by the complainants with respect to waiver/refund/adjustment of interest is not maintainable.

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 respondent has 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.

E.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.

E.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 complainants at a later stage.

F. Findings on the Objections raised by Respondent.

F.I Objection regarding the complainants being investor.

11. The respondent has taken a stand that the complainants are 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 complainants, it is crystal clear that the complainants 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 complainants:

(i) Direct the respondent to handover the physical and vacant possession of unit GF-120 to the complainants in terms of the original unit buyer's agreement.

13. The complainants have sought physical possession of the unit. The Authority observes that the unit no. 0091 on ground floor was initially allotted to the complainants on 16.06.2016 and thereafter an agreement was executed on 24.08.2017 for the said unit. The agreement dated 24.08.2017 also contained a leasing arrangement and clearly stipulated that the unit was meant exclusively for leasing purposes.

14. Subsequently, the allotted unit no. 0091 on ground floor was changed to unit no. GF-120, for which a new agreement was executed on 07.01.2021. Clause 20 of the agreement dated 07.01.2021 categorically provides that physical possession of the unit shall not be handed over to the Allottee. The said clause is reiterated as under:

> *"PHYSICAL POSSESSION OF THE UNIT:*
>
> *The Allottee hereby confirms that the Allottee has invested in the Unit since it intends to lease the Unit in the Project. The Allottee agrees and acknowledges that the Promoter has allotted the Unit to the Allottee on the specific understanding* ***that physical possession of the Unit will not be given to the Allottee and the Unit is not for the personal physical occupation or use by the Allottee****. Accordingly, the Carpet Area of the Unit has been computed without any physical partition."*

15. In view of the explicit contractual terms contained in the Agreement dated 07.01.2021, the Allottee is not entitled to physical possession of the unit.

(ii) Direct the respondent to pay the assured return and the assured return penalty of 4.5 months which was arbitrarily waived off by the respondent company.

16. In the present complaint, the complainants booked a unit in the project of the respondent namely, AIPL Joy Central, situated at Sector- 65 of Gurugram. The complainants were allotted a unit bearing no. GF-0091 on Ground Floor admeasuring 1386 sq. ft. vide allotment letter dated 16.06.2017. Subsequently the builder buyer agreement was executed between the parties on 24.08.2017. Subsequently on 28.05.2019 an addendum to buyer's agreement was executed between the parties. That on 07.01.2021 new agreement for sale was executed between the parties and subsequently unit no. was also changed from GF-0091 to GF-120 on ground floor. The respondent has obtained the occupation certificate on 24.12.2021 and subsequently offered the constructive possession of the unit on 21.01.2022.

17. The complainants in the present complaint have sought relief regarding payment of assured return. The Authority observes that buyer's agreement dated 24.08.2017 contains a clause no. 32 regarding payment of assured return. 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. 53,725/- per month by way of assured return to the Allottee from 09.06.2017 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.*

18. As per the said clause 32 of the builder buyer agreement dated 24.08.2017 the respondent is liable to pay the assured return of Rs. 53,725/- per month from 09.06.2017 till the date of issuance of notice of possession.

19. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the agreement dated 24.08.2017 was executed in respect of Unit no. GF-0091. Subsequently unit was changed and new agreement for sale dated 07.01.2021 was executed between the parties in respect of Unit GF-120. The complainants have signed this Agreement without protest or reservation. It is also a matter of record that the agreement for sale dated 07.01.2021 contains an explicit clause no. 24 providing that the agreement shall supersede and replace all other earlier agreements, proposals, statements or undertakings between the parties. The said clause is reproduced hereunder for ready reference:

> *24. Entire Agreement:*
> *This Agreement and Schedules hereto constitutes the entire Agreement among the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous correspondence(s), report(s), project report(s), agreement(s), negotiations, discussion(s), representation(s), promise(s), or understandings, both written or oral, among the parties, with respect to the subject matter hereof. The, preamble and recitals to this Agreement shall form an integral part of this Agreement.*

20. In the present case, even assuming that the agreement dated 24.08.2017 created a contractual liability for assured return in respect of Unit GF-0091, the said agreement cannot be enforced after the execution of the Agreement for Sale dated 07.01.2021, which extinguished, substituted and replaced all prior obligations. The complainants cannot simultaneously rely upon the benefits of a fresh contractual allotment of a new unit and selectively enforce an earlier

agreement associated with a surrendered unit. Such an interpretation would be contrary to both the intention of contracting parties and well-settled legal principles.

21. Further, the agreement for sale dated 07.01.2021 does not provide any assurance of assured return. The absence of such a clause confirms that the contractual rights have been consciously modified by both parties. Thus, the Authority finds no legal basis to direct payment of assured return claimed in this complaint. 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) 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 22.01.2022, i.e. the date of offer for possession issued by the respondent company.

22. In the present complaint, the complainants are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> ***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***
> ***(Emphasis supplied)***

23. The complainants booked a unit in the project of the respondent namely, AIPL Joy Central situated at sector-65, Gurugram. The complainants were allotted a unit bearing no. GF-0091 on Ground Floor admeasuring 1386 sq. ft. vide allotment letter dated 16.06.2017.

Subsequently the builder buyer agreement was executed between the parties on 24.08.2017. Subsequently on 28.05.2019 an addendum to buyer's agreement was executed between the parties. That on 07.01.2021 new agreement for sale was executed between the parties and subsequently unit no. was also changed from GF-0091 to GF-120 on ground floor.

24. Clause 7 of agreement to sale dated 07.01.2021 provides for the schedule for possession of the unit and the same is reproduced below:

> *7. Possession of the Unit*
> *7.1 Schedule for possession of the Unit- The Promoter agrees and understands that timely delivery of possession of the Unit to the Allottee and the Common Area is the essence of Agreement.*
> *The Allottee hereby agrees that whenever the reference is made for possession of the Unit in this Agreement or any other document with reference to the Unit, it shall always mean constructive/symbolic/notional possession of the Unit and not physical handover of the Unit to the Allottee. The Allottee hereby confirms that the Promoter has in no way made any representation or warranty to the Allottee that the Promoter shall offer/handover physical possession of the Unit to the Allottee except where specifically agreed by the Promoter in writing with the Allottee.*

25. The said clause 7 is mentioned the agreement to sale dated 07.01.2021 but it does not specify any definite time period within which possession is to be handed over. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** -:

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

26. Accordingly, the due date of possession is calculated as 3 years from the date of agreement to sale i.e., 07.01.2021. Therefore, the due date of possession comes out to be 07.01.2024.

27. In the present case the Authority observes that the respondent has obtained the occupation certificate on 24.12.2021 and subsequently offered the unit to the complainants for possession on 21.01.2022.

28. The Authority is of the considered view that the respondent has completed the construction of the project and offered possession of the allotted unit to the complainants prior to the stipulated date of possession, as per the terms of the agreement. In light of this timely completion and offer of possession, the complainants are not entitled to any delay possession charges (DPC).

29. It is a settled principle under Section 18 of the Real Estate (Regulation and Development) Act, 2016, that a promoter becomes liable to pay compensation in the form of delay possession charges only in the event of a failure to complete the construction or hand over possession within the agreed timeline. In the present case, no such delay has occurred. On the contrary, the respondent has demonstrated due

diligence by obtaining the occupation certificate on 24.12.2021 and offering possession on 21.01.2022.

30. Since there has been no breach of the agreement as well as of the provisions of Section 18(1) of the Act of 2016 for delay in the completion of the project, therefore the Authority finds no justification for awarding delay possession charges to the complainants. Accordingly, no case for delay possession charges is made out.

(iv) Direct the respondent to execute the conveyance deed with regards to the said unit GF-120 with the complainants.

31. The complainants are 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.

32. The occupation certificate has been obtained on 24.12.2021 and subsequently unit was offered the constructive possession on 21.01.2022. 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.

(v) Direct the respondent to cancel the unjust and arbitrary demand raised on the complainants in the form of maintenance charges, interest on maintenance charges and not hold possession due to these unpaid dues.

33. The Authority is of the view that the respondent is right in demanding maintenance charges at the rate prescribed therein at the time of offer of possession.

(vi) Direct the respondent to cancel the arbitrary interest charges imposed on alleged delay in payment with regards to the said unit.

34. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

(vii) Direct the respondent to refund the amounts paid, i.e. Rs. 21,537/- and Rs. 3,17,262/- paid towards labour cess and sinking fund.

35. **Labour Cess:** Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled ***Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants are completely arbitrary and the complainants cannot be made liable to pay any labour cess to the

respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

36. **Sinking Fund:** The respondent shall not charge anything from the complainants, which is not the part of the buyer's agreement.

(viii) Direct the respondent to refund the GST input Credit that is legally due to the complainants along with the statement of accounts to the complainants and order an investigation on the respondent for non-compliance of Section 171 of the CGST Act with all unit holders in the said project and also initiate an investigation under the GST Act and national anti-profiteering measures against the respondent.

(ix) Direct the respondent to refund the Rs. 4,70,357/- being GST charged illegally on the discount provided by the respondent.

37. The complainants have sought the relief with regard to direct the respondent to give anti-profiteering credit/input tax credit to the complainants and charge the GST as per rules and regulations, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below.

> *"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

38. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section

171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of section 171(1) of the HGST Act, 2017. The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

(x) Hold the respondent guilty of indulging into unfair practices to the complainants and award a compensation of Rs. 50,00,000/- towards loss of profits.

(xi) Award litigation cost to the complainants.

39. 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.

H. Directions of the authority

40. 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/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.

41. Complaint as well as applications, if any, stands disposed off accordingly.

42. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025