

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

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| Complaint no. | : 4096 of 2023 |
| Date of Filing: | 20.09.2023 |
| Date of Decision: | 28.11.2025 |

1. Raman Marwah

2. Ashma Marwah

Address at: A-215, 4th Floor, Sushant Lok 2,
Sector-55, Gurgaon, Haryana

Complainants

Versus

1. M/s Advance India Projects Limited

Office: A-22, Hill View Apartments Vasant
Vihar, New Delhi, West Delhi, Delhi- 110057

2. Anant Raj Limited

Office: Plot no. CP-1, Sector-8, IMT Manesar,
Gurgaon, Haryana

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sandeep Kumar

Advocate for the complainants

Sh. Dhruv Rohtagi

Advocate for the respondent
no. 1

Sh. M.K Dang

Advocate for the respondent
no. 2

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia*

prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. N. | Particulars | Details |
|-------|--------------------------------|---|
| 1. | Name of the project | "AIPL Joy Square", Sector-63A, Gurgaon |
| 2. | Nature of project | Commercial site in Residential plotted colony of 2.838 acres |
| 3. | RERA registered/not registered | 259 OF 2017 dated 03.10.2017 valid up to 31.12.2022 |
| 4. | DTCP License no. | 119 of 2011 dated 28.12.2011 valid up to 27.12.2019 71 of 2014 dated 29.07.2014 valid up to 28.07.2024 |
| | Licensed area | 108.125 acres |
| | Name of licensee | M/s Rose Realty Pvt Ltd and others |
| 5. | Provisional allotment letter | 01.06.2023 [annexure 1 of complaint] |
| 6. | Unit no. | SF-087 on 2 nd floor [annexure 1 of complaint] |

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|-----|--|--|
| 7. | Unit area admeasuring | 451 sq. ft. [Super area] 189 sq. ft. [carpet area] [annexure 1 of complaint] |
| 8. | Allotment letter | 05.06.2023 [annexure 1 of complaint] |
| 9. | Date of registered builder buyer agreement | 03.07.2023 [annexure 3 of complaint] |
| 10. | Total sale consideration | ₹ 26,15,800/- [TSC] [As per payment plan on page no. 88 of reply] |
| 11. | Amount paid by the complainant | ₹ 7,71,823/- [As per SOA dated 14.08.2023 at annexure 2 of reply] |
| 12. | Possession clause | <p>Clause 5</p> <p><i>The promoter shall abide by the time schedule for completing the said Unit/Project, handing over the possession of the said unit to the allottee (which for the purpose of this agreement shall mean issuance of notice of offer of possession of the unit by the promoter to the allottee) and the common area to the association of allottees or the governmental authority, as the case may be, as provided under rule 2(1)(f) of the Rules or as disclosed at the time of registration of the project with the authority i.e., <u>30.06.2023</u> (including extension granted by RERA by invoking "Force Majeure" clause) or such other extended period as may be intimated and approved by the authority from time to time. The completion of the project shall mean grant of occupation certificate for the said unit/project. It is agreed</i></p> |

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|-----|--|---|
| | | <i>between the parties that for that purpose of this agreement "handing over the possession of the said unit" shall mean issuance of notice of offer of possession of the unit by the promoter to the allottee.</i> |
| 13. | Due date of possession | 30.06.2023 |
| 14. | Application for grant of OC | 02.06.2023 [Page 89 of Reply] |
| 15. | Addendum to agreement for sale w.r.t. physical possession shall not be given to the allottee | 03.07.2023 [Annexure 3 of complaint] |
| 16. | Addendum to agreement for sale w.r.t. penalty (as per clause 1 if respondent applies for OC after 01.12.2023 then the company will pay penalty of Rs. 36.18/- per sq. ft. on super area till the date of filing application. If respondent applies for OC before 01.12.2023 then the allottee will pay incentive of Rs. 36.18/- per sq. ft. per month on super area for the period of pre-ponement. | 03.07.2023 [Annexure 3 of complaint] |
| 17. | Occupation certificate | 09.11.2023 [pg. 90 of reply] |
| 18. | Offer of possession | Not offered |

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the complainant booked a shop on 2nd floor in AIPL Joy Square, situated in Sector 66A , Gurgaon on 20th March 2023 for a total cost of Rs. 29,31,500/- plus applicable GST. At that time, the project structure was prepared and the complainants were informed that it will take another 8-10 months to get the project completed.
- II. That the respondent is not giving Assured return in this project as they had kept the price as Rs. 5100/- per sq. feet against the market rate of Rs.9,000- 10,000/- per sq. ft for the builders who give assured returns out of the additional amount taken from the buyers only due to such huge rate difference.
- III. That we got a call from the CRM team for BBA registration date around 25th June 2023 and we agreed to get the BBA registered on 3rd July 2023 for this shop and on 28th June 2023 for other 2 shops in name of my mother Shakun Dhingra.
- IV. That the agreement was as per the RERA approved format but to our dismay and surprise, there was 2 addendums attached to the agreement which they asked us to sign which were contrary to what was agreed at the time of the booking.
- V. One of the addendum to the BBA had a clause no. 1 of payment of Rs. 36.18/- per square feet per month in case the builder apply for the OC before 2nd December 2023 as an Loyalty payment while there is no assured return payable to us anytime for this shop. It is important to note that this amount will be Rs.16,317/- per month and total amount will be approx. Rs.89,745/- for approx. 5.5 months when they had fraudulently filed the OC with DTCP on 16th June 2023.
- VI. Second Addendum has clause relating to the lease rights to be given to the builder to get the lease done for our shops. In this addendum,

complainants were bound to agree to the irrevocable rights to be given to the builder to get the lease done for our shops as per his sole discretion and we will be bound by his terms of rentals as well as any additional marketing/sales charges to be payable to him for helping in such lease process. Furthermore, there was additional amount of Rs.300/- psf to be levied on us as "Mall Operation & Marketing Charges" under Clause d which were not agreed by us at the time of booking of the shop.

- VII. On seeing these onerous charges and clauses, I immediately reach out to the Sales Head Mr. Apoorv and my broker Mr. Jitender to clarify these charges and lease related clauses which were not agreed by us. We were given these explanation by both of them for these clauses: -
- VIII. That the addendum for lease hold rights to the given to the builder is also a standard agreement as around 90% of the buyers wanted to take builder help for lease hence as a process this addendum is executed with all the buyers. In case someone wants to take possession of his own shop, he can do that as per the terms of the BBA and builder will have no objection to that. The BBA already have a clear possession clause which allows the buyer to take physical possession and the builder cannot go against the RERA Act in such cases.
- IX. The amount of Rs. 300/- per sq ft as Mall Operation and Marketing Charges is new charges which were levied for the first time for this project only and hence neither sales team nor Brokers were aware of the same so the complainant should check with CRM team. They also confirmed that they will also raise this internally as it was not agreed and informed to us at the time of booking and they will help us to reverse these charges.

- X. We had also sent an email on 2nd July 2023 regarding these additional charges of Rs. 300/- per sq. ft. for which we were neither provided any confirmation at that time nor had the complainants received any confirmation from them after 28th June 2023 when 2 shops BBA were registered. As the complainants had already paid hefty amount for bookings of these 3 shops, the complainants had no other option but to get our BBA registered and then after sending mails to the Company on 2nd July 2023 , the complainants got the BBA for my 3rd shop registered on 3rd July 2023.
- XI. After our repeated mail and meetings, they agreed to waive off these additional Rs.300/- per sq. ft. charges for all our units which were not informed and agreed by us at the time of the booking.
- XII. Thereafter, to our sudden shock and dismay, we received a demand notice on 18th July 2023 asking us to pay the entire balance amount of Rs. 21,30,823/- towards the 100% cost of the shop by 2nd August 2023 which was due to be payable on application of the OC of the project.
- XIII. That the current pictures of the project which we had taken on same day of our first meeting on 25th July 2023 which clearly shows that the project is no where near completion and/or OC application and there are atleast 5-6 months' time required for the project to reach for the OC application stage. The project is at the stage of just structure with no tile work has been started yet. We had sent them mails regarding the same with these pictures of the project mentioning that these are not the OC status of the project and they need to explain how they had applied to the OC at this stage of project.
- XIV. When we were not given any resolution even after multiple mails and meetings, we went to DTCP office Chandigarh and met Mr. R.S. Bhatt,

District Town Planner, DTCP Office, Sector- 18A, Chandigarh and raised this issue with him. I also showed him all current pictures of the project which clearly shows that the project is not even anywhere near to the completion and OC application. I had also filed an RTI application with DTCP office, Chandigarh to seek clarification in this regard.

XV. That the builder has filed this OC application fraudulently to demand 100% payment of these units from all the buyers without reaching the OC stage of the project. This is an unethical, illegal demand to force the innocent Buyers to pay such a hefty amount at least 6-8 months in advance of the project completion stage.

XVI. That the builders has fraudulently annexed addendum to the BBA to get some of the terms executed with the innocent buyers which were not agreed by them and the same could not be part of the BBA as well as application form to demand more money from these buyers at the time of possession.

XVII. That the builder had unilaterally got all rights in his favour for the lease hold of these units without giving any right to the buyers in regard to their shops, thereby forcing the buyers to bend to their unethical terms at the time of lease and thereafter.

C. Relief sought by the complainant:

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

(i) Direct the respondent/builder to revoke the current demand which needs to be payable at the time of OC and will raise this only when OC is received to avoid any ambiguity.

- (ii) Direct the respondent/builder not to levy interest etc. on this instalment as it was raised prior to actual date of demand which will fall due at the time of receipt of the OC.
- (iii) To cancel and set aside the 2 addendums signed illegally at the time of the BBA registration regarding payment of the Incentive payment and irrevocably giving lease rights to builders as their terms were not agreed between the parties at the time of the booking.
- (iv) To give GST input credit in the next demand to be raised at the time of the receipt of the OC.

D. Reply by the respondent no. 1.

- 5. The respondent no. 1 has contested the complaint on the following grounds.
 - I. That the complainants since the execution of the application form has defaulted in making timely payments and even after multiple requests failed to comply with the terms and conditions of the booking.
 - II. That the present complaint is not maintainable in law or on facts.
 - III. That the complainants are not "Allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.
 - IV. That the complainants had approached the respondent and expressed interest in booking a retail shop developed by the respondent and booked the unit in question, bearing number SF/087, second floor admeasuring 189.00 sq. ft. situated in the project developed by the respondent, known as "AIPL Joy Square" at Sector 63A, Gurugram, Haryana. The complainants consciously and willfully opted for flexi payment plan as per their choice for remittance of the sale consideration for the unit in question and further represented to the

respondent that he shall remit every installment on time as per the payment schedule.

- V. That thereafter, the complainants vide application form applied to the respondent for provisional allotment of a unit bearing number SF/087 in the project. The complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- VI. That arrangement between the parties was to transfer the constructive possession of the unit and the same was categorically agreed between the parties in the application form and no protest in this regard had ever been raised by the complainant and the same was willingly and voluntarily accepted by the complainant.
- VII. That the complainants have time and again failed to pay the outstanding demands raised by the respondent as per the terms of the application form and the annexed payment plan. Adequate time and opportunities were given by the respondent as per the provisions of RERA for payment of remaining dues. However, no heed was paid by the complainants to the requests of the respondent.
- VIII. That out of a total sale consideration of Rs. 26,15,800/- to be paid against the unit in question, the complainants have paid only a meagre sum of Rs. 7,71,823/- and thereafter, stopped paying the remaining demands raised as per the payment plan opted by the complainants.

- IX. That subsequently, the respondent sent several correspondences to the complainants for making the outstanding payments, however, the same remained unanswered or ignored deliberately by the complainants.
- X. That in the event of their default in making the outstanding payment, leads to levy of interest or cancellation/termination of the allotment letter and forfeiture of the entire earnest Money (10% of the Total Consideration of the Unit) along with delay payment charges shall be forfeited.
- XI. That 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 05.06.2023 was issued to the complainants.
- XII. That thereafter, buyer's agreement dated 03.07.2023 was executed between the complainants and the respondent.
- XIII. That in case the complainants default in payment as per the agreed payment plan, then the respondent shall be released from all liabilities and also not liable to pay any penalty.
- XIV. 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.
- XV. That it was categorically agreed and undertaken by the complainants that in case the date of filing of the application by the respondent for grant of occupation certificate with DGTCP is issued prior to 01.12.2023, then the complainants will pay the respondent an incentive of Rs.36.18/- per sq. ft. per month on super area for the period of preponement.

XVI. That the complainants are praying to instruct the builder to revoke the current demand which needs to be payable at the time of the OC and will raise this only when OC is received to avoid any ambiguity, to cancel and set aside the two addendums signed at the time of BBA registration regarding payment of Incentive payment and irrevocably giving lease rights to respondent and give GST input credit in the next demand to be raised at the time of receipt of the OC which is beyond the jurisdiction that this Hon'ble Authority.

XVII. That this Hon'ble Authority has no jurisdiction to deal with the cases pertaining to leasing. That the Act is entirely silent on the same. The legislature intended the jurisdiction of the Act to extend to leasing arrangements, the same would have been incorporated.

XVIII. That the respondent has acted strictly in accordance with the terms and conditions of the agreement between the parties. There is no default or lapse on the part of the respondent. The respondent has duly fulfilled its obligations under the buyer's agreement.

E. Reply by the respondent no. 2.

6. The respondent no. 2 has contested the complaint on the following grounds.

- I. That the complaint is bad for mis-joinder of parties. Respondent no. 2 is a wholly unnecessary party and has been wrongly and illegally impleaded as such by the complainants with totally mala fide motives.
- II. That this Hon'ble Authority does not have the jurisdiction to try and decide the present complaint.
- III. That the complainants have not approached this Hon'ble Authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been

filed by them maliciously with ulterior motives and it is nothing but a sheer abuse of the process of law. The true and correct facts are as under:-

- A. That the complainants had approached only respondent no. 1 expressing interest in booking a retail shop in a project being developed by the respondent no. 1. The complainants booked the unit in question i.e. unit bearing number SF/087, second floor admeasuring 189.00 sq. ft. situated in the project being developed by the respondent no. 1, known as 'AIPL Joy Square' at Sector 63A, Gurugram, Haryana.
- B. That all dealings, communications regarding raising of payment demands were made by respondent no. 1 alone and upon the failure to pay by the complainants, reminders were raised by respondent no. 1. The dealings regarding the said unit were between respondent no. 1 and the complainants only. Respondent no. 2 was never a party to any of these communications. Respondent no. 2 neither received a single penny from the complainants with respect to the said project nor have the employees of respondent no. 2 ever interacted or even met the complainants.
- C. That respondent no. 2 alongwith its associate Companies had purchased land and obtained license nos. 119 of 2011 and 71 of 2014 from the Director General, Town and Country Planning, Haryana (DGTC) after paying crores of rupees towards land cost, license fee, EDC, IDC etc., for the development of a residential colony over an area of 108.125 acres in Sector 63A, Gurugram (Haryana). As part of township, a zoning plan was approved by the DGTC for land measuring 2.838 acres for the purpose of commercial building under the said Licenses.

D. That that respondent no. 1 i.e. M/s Advance India Projects Limited approached respondent no. 2 and entered into a development agreement dated 08.09.2017 for development and construction of the said commercial building on the land of commercial site measuring 2.838 acres under the terms and conditions enumerated therein.

E. That as per clause 2.1 of the said development agreement, the exclusive development rights have been granted and assigned to respondent no. 1 by respondent no. 2 with respect to the land of the said commercial building/commercial site together with the right to market, transfer, brand, advertise the project, sale of the saleable areas/units, lease and license of the leasable areas/units etc.

F. That respondent no. 1 is developing and has developed the said commercial project in the name and style of 'AIPL Joy Square' in accordance with the terms and conditions of the aforesaid development agreement and further as per clause 3.4 of the development agreement respondent no. 1 had agreed and undertaken to obtain all approvals (except pre-execution approvals) and to keep them valid and subsisting till the completion of the project at its own cost and expense.

G. That accordingly, all the requisite approvals had been obtained from the competent authorities and were kept valid and subsisting till the completion of the project and thereafter, occupation certificate was also obtained after following the due process. Moreover, as per the terms and conditions mentioned in the said development agreement dated 08.09.2017 between the respondent no. 1 and the respondent no. 2, respondent no. 1 alone is responsible and liable to deal with the said project including the buyers / purchasers thereof.

H. The complainants do not have any privity of contract with respondent no. 2. The complainants never interacted at any point of time with respondent no. 2. Not a single penny was ever paid by the complainants to respondent no. 2.

I. Further, the name of the Project i.e. "AIPL Joy Square" is also indicative of the fact that the said project is being developed by respondent no. 1 alone. Even as per respondent no. 1, the liability, if any, is solely of respondent no. 1 as all the payments had been received by respondent no. 1 alone which is also clear from order dated 25.04.2025 passed by this Hon'ble Authority. Therefore, it is quite evident and crystal clear that respondent no. 2 has no role with respect to the complainants bookings of units in the project 'AIPL Joy Square' and the payments made to respondent no. 1 towards the same. The complainants have made the payments towards the bookings of the said units only to the respondent no. 1.

J. That the complainants are fully cognizant of all the rights and obligations of respondent no. 1 in the said commercial project i.e. 'AIPL Joy Square' prior to signing the agreements or booking of the said units in the said project and therefore, respondent no. 2 does not have any role in the events that led to the dispute between the complainants and respondent no. 1.

K. That the landowner is not responsible in any manner. Respondent no. 2 is neither a necessary party nor a proper party to the present complaint. The present complaint has been filed by the complainants against respondent no. 2 just to harass and cause wrongful loss to respondent no. 2. Therefore, the present complaint is liable to be dismissed qua respondent no. 2.

- L. That the complainants were never in touch with respondent no. 2 thereby respondent no. 2 did not inform the complainants that the builder assist in getting the lease of the shops in most of the cases as they have a dedicated lease team who assist all shop buyers to help in getting a good rental for their shops.
- M. That respondent no. 2 had no role and was not concerned with the registration of BBA as the dealings of the complainants were solely with respondent no. 1.
- N. That respondent no. 2 is not aware about the addendum to be executed between the complainants and respondent no. 1 as respondent no. 2 has nothing to do in the present case. Moreover, the entire complaint is vague and no role of respondent no. 2 whatsoever has been mentioned by the complainants.
- O. That respondent no. 2 is not aware about the employees of respondent no. 1 and their communication with the complainants. Moreover, no payments were made by the complainants in favour of respondent no. 2. Respondent no. 2 is not aware about the demands raised by respondent no. 1 from the complainants.
- P. As per the clause 2.1 of development agreement dated 08.09.2017, the exclusive development rights had been granted and assigned to respondent no. 1 by respondent no. 2 with respect to the land of the said commercial building/commercial site together with the right to market, transfer, brand, advertise the project, sale of the saleable areas/units, lease and license of the leasable areas/units etc. and as per clause 3.4 of the development agreement respondent no. 1 had agreed and undertaken to obtain all approvals (except pre-execution agreement) and to keep them valid and subsisting till the completion

of the project at its own cost and expense thereby, it is only respondent no. 1 which was responsible for obtaining occupation certificate application.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

8. The respondents have raised an objection that Authority has no jurisdiction to deal with the said complaint. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject-matter jurisdiction

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;

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.

G. Findings on the Objections raised by Respondent no. 1

G.I Objection regarding the complainant being investor.

12. The respondent no. 1 has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The authority observed that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be,

has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G.II Objection regarding impleadment of Respondent no. 2 i.e., Anant

Raj Limited.

14. In the present complaint, the complainant has moved an application dated 06.12.2024 seeking impleadment of M/s Anant Raj Limited as a necessary and proper party to the proceedings. It has been contended by the complainant that Anant Raj Limited is directly connected with the subject transaction and dispute, being the owner of the project and holder of the license issued by the Directorate of Town and Country Planning (DTCP). It is further submitted that non-impleadment of Anant Raj Limited as Respondent No. 2 would result in an incomplete and ineffective adjudication of the matter. Accordingly, vide order of this Authority, Anant Raj Limited was impleaded as Respondent No. 2 and was directed to file its reply.
15. In its reply, Respondent No. 2 has opposed the impleadment and has contended that all dealings, communications and payment-related

demands were exclusively made by Respondent No. 1. Respondent No. 2 has further stated that pursuant to a Development Agreement executed between Respondent No. 1 and Respondent No. 2, exclusive development rights, including rights of marketing, branding, advertising, transfer, sale of saleable area/units, and lease and license of leasable spaces/units, were granted and assigned to Respondent No. 1 in respect of the commercial project in question. Therefore, Respondent No. 2 claims that it has no direct role in the transactions between the complainant and Respondent No. 1 and is consequently not liable to be made a party.

16. Therefore, the issue that falls for determination before this Authority is: Whether Respondent No. 2, namely Anant Raj Limited, is liable and responsible in respect of the claims raised by the complainant in the present proceedings or not.
17. Upon consideration of the material placed on record, the Authority observes that the Builder-Buyer Agreement (BBA) dated 03.07.2023 executed between the complainant and the respondent clearly reflects the involvement of Respondent No. 2, M/s Anant Raj Limited, as it was a confirming party to the said agreement dated 03.07.2023. Further, it is a matter of record that the Occupation Certificate (OC) pertaining to the subject project has been issued in favour of Respondent No. 2, which indicates its direct control, ownership, and statutory responsibility with respect to the project in question.
It is also observed that the application for Extension of Registration of the real estate project under Section 6 of the Real Estate (Regulation and Development) Act, 2016 has been filed before this Authority by the M/s Advance India Projects Ltd. the extension of registration file

submitted by the promoter has been scrutinized and it is found that the project was registered in interim RERA Panchkula vide RC no. 259 of 2017 dated 03.10.2017 valid upto 31.12.2022 + 6 months COVID =30.06.2023. The Authority has returned the application of extension of registration as the M/s Advance India Projects Ltd has failed to submit BIP permission.

18. In view of the above facts, documents and statutory responsibilities placed on record, the Authority concludes that both Respondent No. 1 and Respondent No. 2 are jointly and severally responsible for the obligations arising out of the project, including those towards the complainant under the provisions of the Real Estate (Regulation and Development) Act, 2016. Therefore, the objection raised by Respondent No. 2 to impleadment is devoid of merit and stands rejected.

H. Findings on the reliefs sought by the complainant:

- (i) Direct the respondent/builder to revoke the current demand which needs to be payable at the time of OC and will raise this only when OC is received to avoid any ambiguity.**
- (ii) Direct the respondent/builder not to levy interest etc. on this instalment as it was raised prior to actual date of demand which will fall due at the time of receipt of the OC.**

19. In the present complaint, the complainant booked a unit in the project of the respondent namely, AIPL Joy Square, situated at Sector- 63 A of Gurugram. The complainant was allotted a unit bearing no. SF-087 on 2nd Floor admeasuring 451 sq. ft. vide allotment letter dated 05.06.2023. Subsequently the builder buyer agreement was executed between the parties on 03.07.2023. As per the payment plan annexed

with builder buyer agreement dated 03.07.2023 the total sale consideration of the unit was Rs. 26,15,800/- The complainant in the present complaint has sought relief that the current demand which needs to be payable at the time of OC should be revoked. After considering the documents on record the authority observes that allottee has to make the payments as per the payment plan. The payment plan is hereby reproduced:

| Milestone Name | BSP | Total Price |
|--|----------------|------------------|
| At the time of booking | Any | 1,78,571.42/- |
| Within 90 days of booking | 29.05% | 4,89,607.63 |
| On application of Occupation certificate | 70.95% | 19,02,520.95 |
| On offer of possession | - | 45,100 |
| Total | 100.00% | 26,15,800 |

20. The complainant has made a payment of Rs. 7,71,823/- against the same in all. The authority observes that the complainant has to make payment at the time of application of OC. The respondent has applied for OC on 02.06.2023 and subsequently received OC on 09.11.2023. Accordingly, the demand raised by the respondent at the time of application of OC is valid. So far as the interest levied by the respondent upon delayed payments is concerned, both the parties are liable to pay equitable rate of interest in terms of Section 2 (za) of the Act, 2016 read with Rule 15 of the Rules 2017.

(iii) To cancel and set aside the 2 addendums signed illegally at the time of the BBA registration regarding payment of the

Incentive payment and irrevocably giving lease rights to builders as their terms were not agreed between the parties at the time of the booking.

21. The complainant has approached this Authority seeking cancellation and setting aside of the two Addendum Agreements dated 03.07.2023 executed at the time of Builder-Buyer Agreement (BBA) registration, which allegedly imposed terms relating to incentive payment and irrevocable lease rights in favour of the builder, despite the fact that such terms were never agreed upon between the parties at the time of booking. The Authority observes that since the addendums dated 03.07.2023 has been executed and signed voluntarily by the Allottee the same cannot be cancelled or set aside at this stage.
22. Moreover, the complainant has specifically challenged the clause 2 of the Addendum Agreement dated 03.07.2023 which reads as under:

That it has been agreed by the Allottee that in case the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP is issued prior to 01/12/2023, in such case, the Allottee will pay to the Company an incentive of Rs. 36.18/- per sq. ft. per month on super area for the period of preponement."

23. Upon careful examination of the said Addendum and the records available before the Authority, it is observed that the Addendum Agreement in question was executed post-RERA, i.e., on 03.07.2023, and therefore any clause inconsistent with the mandate and objectives of the Real Estate (Regulation and Development) Act, 2016 cannot be enforced. The Authority further notes that the application for grant of Occupation Certificate (OC) had already been submitted by the respondent promoter on 02.06.2023 much prior to the execution of the Addendum dated 03.07.2023. Therefore, the respondent-promoter

was fully aware at the time of execution that the above clause was irrelevant and incapable of being triggered.

24. This Authority is of the considered view that the insertion of such a clause was arbitrary, unconscionable and intended to deceive and mislead the allottee into making an unwarranted payment. Such a predatory clause defeats the protective intent of RERA and amounts to an unfair trade practice. In view of the above findings, the Clause 2 of the addendum dated 03.07.2023 is hereby declared illegal, arbitrary and invalid and is accordingly set aside.

(iv) To give GST input credit in the next demand to be raised at the time of the receipt of the OC.

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

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

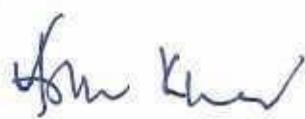
26. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in

contravention to the provisions of section 171(1) of the HGST Act, 2017.

The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

G. Directions of the authority

27. 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 addendums dated 03.07.2023 has been executed and signed voluntarily by the Allottee, the same cannot be cancelled or set aside at this stage.
 - ii. The Clause 2 of the addendum dated 03.07.2023 is hereby declared illegal, arbitrary and invalid and is accordingly set aside.
 - iii. Both the parties are liable to pay equitable rate of interest in terms of Section 2 (za) of the Act, 2016 read with Rule 15 of the Rules 2017.
28. Complaint as well as applications, if any, stands disposed off accordingly.
29. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.11.2025