BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint filed on : 22.02.2024
Date of decision : 20.11.2025

Ajay Vaishnavi
R/o: - H.No. B-169, Sector-11, Faidabad,
Haryana - 122017 **Complainant**

Versus

M/s Advance India Projects Ltd.
Office at: - 232-B, 4th Floor, Okhla Industrial Estate,
Phase III, New Delhi-122002. **Respondent**

CORAM:
Shri Phool Singh Saini **Member**

APPEARANCE:
Shri Parag (Advocate) Complainant
Sh. Dhruv Rohatgi (Advocate) Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 to the allottee as per the agreement for sale executed *inter se* them.

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 Street
2.	Project location	Sector 66, Village Medawas & Badshahpur, Gurugram, Haryana
3.	Project type	Commercial Complex
4.	Application dated	08.10.2018 (As per page no. 17 of the complaint)
5.	Allotment of unit	03.11.2018 (As per page no. 21 of the complaint)
6.	Unit no.	022, Ground floor (As per page no. 21 of the complaint)
7.	Unit area admeasuring	296.01 sq. ft. (super area) (As per page no. 21 of the complaint)
8.	Date of unit buyer agreement	Annexed but not executed (As per page no. 35-64 of the complaint)
9.	Possession clause	**7.2** *The promoter upon obtaining the grant of occupation certificate by **30th June 2023** or as may be further extended/amended by the RERA authority, in respect of the Project, shall offer in writing the possession of the said unit within 3 months from the date of receipt of such approval, to the allottee as per terms of this agreement. ("Notice of offer of possession of the unit.)* (As per page no. 47 of complaint)
10.	Due date of possession	30.06.2023 (As per page no. 47 of complaint)
11.	Sale consideration	Rs.35,14,112/- (As per page no. 35 of complaint)
12.	Amount paid	Rs. 20,81,064/- (As per page no. 33 of complaint)

13.	Application for grant of OC	02.06.2023 (As per page no. 67 of reply)
14.	Occupation certificate	09.11.2023 (As per page no. 68 of reply)
15.	Intimation of constructive possession	01.12.2023 (As per page 25 of the complaint)
16.	Pre- termination letter	06.02.2024 (As per page no. 66 of reply)
17.	Letter for leasing the unit to Zudio	09.02.2024 (As per page no.71 of reply)
18.	Termination letter dated	19.03.2024 Filed as additional documents dated 16.01.2025

B. Facts of the complaint

3. The complainants have made the following submissions: -

i. The opposite party is constructing a project titled "AIPL JOY SQUARE" in Sector 63A, Golf Course Extension Road, Gurugram, Haryana for developing commercial complex and has invited the public to invest in the said project, registered under HRERA vide registration no. 259 of 2017.

ii. Through public advertisements, the opposite party boasted that it is their endeavor to meet the expectations of the buyers. That the opposite party further claimed that AIPL JOY SQUARE is inspired by the dreams of consumers and driven by its commitments to deliver the finest quality and set new benchmarks in the industry. Complainant being lured and deceived by such advertisements, representations and tall claims of the opposite party, booked a unit in the project titled as "AIPL JOY SQUARE".

iii. The complainant namely Mr. Ajay Vaishnavi, R/o A-1204, Park View City – 2, Sohna Road, Gurugram, Haryana – 122018 purchased a Retail unit bearing no. GF-022 measuring 296.01 square feet on 25/09/2018 relying on the opposite party's advertisements and assurances, by paying Rs. 5,00,000/- vide cheque bearing no. 155505 dated 22/09/2018.

iv. On 03/11/2018, the opposite party allotted the above said retail unit to the complainant by virtue of the allotment letter and as per the allotment letter, it was agreed that the total sale consideration in lieu of the said unit was Rs. 31,67,307/-. The complainant paid Rs. 10,90,400/- vide cheque bearing No. 214278 dated 10/11/2018 as the next instalment.

v. Various mails have been sent by the complainant to the opposite party for providing the possession of the unit but the opposite party paid no heed to it and delayed the matter on one pretext to another and offered constructive possession instead of the actual physical possession vide e-mail dated 01/12/2023 wherein the opposite party has specifically defined the constructive possession as:

> ***"Constructive Possession:***
> *We would like to inform you that upon receipt of the entire outstanding amount and completion of the documentary formalities as mentioned above, we shall offer you the constructive possession of your Unit in terms of the Buyer Agreement. It is made clear that as per the Buyer Agreement physical possession of the Unit shall never be given to you. In case you wish to visit the Unit for an interim inspection, you are requested to kindly intimate the same to our Facility Management Team@ 7378580457 or CRM Team@ 9211168888 2-3 days prior to the date of such visit."*

vi. That there is no concept of constructive possession in Indian Law. Moreover, the buyer agreement was never executed between the parties. Hence, the unilateral clause of the constructive possession and the offer of constructive possession dated 01/12/2023 is not binding on the complainant.

vii. As per the said frivolous letter for offer of constructive possession, the opposite party demanded arbitrary extra charges from the complainant such as Rs. 67,062/- as common area maintenance charges calculated in advance for 12 months @ Rs. 16/- per square ft. per month and Rs. 62,870/- as sinking fund calculated @ Rs. 180/- per square ft. to be paid to AIPL JOY SQUARE MGMT SERVICES PVT. LTD.

viii. Thereafter, the opposite party also offered the registration of agreement of sale without even giving actual physical possession vide email dated 06/01/2024.

ix. On perusal of the clauses 5, 7.2, 7.7, of the unsigned unexecuted agreement, it is pertinent to note that the opposite party had to deliver the possession of the unit to the complainant by 30/06/2023. The opposite party shall pay the complainant interest at the rate prescribed in the Rules for every month of delay, till the issuance of the notice of offer of possession of the said unit which shall be paid by the opposite party to the complainant within 90 (ninety) days of it becoming due.

x. The opposite party and the confirming party as per the agreement have absolute, clear and marketable title with respect to the said land (on which the project has been carried out) and the opposite party has requisite rights to carry out development upon the said land and absolute, actual, physical and legal possession of the said land for the project.

xi. However, to the contrary the opposite party failed to deliver the actual physical vacant possession of the unit to the complainant till date, despite opposite party having absolute, actual, physical and legal possession of the said land for the project, the opposite party failed to offer actual, physical and vacant possession of the subject

unit to the complainant and only offered frivolous notice of constructive possession dated 01/12/2023 and that too after the complainant repeatedly enquired about the status of project and his allotted unit.

xii. Vide email dated 23/01/2024, the complainant refused to accept the constructive possession out rightly and also agreed to pay the remainder balance and register the sale agreement on a condition that the opposite party shall provide the actual physical possession of the said unit to the complainant.

xiii. Thereafter the opposite party again ignored the valid and lawful demand of the complainant and issued a frivolous pre-termination letter to the complainant dated 06/02/2024 wherein the opposite party made arbitrary demand of outstanding balance from the complainant within seven days of the issuance of the said pre-termination letter without even providing the actual physical possession. The opposite party is adamant to unlawfully and arbitrarily terminate the booking of the complainant and forfeit the hard-earned money of the complainant and the same is evident from the pre-termination letter dated 06/02/2024 and various email communications between the complainant and the opposite party.

xiv. On receipt of pre-termination letter dated 06/02/2024, the complainant personally visited the project site and was shocked to see that his unit was not even completed yet and the opposite party in order to cheat the complainant and extract money from him illegally, issued frivolous notice of offer of constructive possession and frivolous pre-termination letter dated 06/02/2024.

xv. The opposite party have duped the complainant and have clearly misrepresented the facts and same further shows their malafide intentions and unfair trade practices. Furthermore, it is submitted

that the opposite party and their officials have been playing tricks and hide behind the wrong doings to wriggle out of the binding contract by playing tricks.

xvi. The cause of action in the present complaint is within the jurisdiction of this Hon'ble RERA, as the property is situated in Sector 63A, Gurugram, Haryana and such this Hon'ble RERA is competent to adjudicate the present complaint.

xvii. The cause of action arose on 01/12/2023 when the opposite party offered the constructive possession of the unit to the complainant. That the cause of action further arose on 06/02/2024 when the opposite party served a pre-termination letter to the complainant.

C. Relief sought by the Complainant:

4. The complainant has sought following relief(s):

i. Direct the respondent to withdraw the frivolous notice of offer of possession dated 01/12/2023.

ii. Direct the respondent to withdraw the frivolous pre-termination letter dated 06/02/2024.

iii. Direct the respondent to deliver the actual physical vacant possession of the unit bearing no. GF-022 in the said project namely AIPL JOY SQUARE; Rs. 5,00,000 for deficiency in service; Rs. 5,00,000/- for causing mental torture and harassment to the complainant; Rs. 50,000/- as monthly rent of the unit for delayed period till delivery of the possession.

iv. In case the opposite party wishes to take the premises from complainant, then the opposite party must pay market rent of the premises from the day it wants to take over the premises.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the Respondent:

6. The respondent has contested the complaint on the following grounds:

i. The complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the application form.

ii. That the complainant is not an "Allottee" but an investor who has booked the unit in question for a business purposes in order to earn rental income/profit from its resale.

iii. The complainant had approached the respondent and expressed an interest in booking a unit in the commercial colony developed by the respondent and booked the unit in question, bearing number GF/022, ground floor admeasuring 296.01 sq. ft. (tentative area) situated in the project developed by the respondent, known as "AIPL Joy Square" at Sector 63A, Gurugram, Haryana. The complainant vide application form applied to the respondent for provisional allotment of a unit bearing number GF/022 in the project.

iv. The complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project that the unit is not for the purpose of self-occupation and use by the allottees and is solely for the purpose of leasing the same to the third parties along with combined units as larger area. It was only after the complainant was fully satisfied with regard to all aspects of the project, he himself took an independent and informed decision to purchase the unit.

v. The booking was categorically, willingly and voluntarily made by the complainant with an understanding of the same being for leasing purposes and not self-use, as can be noted in clause k of the of the application form:

> *"k) I/We agree that the* ***Unit is not for the purpose of self-occupation and use by me/us and is for the purpose of leasing to third parties*** *along with combined units as larger area. I/We have given unfettered rights to the Company to lease out the Unit along with other combined units as a larger area on the terms and conditions that the Company would deem fit. I/We shall at no point of time object to any such decision of leasing by the Company."*

vi. As can be noted from the above-mentioned clause k of the application form, the complainant had given unfettered right to the respondent to lease the unit and had agreed to not object to the decision of leasing at any point in time. However, despite having booked the unit on these very terms, the complainant has *malafidely* filed the present complaint with the motive to seek wrongful gains over the respondent by seeking physical possession of the unit, which was never the term agreed upon.

vii. At this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms. That in the present case, the complainant purchased the unit only on the categorical understanding that the unit shall not be for self-occupation but for the purpose of leasing to third parties.

viii. That pursuant to the execution of the application form, the allotment letter dated 03.11.2018 was issued to the complainant. The arrangement between the parties was to handover the constructive possession of the Unit and the same was categorically agreed between the parties in the application form and no protest in this regard had ever been raised by the complainant and the same was willingly and voluntarily accepted by the complainant. It was the complainant who signed and submitted the application after reading and understanding the same. The entire story as narrated by the complainant in the present complaint is nothing but a concocted and after thought story to extract undue advantage from the respondent. The complainant choose to remain silent till 24.02.2024 from the date

of submitting the application form in the year 2018, even after writing letter dated 09.02.2024, intimating regarding proposed to lease the unit to some tenant. The entire arrangement between the parties to offer only the constructive possession of the unit in question was two folds, which was one of the main attractions for the complainant to make the booking by submitting the application form. Firstly, the allottee was being given the convenience of leasing out its unit, without putting any efforts and the complications of finding a suitable tenant for his premises. Secondly, the goodwill and network of the respondent enabled the presence of marquee brands in the project, thereby increasing its footfall and the value of the project, consequently, resulting into higher rentals for the benefit of the allottees themselves.

ix. The complainant by filing the present complaint and by taking such baseless and untenable pleas is just trying to conceal the material facts in order to somehow cover up his own wrongs, delays and latches and to wriggle out of his financial obligations, by concocting false and frivolous story. Despite all the goodwill gestures extended by the respondent, the complainant is trying to illegally extract benefits from the respondent and his main aim is to cause wrongful gain to himself and wrongful loss to the respondent from time to time.

x. The complainant has filed the present complaint before the Hon'ble Authority which is not maintainable in the eyes of law. That the complainant is also praying for the relief of "compensation" which is beyond the jurisdiction that this Hon'ble Authority. That from the bare perusal of the RERA Act, it is clear that, as per section 18 of RERA Act 2016 three kinds of remedies are provided in case of any dispute between a builder and buyer with respect to the development of the project. That the said remedies are of refund in nature in case the

allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred to the allottee.

xi. The respondent approached the complainant and requested the complainant to complete the formalities for registration of the buyer's agreement, however, the complainant failed to execute the same. The respondent from time to time issued emails dated 16.12.2019, 31.03.2020 and 09.04.2021 to the complainant in this regard. That ultimately, after repeated follow ups and reminders by the respondent company to the complainant for execution of the buyer's agreement, it was informed by the complainant that he had misplaced the buyer's agreement sent to him by the respondent company. That in order to be sent another copy of the buyer's agreement, the complainant submitted an affidavit dated 20.11.2021. Pursuant thereto, the respondent sent another copy of the agreement to sell/ buyer's agreement to the complainant for execution. The copy of the buyer's agreement/ agreement to sell has been filed by the complainant. The complainant has, till date, not signed the buyer's agreement/ agreement to sell on bogus and flimsy reasons.

xii. The respondent from time to time requested the complainant to submit the charges so that all necessary formalities relating to the execution of the buyer's agreement could be concluded, however, the complainant deliberately ignored all such requests. The respondent once again sent several email reminders to the complainant dated 29.05.2022, 27.04.2023, 12.06.2023, 03.08.2023, 14.09.2023, 17.10.2023, 14.11.2023 and 06.01.2024 to come forward and complete the formalities for execution of the buyer's agreement/ agreement to sell.

xiii. The respondent issued several reminders/calls to the complainant requesting him to remit the outstanding payments however, the said letters were ignored by the complainant. The respondent, running out of options, due to continuous defaults of the complainant in remitting the payments, was constrained to issue pre-termination letter dated 06.02.2024 to the complainant, which the complainant paid no heed to.

xiv. Despite the defaults of the complainant, the respondent has completed the development of the said project and applied for the occupation certificate on 26.06.2023 and obtained the occupation certificate of the project on 09.11.2023.

xv. The respondent has acted strictly in accordance with the terms and conditions of the application form. There is no default or lapse on the part of the respondent. The allegations made in the complaint inter-alia that the respondent has failed to comply with the payment obligations. On the contrary, it is the complainant who is in the clear wrong by not remitting the outstanding amount of the said unit in question within the stipulated time despite numerous reminders. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

xvi. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submissions made by the complainants-allottees.

E. Jurisdiction of the Authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance

of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complainant being investor.

12. The respondent took a stand that the complainant is investor and not allottees and 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. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the 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 to 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 the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

G. I Direct the respondent withdraw the frivolous notice of offer of possession dated 01/12/2023.

G.II Direct the respondent to withdraw the frivolous pre-termination letter dated 06/02/2024.

G.III Direct the respondent to deliver the actual physical vacant possession of the unit bearing no. GF-022 in the said project namely AIPL JOY SQUARE; Rs. 5,00,000 for deficiency in service; Rs. 5,00,000/- for causing mental torture and harassment to the complainant; Rs. 50,000/- as monthly rent of the unit for delayed period till delivery of the possession.

G.IV. In case the opposite party wishes to take the premises from complainant, then the opposite party must pay market rent of the premises from the day it wants to take over the premises.

14. The complainant was allotted a unit in the project of respondent "AIPL JOY STREET" vide allotment letter dated 03.011.2018 for a total sum of Rs. 35,14,112/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 20,81,064/-. The complainant intends to continue with the project and is seeking delay possession charges provided under the 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, —*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand of the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
> *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.*

15. The complainant in the present matter have pleaded that the respondent offered the constructive offer of possession instead of the actual physical possession of the unit. On the contrary the respondent, contended that as per clause 'k' of application form it was clearly written that the said unit is not for self-occupation rather is for the purpose of leasing. The respondent has contended that the unit booked by the complainant is a service apartment and that a constructive offer of possession of the said unit was made on 01.12.2023.

16. The authority herein observes that the complainants were very well aware of the fact that the said unit was not for the purpose of self-occupation rather is to be put on lease as clear from clause 'k' of application form. Further nowhere in the agreement it is specifically mentioned that the respondent shall handover the actual physical possession of the unit rather the terminology used is handing over of possession. The relevant clauses are produced herein below for the ready reference:

> *k) I/We agree that the* ***Unit is not for the purpose of self-occupation and use by me/us and is for the purpose of leasing to third parties*** *along with combined units as larger area. I/We have given unfettered rights to the Company to lease out the Unit along with other combined units as a larger area on the terms and conditions that the Company would deem fit. I/We shall at no point of time object to any such decision of leasing by the Company.*

17. Accordingly, the physical possession was never the intent of the respondent and therefore, the constructive possession of the unit dated 01.12.2023 is valid.

18. Upon a careful perusal of the documents placed on record, it is observed that the complainant has committed default by failing to make payments in accordance with the payment schedule stipulated in the allotment letter. As per the agreed terms, the complainant was required to pay an initial amount at the time of booking, 47.96% of the total consideration within two months

from the date of booking, and the remaining 52.04% upon the offer of possession. The complainant has paid only a sum of Rs.20,81,064/- up to the stage when constructive possession was offered. At the time of the offer of possession, the complainant was under an obligation to clear the outstanding dues; however, the complainant failed to do so and continued to remain in default.

19. Consequently, the respondent issued a pre-termination notice dated 06.02.2024, calling upon the complainant to remedy the default. Upon continued non-payment, the respondent proceeded to terminate the allotment on 19.03.2024. Accordingly, it is evident that the complainant has failed to comply with the terms and conditions of the allotment letter by not adhering to the prescribed payment schedule within the stipulated timelines. Now, the question before the Authority is whether this cancellation is valid or not?

20. It is matter of record that the complainant booked the aforesaid unit under the above-mentioned payment plan and paid an amount of Rs.20,81,064/- towards total consideration of Rs.35,14,112/- which constitutes 59% of the total sale consideration. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 09.11.2023 and thereafter, the constructive possession of the same was offered on 01.12.2023.

21. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit. The respondent after giving reminders dated 01.12.2023, 08.01.2024, 10.01.2024, pre-termination letter dated 06.02.2024 for making payment for outstanding dues as per payment plan and has cancelled the subject unit. Despite issuance of aforesaid numerous reminders, the complainant has failed to take possession and clearing the outstanding dues. The respondent has given sufficient opportunity to the

complainant before proceeding with termination of allotted unit. Thereafter, the respondent issued termination letter dated 19.03.2024, and the relevant proportion of the said notice is reproduced as under: -

> *"This is with reference to your booking dated September 25, 2018 of Unit No. GF/022 in "AIPL Joy Square". We regret to observe that despite of our communication 18, 2023 & Jan 10, 2024 and Pre-Termination Letter dated February 06, 2024 ion vide our demand letter dated December 01, 2023, various Reminder letter's dated Dec Payment Plan, the outstanding payment of Rs. 16,65,517.70 has not been cleared by you. We now left with no other alternate but to enforce the termination of the captioned Unit as per the terms and conditions enumerated in the Application Form. Further, as per the provisions of the Application Form, the details of earnest money and other forfeitable amount(s) are below – stated*
>
> .....
>
> *With this, all documents relating to the Unit, including but not limited to Application Form, the Acknowledgement/ Receipts issued for the amounts received from you also hereby stand cancelled and revoked. Hereinafter, you cease to have any rights/claims/entitlements or lien of whatsoever nature in the said Unit."*

22. As per terms of application form at page 28 of reply, the respondent/promoter has a right to cancel the unit in case the allottee has breached the terms and conditions of application form which is reproduced as under for a ready reference:

> *"I/We agree and undertake that I/We shall not withdraw /revoke this Application and in the event I/ We withdraw my/our Application or if I/We do not accept the allotment made by the Company on my/our application or I/We do not execute the unit buyer's agreement within the time stipulated by the company for this purpose, then Earnest Money or the entire Booking Amount, whichever is lower, shall be forfeited by the company and I/We shall be left with no right, interest, claim or lien on the unit or its booking or otherwise on the Company in any manner whatsoever."*

23. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default. Further, the respondent company has already obtained the occupation certificate for the project of the allotted unit on 09.11.2023 and offered the possession on 01.12.2023. Despite the issuance of offer of possession after obtaining OC, the complainant has failed to take possession of the subject unit and clear the outstanding dues.

24. In view of facts and circumstances of the case, the Authority observes that the respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.

25. Now, another question arises before the authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainant has not sought the relief of the refund of the entire paid-up amount while filing of the instant complaint or during proceeding. It is pertinent to note here that there is nothing on record to show that the balance amount after deduction as per relevant clause of agreement has been refunded back to the complainant. The authority observed that rule 28(2) of the rules provides that the authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The authority will not go into these technicalities as the authority follows the summary procedure and principal of natural justice as provided under section 38 of the Act of 2016, therefore the rules of evidence are not followed in letter and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under:-

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto".

26. From the above, the intention of the legislature is quite clear that the Act of 2016 has been enacted to protect the interests of the consumer in real estate sector and to provide a mechanism for a speedy dispute redressal system. It is also pertinent to note that the present Act is in addition to another law in force and not in derogation. In view of the same, the authority has power to issue direction as per documents and submissions made by both the parties.

27. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** *(decided on 29.06.2020) and* ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** *(decided on 12.04.2022)* ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority

Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under: -

> *"5. AMOUNT OF EARNEST MONEY*
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money* ***shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may*** *be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer".*

28. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the reaming amount along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 19.03.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority

29. 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):

a. The respondent/promoter is directed to refund the paid-up amount of Rs.20,81,064/- after deducting the earnest money which shall not exceed the 10% of the sale consideration to the complainant along with prescribed rate of interest @ 10.85% p.a. on such balance amount from the date of termination till the actual date of realization.

b. The amount paid by the respondents towards assured returns, if any, shall be duly adjusted from the total refundable amount payable to the complainant and the remaining balance shall be refunded by the respondents to the complainants along with interest as prescribed in para 27 of this order.

c. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

30. Complaint stands disposed of.

31. File be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.11.2025