

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No.1201-2023

Date of Decision: 07.01.2026

Ms. Krishna Dhingra, R/o T-2/901, Unitech Fresco, South City-II, Nirvana Country, Sector-50, Gurugram.

Complainant

Versus

Advance India Projects Limited, R/o AIPL Business Club, 5th Floor, Golf Course Extension Road, Sector-62, Gurugram, Haryana.

Respondent

APPEARANCE

For Complainant:

Mr. Varun Chugh, Advocate.

For Respondent:

Mr. Dhruv Rohatgi, Advocate.

ORDER

1. This is a complaint, filed by Ms. Krishna Dhingra (allottee) under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against Advance India Projects Limited (promoter) as per section 2(zk) of Act 2016.

2. Briefly stated, according to complainant, a Food Court Outlet Space, bearing No. SF/057, (Second Floor) admeasuring 645.19 Sq. Ft., in a

Sub
AD

project of the respondent i.e. Advance India Projects Limited, known as "AIPL Joy Street" (the project) situated at Sector-66, Gurugram, Haryana, was booked by her (complainant) An allotment letter dated 14.03.2018 was issued by the respondent, in her favour. Total cost of the aforementioned unit was Rs.48,27,776.12/-. It was a time linked payment plan. The entire sale consideration has already been paid by her (complainant) and nothing is due and payable to the respondent.

3. That the respondent had portrayed a rosy picture regarding the project in question and had claimed itself to be the numero uno for having tie ups with international brands and hence assured confirmed leasing arrangement for the unit in question, purchased by her it was sole reason, for her to purchase the food court outlet space the respondent thereby promising a guaranteed leasing arrangement.

4. That believing in the assurance and reposing trust in the commitments made by the respondent, she (complainant) purchased the property in question with a hope that her hard-earned money invested there-in will turn out to be fruitful. After making the entire payment towards the cost of the unit, within sixty days from the date of the booking i.e. March 2018 itself, the respondent did not execute any builder buyer's

AD

agreement (BBA) or any agreement for sale. It was only after much persuasion by the complainant that finally on 17.06.2022, the respondent was constrained to execute an agreement for sale, with respect to the unit in question. As per agreed terms between the parties, the complainant was not supposed to get constructive possession of the unit in question as the respondent had been granted the exclusive leasing rights of the unit in question. In fact, on 01.10.2020, the respondent offered constructive possession of the unit in question to the complainant.

5. That by virtue of the said leasing arrangement, the complainant has conferred right in favour of the respondent to negotiate and finalize the leasing arrangement in respect of the unit in question, either individually or in combination with other adjoining units (whether horizontally or vertically), with any intending tenant/lessee/licensee, on such commercial terms including but not limited to lease/license tenure, rent/license fee, fit out period, rent/license fee free period, lock-in period, security deposit, penalty, maintenance charges, power back-up/utility charges, parking charges etc. The respondent vide its letter dated 14.09.2018 informed her (complainant) that they have been able to conclude a leasing arrangement with food court operator by the name of

dnb
AO

"Food Quest" for leasing out the food court of the project in question. Unit belonging to the complainant was also a part of the said lease agreement. For said very purpose, the respondent requisitioned the account details of the complainant besides other KYC formalities, for remittance of the monthly rental amount in her account, which was to commence upon receipt of the possession of the unit in question.

6. That in letter dated 14.09.2018, the respondent categorically stated the lease term, rental amount, lock-in period, security deposit and other terms and conditions of the purported lease. However, to the utter shock and surprise of the complainant, after the receipt of the constructive possession of the unit in question, she never received any monthly rent as committed by the respondent and after waiting for a considerable period, she (the complainant) was finally constrained to write emails besides personal visits enquiring about the reason for non-payment of the monthly rent as assured by the respondent. The respondent cited covid-19 pandemic the only reason for non-payment of rent as the leasing arrangement with the said food court operator could not take effect.

7. That again vide its letter dated 09.08.2022, the respondent informed the complainant that they have been able to sign a lease deed


AO

with another food operator by the name of "Gokhana" which also included the unit belonging to the complainant. Till date, not even a single penny has been remitted in the account of the complainant, in the name of monthly rental and the complainant has been left in the middle of nowhere. The complainant again confronted the respondent for non-payment of monthly rent but all her attempts yielded no results and she was forced to write several emails to the respondents, enquiring the reason for the said non-payment of rent.

8. That the entire scheme of selling the food court outlet space under the guise of getting good rental yield has been devised by the respondent in order to cheat the innocent buyers like her. The respondent neither remitted any rent nor ever intended to remit any rent in the bank account of the complainant. The respondent has duped so many buyers by selling the food court space at exorbitant prices. In fact, the said agreement for sale entered between the parties is totally one sided, which imposed completely biased terms and conditions upon her (complainant).

9. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the

1/10/20
AO

advertisement material. Moreover, the project has been inordinately delayed.

10. Citing the facts as mentioned above, complainant prayed for following reliefs: -

a) To direct the respondent to pay Rs.7,41,457/- as compensation on account of loss occasioned due to non-payment of rent commencing from February 2021 i.e. (01.10.2020 which is the date of constructive handover of possession plus four months fit out period) till February 2023, along with interest @ 12% per annum of the rental amount accrued to the complainant, as per provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA") and Haryana Real Estate (Regulation and Development) Rules, 2017 ("HRERA");

b) To direct the respondent to pay a sum of Rs.50,000/- to the complainant towards the cost of the litigation;

c) Pass such order or further order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.

11. The respondent contested the complaint by filing a written reply. It is averred that the complainant has no locus standi or cause of action to file present complaint. The complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainant herself had failed to comply with the obligations of the agreement to sell, by not clearing outstanding dues.

Sub
AD

Moreover, the respondent has fulfilled its commitments by leasing the unit of the complainant as per the terms agreed between the parties. The present complaint is not maintainable in law or on facts.

12. That the complainant is not an "Allottee" but an Investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The complainant has not come before this Authority with clean hands and suppressed vital and material facts. The unit allotted was provisional and subject to change as was categorically agreed between the parties. Moreover, the complainant was duly apprised with the fact that the said unit is not for self-occupation and is for the purpose of leasing out.

13. That pursuant to the booking of the said unit, some brands have approached the respondent in order to take the unit of the complainant on lease along with other units. Moreover, letter of intent was also signed between the parties in order for leasing the said unit of the complainant. In case for any reason whatsoever, the Brand withdraws from the Letter of Intent, it (respondent) does not assume any liability for payment of rent in terms of the Letter of Intent. However, in such a case, in terms of the above referred Agreement, it (respondent) will endeavor

1/16/20
AO

lease the unit to some other prospective tenants. The respondent has duly informed the complainant that in case, the brand withdraws from the letter of intent, the respondent has no liability to pay any lease rent to the complainant, however it will endeavour to find another tenant.

14. That the leasing of the said unit is dependent upon the market conditions and the brands have had financial impacts on the account of Covid-19 pandemic. That due to the said pandemic, the whole nation was under a lockdown and all things were at a stand-still including the real estate sector. Due to the financial hit by the pandemic, some prospective tenants were unable to continue with the lease and had to cancel the leasing arrangement with the respondent. The complainant is trying to reap undue benefits at the expense of the respondent.

15. Denying all averments of complainant, the respondent prayed for dismissal of complaint.

16. Both of the parties filed affidavits in support of their claims.

17. I have heard learned counsels appearing for both of parties and perused the record.

18. The facts that complainant purchased subject unit i.e. Food Court Outlet Space bearing No. SF057 Admeasuring 645.19 sq. ft. in its

krb
Ao

project known as AIPL Joy Street, Sector 66, Gurugram and paid entire sale consideration, were not disputed by the respondent. Although BBA, executed between the parties mentions about allottee having requested the promoter to put said unit individually and/or in combinations with other units by way of merging it as part of larger area, ^{it} is contended by learned counsel for the complainant that a rosy picture was shown to his client that the promoter was in contact with ^{Foot} many giants for the purpose of leasing, which will fetch a good rent for her. She (complainant) was allured by such promise to purchase unit in question. Learned counsel for respondent claims that the unit was not to be physically handed over to the allottee i.e. complainant. It was agreed that respondent will have rights to lease it out, alongwith units of other allottees, as a single unit to some food giant.

19. It is further plea of learned counsel for complainant that, even as per said agreement, the respondent failed to lease it out and she (complainant) was not given any option to lease it out, on her own. The respondent kept on informing her that they are in contact with some ^{Foot} giants and her unit is likely to be leased out shortly. Firstly in favour of "Food

116
Ao

Quest" and then in favour of "Gokhana". Copies of Communications exchanged between the parties (through email) are on the record.

20. As per learned counsel for respondent, his client i.e. respondent was ready to hand over physical possession of unit to the complainant when failed to lease it out but complainant never made a request in this regard.

21. All this is denied by learned counsel for complainant. It is not plea of learned counsel for respondent even that ^{the} latter sent any communication to the complainant, allowing her to search for some tenant/lessee. As per learned counsel, it was for complainant to ask his client i.e. respondent to hand over possession of subject unit, so that she could leased it out, on her own.

22. I am not in consonance with learned counsel on this issue. When, respondent failed to lease out subject unit, it was for it (respondent) to inform the allottee/complainant telling her that she was free to lease it out, on her own. Correspondences exchanged between the parties through email are evident that the complainant requested the respondent time and again, to lease it out but the respondent, despite expressing ^{his} inability, kept the complainant in dark. Assurances were given again and again to

Ad

lease it out. Names of two such prospective tenants have already found mentioned in the communication between the parties. For example, through email dated September 14, 2018, the respondent gladly informed to the allottee/respondent that "Food Quest" (brand) has agreed to take on lease the ^{subject} unit in combination with other units in the project. A letter of intent was mentioned to have been signed with that brand. The rate of lease was mentioned as follow:-

Rental	Year 1	pure revenue share of net sales
	Year 2	MG of Rs. 38 per sq. ft. on super area or revenue share, whichever is higher
	Year 3	MG of Rs. 40 per sq. ft. on super area or revenue share, whichever is higher

Similar mail was sent to complainant on June 6, 2019 informing the latter about "Food Quest" having agreed to take the unit of complainant on lease alongwith other units, after enhancing some lease amount. On 30th September 2022, the respondent informed the complainant in reply of ^{latter's} latest email that same (respondent) understands her concern. It was mentioned that "Food Quest" had cancelled leasing arrangement on account of financial constrained "Gokhana" was mentioned as having started operation in September 2022 only. The respondent explained that

lib
AO

rentals in the initial months take time to get released as brands need to do match their calculations and accordingly share the amount of releasing. The respondent claimed in this letter that several brands were already in operations in Joy Street and many more were under fit outs. Said email was dropped by the respondent in reply of complainant's communication, where she asked update on the 'Food court' as if there was any tenant on it or not. The respondent again on 10.08.2022, informed the complainant about signing of lease deed with "Gokhana". When complainant was fed up with the respondent having sent about 50 emails and discussed personally in length. The complainant asked about assured rental for last 1.5 years. The respondent replied stating that same will like to apprise you (complainant) that we (respondent) are working on leasing. Intimation letter will be provided to you (complainant) within seven working days.

Trite it to mention here that in her email dated May 1st, 2022, the complainant expressed her disappointment stating that state of affairs were frustrating, careless, sad and miserable. She reminded the respondent about its promise when she (complainant) booked food court in 2018. Complainant mentioned about no updates on rental payment even after 1.5 years of OC. Prior to that, the respondent conveyed that same

lib
AO

understood annoyance of the complainant due to delay in processing agreement and leasing but explained that their team was already working towards the brand and assured for update.

All these emails show that respondent kept on assuring the complainant to lease out the unit, but never offered an option to ^{the} complainant to lease out on her own.

23. In this way, when respondent failed to lease out the unit, allotted to the complainant despite representations and assurances in this regard, and did not offer the complainant to let it out, same is liable to compensate the complainant for loss suffered by the latter. As stated earlier, the complainant was lured to purchase subject unit when respondent represented that same will arrange for letting out said unit in combination with other units.

24. The complainant has requested for direction to respondent to pay Rs. 7,41,457/- as compensation on account of loss occasioned due to non-payment of rent commencing from February 2021 i.e. the date of constructive handover of the possession plus two months till February 2023, alongwith interest at rate 12% per annum. Amount of Rs. 7,41,457/- if divided by 24 months (from February 2021 February 2023) comes to

Ad
AO

30,894/- per month. As stated earlier, the respondent mentioned about an agreement with "Food Quest" with lease amount, "on the basis of pure revenue share net sales for first year" and "Rs. 40 per sq. ft. for second year" and "42 per sq. ft. for third year". Even if lease amount is taken as Rs. 40 per sq. ft. the loss suffered by complainant can be taken as Rs. 40 (per sq. ft.) multiplied by 645.19, (sq feet of total area) which it comes to Rs. 25,807/- per month.

25. Considering all this, in my opinion, the complainant is entitled for compensation for loss of lease amount at rate Rs. 25,800/- (rounded up) per month from February 2021 i.e. date of constructive hand over of possession till the date unit is actually leased out or up to date when same is handed over to the complainant, for leasing out by her own.

26. The respondent is directed to pay said amount alongwith interest at rate 10.85% per annum from the date of this order till realization of amount. Amount of lease (if any) paid by respondent is liable to be deducted. Apart from same, complainant has asked for Rs. 50,000/- as cost of litigation. Although, complainant did not adduced any evidence as what fee was paid by her to her counsel. It is evident that she

dwg
AO

was represented by an advocate during proceedings of this case. She is allowed a sum of Rs 50,000/- as cost of litigation.

27. Complaint is thus allowed.
28. File be consigned to the record room.

Ans
AO


7-1-2026

Complaint No. 1201 of 2023

Present: Mr. Varun Chugh, Advocate, Advocate for complainant.
Mr. Dhruv Rohatgi, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
07.01.2026