BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: 5981 of 2024
Date of decision: 03.12.2025

1. Amit Dewan.
2. Jyotika Dewan

Both R/o: C-082, DLF Park Place, Phase-5, Sector-54, Golf Course Road, Gurugram, Haryana-122011. **Complainants**

Versus

M/s Advance India Projects Limited.
Regd. Office at: AIPL Business Club, 5th Floor, Golf Course Extension Road, Medawas, Sector-62, Gurugram, Haryana-122002. **Respondent**

CORAM:
Ashok Sangwan **Member**

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 provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and Project Details:

2. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

Sr. No.	Particulars	Details
1.	Name of the project	" AIPL Joy Central"
2.	Location of the project	Sector-65, Gurugram, Haryana.
3.	Nature of the project	Commercial colony
4.	DTCP license no.	License no. 247 of 2007 Dated-02.11.2007
5.	Registered/not registered	Not registered
6.	Allotment letter	09.05.2017 (As on page no. 76 of reply)
7.	Unit no.	81, Floor-Ground, Tower-N/A, Type-Retail Shop (As on page no. 72 of complaint)
8.	Unit Area	714sq.ft [Super-Area] (As on page no. 72 of complaint)
9.	Unit Buyer's Agreement	27.10.2017 (As on page no. 70 of complaint)
10.	Possession clause	***Clause 44*** *Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited*

		to the timely payment of the Total Price and also subject to the Allottee having complied with all the formalities or documentation as prescribed by the Company, the Company endeavours to hand over the possession of the Unit to the Allottee ***within a period of 54 (fifty four) months, with a further grace period of 6 (six) months, from 1 September 2017.*** ***[Emphasis supplied]*** ***(As on page no. 89 of complaint)***
11.	Due date of possession	01.09.2022 [Calculated 54 months plus 6 months from 01.09.2017]
12.	Sale consideration	Rs. 2,32,95,159.80/- (As per Account Statement dated 18.03.2025 on page no. 167 of reply)
13.	Total amount paid by the complainant	Rs. 2,20,50,441.53/- (As per Account Statement dated 18.03.2025 on page no. 167 of reply)
14.	Letter sent by respondent inviting objections/suggestions for approval of building plans	21.11.2019 (As on page no. 123 of reply)
14.	Occupation certificate	24.12.2021 (As on page no. 130 of reply)
15.	Offer of possession	21.01.2022 [Constructive possession] (As on page no. 104 of complaint)
16.	Letter sent by complainants to the respondent protesting about the present unit's location and seeking the originally allotted unit	29.01.2022 (As on page no. 105 of complaint)

17.	Reminders	11.02.2022, 21.02.2022, 19.04.2022, 29.06.2022, 09.09.2022, 10.11.2022, 09.12.2022, 11.01.2023, 15.03.2023, 06.04.2023, 05.05.2023, 07.07.2023, 08.08.2023, 12.09.2023, 09.10.2023, 08.11.2023, 08.11.2023, 12.11.2024, 11.12.2024, 14.01.2025.

B. Facts of the complaint

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

I. That the complainants are innocent allottees of the real estate project, namely "AIPL Joy Central", situated at Sector 65, Gurugram, developed by M/s Advance India Proiects Limited.

II. Relying on the representations and assurances by the respondent, the complainants submitted a signed Application Form dated 05.05.2017 with the respondent for allotment of a unit in the project by paying a booking amount of Rs.5,00,000/- vide Cheque no. 010091 dated 24.04.2024 drawn on HSBC Bank Ltd.

III. That the respondent issued an Allotment Letter dated 09.05.2017 and allotted a unit bearing no. 0081, Ground Floor (Later changed to unit no. "Ground Floor-100") admeasuring 714 sq.ft. (Later changed to unit no. Ground Floor- 717.46 sq ft), for a total sale consideration of Rs.2,32,94,310/-.

IV. Thereafter, a Unit Buyer Agreement was duly executed between the complainants and the respondent on 27.10.2017 in respect of unit bearing no. 81, Ground Floor (later changed to unit no. "Ground Floor-100") admeasuring 714 sq.ft. (later changed to an area measuring 717.46

sq.ft.).

V. As per clause 44 of the Buyer's Agreement dated 27.10.2017, the respondent was liable to deliver possession of the booked unit within a period of 54 months with a further grace period of 6 months from 01.09.2017. Therefore, the due date of delivery of possession is calculated as 01.09.2022. However, no physical possession has been delivered by the respondent till date.

VI. That the respondent vide DTCP memo no. ZP 322 /ID(RD)/2020/28259 dated 18.11.2019 requested for approval on the revision of the building plans. Therein, vide points (a) and (b), the respondent was specifically directed to inform the allottees of the amendment in the building plans through an advertisement and registered post and seek objections from the existing allottees. On the contrary, no such information was sent to the complainants.

VII. That the respondent revised the sanctioned building plans of the real estate project unilaterally, without taking the prior approval and written consent of at least two-thirds of the allottees, in violation of Section 14. Hence the original unit, which was agreed upon between parties vide the Buyer's Agreement dated 27.10.2017, cannot be allotted to the present complainant as the layout plan stands revised.

VIII. At a much later stage, i.e., on 20.05.2020, the respondent, informed the complainants of the change in the numbering of the unit from 0081 on the ground floor to 100 on the ground floor. Further, the respondent on 19.05.2021 also increased the unit super area from 714 sq. ft. to 717.46 sq. ft.

IX. The complainants originally booked unit i.e., 0081, on the ground floor as per the unit buyer agreement, and as per the ground floor plan, it was

facing a 10-meter-wide entrance road and an adjoining 4-meter-wide road, and had excellent visibility from two sides. However, the original position of the booked unit, i.e., 0081, on the ground floor described above has been unlawfully and arbitrary changed to unit no. 100 on the ground floor, facing obstacles such as escalators, and is partly obscured from both the earlier wide entrances, without the consent of the complainants, this is in violation of Section 14 of the Act, 2016.

X. That the complainants booked the original unit no. 0081 and paid a huge amount because of its prominent placement in the commercial complex, but the respondent has devalued it by changing it to unit no. 100 as a result of the above stated alterations in the ground floor plan lately.

XI. Clause 10 of the Unit Buyer's Agreement dated 27.10.2017 deals with alterations/modifications/variation in plan, which clearly states that in the event of modification of the layout plans, building plan or any other reason, an alternative unit will be offered to the allottee and if the alternative unit so offered by the respondent is not acceptable to the allottee, then the total price received against the said unit will be refunded to the allottee along with a simple interest rate of 18% per annum within 3 months.

XII. That the respondent, vide letter dated 21.01.2022, issued notice of offer of constructive possession of unit no. GF-100, admeasuring 717.46 sq. ft. located on the Ground Floor and sought payment of pending dues, further calling upon the complainants to execute a bond cum undertaking and to take handover of the constructive possession of the unit, i.e., GF-100, after February 2022.

XIII. That the complainant was surprised when the respondent introduced the term "Constructive Possession" in the said letter dated 21.01.2022, for

the very first time, which was never agreed upon, and the complainant had further never opted for the leasing arrangement mentioned in the buyer's agreement, as clause 33 begins with the words "At the request of the allottee."

XIV. That thereafter, the complainants went to the site to inspect the property physically themselves and found that the above narrated changes in the booked unit and accordingly sent an email regarding the same to the respondent on 29.01.2022, intimating the respondent to either allot the original unit or to refund the total amount paid by the complainants along with 18% interest.

XV. It is pertinent to mention that the complainants were also unable to trace the exact position of their booked unit in the newly allotted GF-100. As per clause 11 and 12 of the unit buyer's agreement which deals with "*Procedure for taking possession*" and "*Handing over possession*" respectively. The words "*Constructive Possession*" had nowhere been used in the entire buyer agreement which shows that it was never agreed between the parties.

XVI. Further, Clause 30 in the Unit Buyer's Agreement, clearly mentions that the buyer's agreement supersedes all the previous understandings, agreements, correspondences, arrangements, whether written or oral, if any, between the parties.

XVII. Section 18 of the Act very clearly states that "If the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale" and the allottee wishes to withdraw from the project then the respondent is liable to refund the amount received by the complainant along with interest.

XVIII. That the respondent failed to put the unit on lease till date even after

receiving the occupation certificate on 24.12.2021 and has also failed to deliver physical possession of the unit till date to the complainants, even after three years. The complaints had requested the respondent to deliver physical possession of the booked unit via emails dated 08.02.2022, 16.08.2023, 18.07.2024 and various telephonic calls and physical visits to the respondent's office. However, the respondent never paid any heed to such requests of the complainants.

XIX. That the respondent had advertised, marketed, invited, and sold allotees the units without registration with the Authority, in violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016.

XX. That it is further to mention herein that the Respondent Company has failed in its commitments to abide by the terms against which occupancy certificate was granted in favor of the project such as the respondent by putting advertisement on the outer façade of the project, not using construction material as per INBFC standards and etc.

XXI. That the complainants had already paid Rs.2,20,50,441.53/- out of total sale consideration of Rs.2,32,94,310/- as and when demanded by respondent on timely basis.

C. Relief sought by the complainants

4. The complainants have sought the following relief(s):

   i. Direct the respondent to refund the total amount deposited along with interest at the prescribed rate.

   ii. Direct the respondent to pay compensation of Rs.25,00,000/- to the complainants for unfair trade practices, harassment, mental trauma and litigation costs.

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. That the respondent has already offered constructive possession to the complainants, who have failed to honour the payment terms, despite repeated reminders. The complainants are not "allottee" but investors who had booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.

II. That the complainants approached the respondent and expressed interest in booking a unit in the commercial colony developed by the respondent and booked a retail space, bearing number 0081, on Ground Floor admeasuring 714 sq.ft. (tentative super area) situated in the project known as "AIPL Joy Central" situated at Sector 65, Gurugram, Haryana.

III. Thereafter, the complainants vide application form applied to the respondent for provisional allotment of a unit bearing no. 0081 in the project. The complainants, consciously and wilfully opted for a "Flexi Payment Plan" for remittance of the sale consideration for the unit in question and further represented that they shall remit every instalment, on time as per the payment schedule.

IV. That the booking was categorically, willingly and voluntarily made by the complainants, with an understanding of the same being for leasing purposes and not self-use, as can be noted in clause 43 of the Application Form:-

> *" 43. The Applicant has clearly understood that the Unit is not for the purpose of self occupation and use by the Applicant and is for the purpose of leasing to third parties alongwith combined units as larger area. The Applicant has given unfettered rights to*

the Company to lease out the Unit alongwith other combined units as a larger area on the terms and conditions that the Company would deem fit. The Applicant shall at no point of time object to any such decision of leasing by the Company."

V. Thus it was very clear from the beginning itself that the physical possession was never to be given. Pursuant to the execution of the Application Form, the respondent had no reason to suspect the bonafide of the complainants and the Allotment letter dated 09.05.2017 was issued to them.

VI. Thereafter, Buyer's Agreement dated 27.10.2017 was executed between the complainants and the respondent. As can be noted from the Clause 33, "Leasing Arrangement", the complainants 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 complainants, have malafidely filed the present complaint with the motive to seek wrongful gains from the respondent.

VII. As per clause 44 of the Buyer's Agreement, *subject to the aforesaid and subject to the applicant not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the applicant having complied with all formalities or documentation as prescribed by the company, the company endeavours to hand over the possession of the unit to the applicant within a period of 54 (fifty four) months, with a further grace period of 6 (six months, from 01.09.2017.* Accordingly, the due date of possession turns out to be 01.09.2022, including the grace period.

VIII. That the Occupation Certificate was applied on 09.05.2021, and the same was granted on 24.12.2021. Hence, there is no delay whatsoever on the part of the respondent.

IX. That the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainants on 21.11.2019. The complainants neither

paid any heed to the requests of the respondent nor came forward with objections, if any. That the complainants chose to be a mute spectator by not even replying to the said letter.

X. That the respondent was miserably affected by the ban on construction activities orders by NGT and EPCA, demobilization of labour, etc being circumstances beyond the control of the respondent and force majeure circumstances, that the payment of assured return was severely affected during this period and the same was rightfully intimated to the complainants by the letter dated 30.11.2019.

XI. That by virtue of such an understanding, the complainants/ allottee enjoys the rights of the lessor and hence, enjoys the constructive possession of the unit, after the notice of possession. Further, it needs to be categorically noted that a lessor is always considered to part with the physical possession of the property and stay in constructive possession through the lessee.

XII. That without prejudice to the preliminary objections on maintainability, it is vehemently submitted that the physical possession cannot be given and the unit shall be leased out. The possession can be shown not only by acts of enjoyment of the land itself but also by ascertaining as to in whom the actual control of the thing is to be attributed or the advantages of possession is to be credited, even though some other person is in apparent occupation or the land. In one case, it would be actual possession and in the other case, it would be constructive possession.

XIII. Despite all the goodwill gestures extended by the respondent, the complainants are trying to illegally extract benefits from the respondent and their main aim is to cause wrongful gain to themselves and wrongful loss to the respondent from time to time.

XIV. That as per clause 32 of the said Agreement, it was the obligation of the respondent to give the assured returns amounting Rs.64,200/- from 21.05.2017 till the issuance of the Notice of Offer of Possession. Without prejudice to the facts and circumstances, it is submitted that the assured returns are to be adjusted from the refundable amounts.

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

XVI. That due to the Covid-19 pandemic, whole nation was under the complete lockdown and all activities, including the construction of the said project was under a complete standstill. It is further submitted that the respondent was also severally affected by the adverse effects of the pandemic. Yet, the respondent maintained on its commitment of payment of assured return.

XVII. That on 06.07.2020, the payment of assured returns was divided in two parts of 50% each and the same were made payable in the following manner:

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

Adjustment of Part II AR:

- *The balance 50% Assured Return shall accrue from the succeeding date of the Lockdown Period along with an interest@12% till (a) due date of next installment; or (b) till the date of filing of application for grant of Occupancy Certificate for the unit / project, whichever is earlier, shall be accumulated and adjusted from the demand amount due at next instalment or demand amount due on date of filing of application for grant of Occupancy Certificate/Offer, of*

possession for the unit /project, as the case may be.

XVIII. That till June 2019, the assured returns were given through cheques and post June 2019, the Electronic Clearing Services were made mandatory. However, after the implementation of the BUDS Act, the payment of assured returns were impacted. After banning of the assured returns from the BUDS Act, there exists no liability of the respondent to pay the assured returns. That despite there being a number of defaulters in the project, the respondent has diligently developed the project in question. The respondent had applied for Occupation Certificate on 09.05.2021. Occupation certificate was thereafter issued in favour of the respondent on 24.12.2021. The time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

XIX. That the complainants were offered possession of the unit in question through letter of offer of possession dated 21.01.2022. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants.

XX. The respondent earnestly requested the complainants to obtain possession of the unit in question and further complete all the formalities regarding delivery of possession. However, the complainants did not pay any heed to requests of the respondent and threatened the respondent with institution of unwarranted litigation.

XXI. That the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and consequently in order to needlessly linger on the matter,

the complainants refrained from obtaining possession of the unit in question. That it was an obligation of the complainants to make the payments against the unit, however, they have defaulted in the same. The complainants are yet to pay Stamp Duty and Registration Charges of Rs.5,08,700/- and Rs.45,003/-, respectively as stated above. Hence, the complainants can either seek the refund of above mentioned excess and pay the Stamp Duty and Registration Charges or seek an adjustment of the excess and pay the balance dues.

XXII. That the allegations made in the complaint inter-alia that the respondent has failed to comply with the obligations under the agreement. On the contrary, it is the complainants who is in clear breach of the terms of the Agreement by not remitting the outstanding amount of the said unit within the stipulated time.

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 submission made by the parties.

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 purposes 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 a 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 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;*

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 complainants being investors.

12. The respondent took a stand that the complainants are investors 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 complainants are buyers, 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 complainants are allottees 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 allottees being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the total amount deposited along with interest at the prescribed rate.

14. In the present complaint, the complainants applied for the booking of a retail shop in the project titled *"AIPL Joy Central"*, situated at Sector-65, Gurugram, being developed by the respondent. Pursuant to the allotment letter dated 09.05.2017, Unit No. 81, located on the ground floor and designated as a retail shop admeasuring 714 sq. ft. (super area), along with one car parking space, was allotted to the complainants. Subsequently, a Unit Buyer's Agreement was executed between the parties on 27.10.2017.

15. As per Clause 44 of the Agreement dated 27.10.2017, the respondent was obligated to hand over possession of the unit within 54 months, along with a grace period of six months, commencing from 01.09.2017. Accordingly,

the due date for possession was 01.09.2022. The total sale consideration for the unit was Rs. 2,32,94,310/-, against which the complainants have paid a sum of Rs. 2,20,50,411.53/-.

16. The complainants assert that the sanctioned building plans of the project were altered without obtaining their consent. Vide communication dated 20.05.2020, the respondent informed the complainants that the unit number had been changed from 0081 (ground floor) to 100 (ground floor). In addition, the super area of the unit was revised from 714 sq. ft. to 717.46 sq. ft. It is contended that the original unit allotted to the complainants—Unit No. 0081 on the ground floor—was unilaterally and arbitrarily changed to Unit No. 100, without their consent, thereby constituting a violation of Section 14 of the Real Estate (Regulation and Development) Act, 2016.

17. Furthermore, Clause 10 of the Buyer's Agreement, which deals with alterations, modifications, or variations in the plans, stipulates that in the event of any modification to the layout or building plans, an alternative unit is to be offered to the allottees; and if such alternative unit is not acceptable to them, the entire amount deposited is to be refunded along with interest.

18. In the present complainant, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

> *"**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*
> ***he shall be liable on demand to 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."
(Emphasis supplied)

19. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest.

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid, has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.

21. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

22. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

23. Upon consideration of the documents on record and the submissions advanced by both parties regarding the alleged contravention of the provisions of the Act, the Authority is satisfied that the respondent has violated Section 14 read with Section 18 of the Act, 2016, by failing to hand over possession of the unit to the complainants in accordance with the terms of the Agreement executed between the parties.

24. It is pertinent to note that the respondent has contended that the building plans were revised and that the complainants were duly informed of the same. The respondent further asserted that a letter dated 21.11.2019 was issued to the complainants inviting objections or suggestions regarding the proposed revision of the building plans, and that the complainants neither responded nor raised any objections.

25. However, the Authority is of the considered view that, in terms of Section 14 of the Act, 2016, the respondent was mandatorily required to obtain the *written consent of two-thirds of the allottees* of the project. The mere issuance of a letter inviting objections does not fulfil this statutory requirement. The law expressly mandates written consent, and no such consent from the requisite majority of allottees has been produced on record.

26. The respondent, therefore, could not have unilaterally or arbitrarily altered the allottee's unit. In the present case, not only was the unit number changed from 0081 to 100, but the location of the unit was also shifted from the position originally allotted. This constitutes a clear violation of Section 14 of the Act, 2016.

27. Furthermore, in terms of Section 18 of the Act, 2016, the respondent has failed to offer possession of the unit in accordance with the Agreement executed between the parties. The Agreement pertained specifically to Unit No. 0081, whereas the respondent attempted to offer Unit No. 100 in its place, which is impermissible under law. In view of the above-mentioned facts, the allottee intends to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for

sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as it wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid, after deducting the amount that has been paid by the respondent to the complainants on account of assured returns, if any.

G.II Direct the respondent to pay compensation of Rs.25,00,000/- to the complainants for unfair trade practices, harassment, mental trauma and litigation costs.

30. The complainants are seeking the above mentioned relief w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority

31. 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/promoter is directed to refund the amount received by it from each of the complainant(s) along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount, after deducting the amount that has been paid by respondent to the complainants on account of assured returns, if any.

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

III. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottees-complainants.

32. Complaint stand disposed off.

33. Files be consigned to the registry.

Dated: 03.12.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram