BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**4197 of 2025**
Date of Filing:		**08.08.2025**
Date of decision	**:**	**09.01.2026**

Ratan Batra **Address:** - R-737, New Rajinder Nagar, New Delhi-110060	**Complainant**
Versus	
1. M/s Advance India Projects Limited Office at: - AIPL Business Club, 5th Floor, Golf Course Extension Road, Sector-62, Gurgaon 2. M/s Golden Bricks Real Estate Worldwide LLP Office at: C 396, Ground Floor, Sushant Lok, Phase I, Gurgaon	**Respondents**

CORAM:	
Shri Arun Kumar	**Chairman**

APPEARANCE:	
Sh. Yogender Singh	Advocate for the complainant
Sh. Venket Rao	Advocate for the respondent no. 1
Sh. Virender Singh	Advocate for the respondent no. 2

ORDER

1. The present complaint dated 08.08.2025 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 under the provision of the Act

or the Rules and regulations made there under or to the allottee 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 Central, Sector 65, Gurugram.
2.	Nature of project	Commercial Colony
3.	Project area	3.987 acres
4.	DTCP license no.	249 of 2007 issued on 02.11.2007 valid up to 01.11.2024
5.	Name of licensee	M/s Wellworth Project Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	79, GF (as per agreement dated 01.09.2017 at page no. 53 of complaint)
8.	Renumbering of unit no.	20.05.2020 GF-102 (page no. 93 of complaint)
9.	Area admeasuring	714 sq. ft. (as per agreement dated 01.09.2017 at page no. 53 of complaint)
10.	Date of apartment buyer agreement	01.09.2017 (page no. 51 of complaint)

11.	Addendum to BBA	11.10.2017 (page no. 90 of complaint)
12.	Assured return clause	32. Where the Allottee has opted for Payment plan as per Annexure A attached herewith and accordingly, the Company has agreed to pay **Rs. 26,316/-** per month by way of assured return to the Allottee from **01.12.2016 till the date of issue of Notice of Possession of the Unit**. The return shall be inclusive of all Taxes whatsoever payable or due on the return.
13.	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 formalities or documentation as prescribed by the Company, the Company endeavors 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.*** *(as per agreement dated 01.09.2017 at page no. 70 of complaint)*
14.	Due date of possession	01.09.2022 [Calculated 54 months + 6 months from 01.09.2017]

15.	Penalty clause as per addendum dated 11.10.2017	1. That it has been agreed by the Allottee that in case the Notice of Offer of Possession is issued prior to 29th November 2019, in such case the Allottee will pay to the Company an incentive of Rs. 50.84/- per sq. ft. per month for the period of pre-ponment. 2. That it has been agreed by the Company that in case the Notice of Offer of Possession is issued post 29th November 2019 in such case the Company will pay to the Allottee penalty of Rs.50.84/- per sq. ft. per month till the issue of Notice of Offer of possession. (page no. 91 of complaint)
16.	Total sale consideration	Rs. 1,28,29,866/- (as per payment plan of agreement dated 01.09.2017 on page no. 75 of complaint)
17.	Paid up amount	Rs. 17,85,922/- (Rs. 15,00,000/- paid by complainant + Rs. 2,85,922/- discount given by respondent no. 1 to complainant) (as per SOA at page 29 of reply)
18.	Demand letters and reminders	26.03.2021, 11.04.2021, 21.04.2021, 06.05.2021
19.	Intimation of termination by respondent no. 1	01.07.2021 (page no. 117 of complaint)
20.	Occupation certificate	24.12.2021 (page no. 33 of reply)

21.	Legal notice by complainant for refund	25.09.2023 (page no. 107 of complaint)
22.	Assured return paid by respondent no. 1	16,37,143/- (page no. 36 of reply)

B. Facts of the complaint

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

I. That an unit buyer's agreement dated 01.09.2017 was executed between the complainant and the respondent no. 1 for a unit bearing no. 79, admeasuring approx. 714.00 sq. ft. on ground floor in the project under the name and style of "AIPL Joy Central, Sector 65, Gurugram" of the respondent no. 1.

II. That the respondent no. 1 was under the obligation to deliver the possession of the allotted unit within a period of three (3) years i.e., by 01.09.2020 by taking the conservative estimate of 3 years from the date of unit buyer's agreement 01.09.2017 as there is no specific date mentioned in the agreement.

III. In view of the above-mentioned reasoning, the date of unit buyer's agreement i.e., 01.09.2017 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 01.09.2020.

IV. That as per clause 32 of the unit buyer's agreement dated 01.09.2017 the respondent no. 1 explicitly undertook to pay the complainant an assured return of Rs. 26,316/- per month commencing from 01.12.2016 and continuing until the date of issuance of the formal notice of possession of the unit.

V. That in compliance with the aforesaid clause, the respondent no. 1 made part payments of assured return from December 2016 to June 2019, totalling a sum of Rs. 7,57,888/-. However, the respondent no. 1 arbitrarily and without any justification stopped making further assured return payments after June 2019, despite the fact that till date, no notice of possession has been issued in respect of the allotted unit. Accordingly, the respondent no. 1 remains liable to pay the balance assured return from July 2019 onwards. As on June 2025, the outstanding assured return amounts to ₹18,94,752/-.

VI. That the complainant, in compliance with the explicit instructions and demand of respondent no. 1 made a cash payment amounting to Rs. 31,50,000/- to respondent no. 2, who is a duly registered real estate agent. Said cash transaction was duly acknowledged by respondent no. 2 through the issuance of a handwritten receipt dated 27.11.2016 evidencing receipt of the aforementioned amount towards the allotted unit.

VII. That the complainant also made further payments comprising of (i) an amount of Rs. 14,85,000/- and (ii) a sum of Rs. 15,000/- on 08.06.2017. Accordingly, the complainant has paid a cumulative amount of Rs. 46,50,000/- towards the total sale consideration of Rs. 1,22,75,802/- which constitutes approximately 38% of the total consideration.

VIII. That following the execution of the unit buyer's agreement dated 20.09.2017, an addendum dated 11.10.2017 was entered into between the complainant and the respondent no. 1 whereby the respondent no. 1 expressly undertook to pay compensation at the rate of Rs. 50.84 per sq. ft. per month from 29.11.2019 until the issuance of the notice of offer of possession. This contractual obligation is binding and enforceable,

and the respondent no. 1's failure to comply constitutes a breach of the agreement, attracting liability under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

IX. That to the utter shock and dismay of the complainant, the respondent no. 1 in a wholly arbitrary and unilateral manner altered the originally allotted unit bearing no. GF-79 to GF-102 and further reduced the super area from 714.00 sq. ft. to 712.53 sq. ft., without obtaining any prior consent or even informing the complainant. This change was communicated vide letter dated 20.05.2020 titled as "Re-numbering of unit number '0079' to 'GF-102', AIPL, Joy Central, Sector-65, Gurugram, Haryana."

X. That prior to the issuance of the aforementioned letter dated 20.05.2020, the complainant had been diligently and regularly making payments towards all demand notices raised by the respondent no. 1 from time to time in accordance with the terms of the agreement and without any default or delay. The complainant's conduct has been bonafide and cooperative at all stages, reflecting his commitment to the project and fulfilment of contractual obligations.

XI. That subsequent to the issuance of the respondent no. 1's letter dated 20.05.2020, whereby the originally allotted unit GF-79 was arbitrarily changed to GF-102, the complainant immediately raised serious and repeated objections to such unilateral alteration, both in writing and in person. The complainant had originally booked unit no. GF-79 based on the specific location of the said shop within the project which held significant commercial value and personal significance to the complainant. Additionally, the choice of the unit was guided by principles of numerology, which are of personal importance to the

complainant and formed a decisive factor in selecting the unit at the time of booking.

XII. Despite raising repeated concerns through emails, WhatsApp communications, and physical visits to the office of the respondent no. 1, no action was taken by the respondent no. 1 to address or resolve the grievances of the complainant. As a result of the respondent no. 1's apathy and failure to redress the legitimate issues raised, the complainant was constrained to withhold further payments against the subsequent demand notices issued by the respondent no. 1.

XIII. That the complainant aggrieved by the unilateral and arbitrary change of the originally allotted unit no. GF-79 to unit no. GF-102 and the consequent reduction in the super area duly served a legal notice dated 25.09.2023 upon the respondent no. 1. Through the said legal notice, the complainant categorically objected to the said change and called upon the respondent no. 1 to forthwith restore the original allotment of unit no. GF-79, as per the unit buyer's agreement dated 01.09.2017. The notice further highlighted that such unilateral action, without the prior consent of the complainant, constitutes a material breach of contract, and is impermissible under the Real Estate (Regulation and Development) Act, 2016 as well as settled principles of law.

XIV. The arbitrary reallocation of the unit has caused severe mental agony, loss of peace, commercial disadvantage, and financial hardship to the complainant who is now left in a state of uncertainty and distress. The substituted unit GF-102 as communicated vide letter dated 20.05.2020 is wholly unacceptable to the complainant who unequivocally seeks the restoration of the originally allotted unit no. GF-79 as per the unit buyer's agreement dated 01.09.2017.

XV. That the respondent no. 1 had demanded and accepted payment from the complainant in November 2016 much prior to obtaining RERA registration which was granted only on 14.09.2017. Such conduct is in gross violation of the mandatory provisions of the Real Estate (Regulation and Development) Act, 2016.

XVI. That the complainant made continuous and numerous attempts to get in contact with the respondent no. 1 but to the utter shock and disbelief of the complainant all their attempts to communicate with the respondent no. 1 was ignored by the respondent no. 1 and the complainant never received any satisfactory reply from the respondent no. 1.

XVII. That after the numerous attempts of the complainant to get in touch with the respondent no. 1, the complainant was ignored and left unanswered the complainant visited the office of the respondent no. 1 but again the grievances of the complainant were ignored and unheard and they were given unsatisfactory and false promises.

XVIII. That the respondent no. 1 has neither provided peaceful possession nor refunded any amount to the complainant and has not even responded or paid heed to any of the requests of the complainant. It is not out of context to mention that the respondent no. 1 by making false and frivolous commitments lauded their projects to entice the genuine and authentic buyer.

XIX. That to the utter shock and dismay of the complainant, the respondent no. 1 vide letter dated 01.07.2021 has unilaterally and arbitrarily issued a notice purporting to terminate the unit allotted to the complainant. Such termination is wholly illegal, void ab initio and in blatant contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s)

I. Direct the respondent no. 1 to handover the peaceful possession of the original allotted commercial unit bearing no. GF-79, admeasuring approx. 714 sq. ft. located on the ground floor in the project "AIPL Joy Central, Sector-65, Gurugram as per the unit buyer's agreement dated 01.09.2017.

II. Direct the respondent no. 1 to pay delay penalty/interest for the period of delay in handing over possession, calculated from the due date of possession i.e., 01.09.2020 till the actual date of delivery of possession, in terms of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

III. Direct the respondent no. 1 to pay the balance assured returns to the complainant at the agreed rate of Rs. 26,316/- per month for the period from July 2019 till the issuance of the notice of possession in accordance with clause 32 of the unit buyer's agreement dated 01.09.2017.

IV. Direct the respondent no. 1 to pay compensation for breach of contractual and statutory obligations, mental agony, financial loss, and commercial hardship caused to the complainant.

V. Direct the respondents to pay litigation costs amounting to Rs. 2,00,000/- to the complainant.

VI. Take cognizance of the fact that the respondents illegally accepted booking amount from the complainant in November 2016 without obtaining RERA registration in violation of section 3(1) of the RERA Act, 2016.

5. On the date of hearing, the authority explained to the respondents /promoter on the contravention 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 no. 1

6. The respondent no. 1 contested the complaint on the following grounds. The submission made therein, in brief is as under: -

I. That Mr. Ratan Batra with the intention of earning leasing returns invested in the instant project and submitted an application form on 26.11.2016 whereby, the complainant expressed his intention of booking a retail unit bearing no. 79, on ground floor, admeasuring 714 sq. ft. in the commercial project of the respondent no.1 namely "AIPL Joy Central".

II. Considering the request of the complainant, the subject unit was allotted to the complainant and a unit buyer agreement dated 01.09.2017 was executed between the complainant and the respondent no.1.

III. As per clause 1.2 of the UBA, the construction of the project was to be completed within a period of 54 months or 60 months, including the grace period. Thus, as per the said clause, the construction of the project was to be completed by 01.09.2022.

IV. That due to requirements and regulations of competent authorities and for the overall betterment of the project, the unit no. of the complainant was re-numbered from GF-79 to GF-102 and the super area of the subject unit was reduced from 714 sq. ft. to 712.53 sq. ft. and the same was intimated to the complainant vide letter dated 20.05.2020.

V. That the sale consideration of the subject unit was Rs. 1,28,29,866/- against which the complainant had only made a payment of Rs. 17,85,922/- (inclusive of Rs. 2,85,922/- credited in the ledger of the complainant as a discount). That the actual amount paid by complainant is Rs. 15,00,000/- which is approximately 11.7% of the sale consideration.

VI. That as per the agreed payment plan annexed with the UBA the respondent no.1 after reaching the milestone 'On completion of Super Structure – Retail Block' on 26.03.2021 raised a demand letter and requested the complainant to pay the outstanding dues. However, the complainant failed to make payment of the outstanding demands. Therefore, the respondent no. 1 was constrained to issue reminder letters dated 11.04.2021, 21.04.2021 and 06.05.2021, however the complainant paid no heed to the request of the respondent no. 1 and chose to ignore the payment of the outstanding dues.

VII. That the respondent no. 1 despite facing force majeure situations including Covid-19 pandemic, the respondent no. 1 completed the construction of the unit and on 09.05.2021 submitted an application before the competent authority for the grant of an occupation certificate.

VIII. Since, the complainant was not complying with his obligation of payment of the sale consideration of the unit as per UBA, therefore, the respondent no. 1 was constrained to issue a pre-termination letter dated 18.05.2021 wherein the complainant was afforded an opportunity to clear the outstanding dues, failing which the allotment was to be cancelled as per the agreed terms and conditions of the UBA. However, despite receiving the reminder letters and pre-termination letter, the complainant failed to discharge his obligation of making

payment and therefore, the respondent no. 1 was left with no option but to terminate the allotment of the complainant vide termination letter dated 01.07.2021.

IX. That the occupation certificate which was applied on 09.05.2021 was granted by the competent authority on 24.12.2021.

X. That the complainant on 25.09.2023, sent a legal notice, whereby the complainant sought a refund of their investment.

XI. That the primary understanding between the complainant and the respondent no.1 with respect to the unit was that the complainant wanted to earn maximum returns on his investment by way of receiving lease rental benefits and assured returns. Therefore, it was agreed by the complainant that the unit was booked solely for earning lease rental and not self-use.

XII. That the complainant at the time of investment/booking of the unit, agreed to make timely payments as per the payment plan. That as per the agreed payment plan between the complainant and the respondent no.1, the payments were to be made on achievement of certain milestone. The payment schedule is reproduced herein below:

S.No.	Milestone Name
1.	At the time of Booking
2.	On Completion of Super Structure – Retail Block
3.	On Offer of Possession

XIII. That the complainant had paid an amount of Rs. 14,85,000/- at the time of booking of the unit and further paid an amount of Rs. 15,000/- on 08.06.2017. Thereafter, the respondent no.1 after achieving the milestone 'On Completion of Super Structure – Retail Block' raised a demand on 26.03.2021. However, the complainant, despite receiving

the said demand and being obligated to make payments failed to make the payments. Therefore, the respondent no.1 was constrained to issue reminder letters dated 11.04.2021, 21.04.2021 and 06.05.2021 however, the complainant paid no heed to the request of the respondent no. 1 and chose to ignore the payment of the outstanding dues.

XIV. That the sale consideration of the subject unit was Rs. 1,28,29,866/-, against which the complainant had only made a payment of Rs. 17,85,922/- (inclusive of Rs. 2,85,922/- credited in the ledger of the complainant as a discount). That the actual amount paid by complainant is Rs. 15,00,000/- which is approximately 11.7% of the sale consideration.

XV. That the complainant despite receiving the aforementioned demand/ reminder letter, miserably failed to pay the outstanding dues which is not only in breach of the terms and conditions of the UBA but is also a violation of Section 19 (6) of the RERA Act, 2016, which lays the duty on the Allottee to make necessary payments pertaining to the allotment of the unit as per the payment schedule agreed under the agreement.

XVI. That the complainant had defaulted in making payments of the outstanding dues despite receiving demand/ reminder letters dated 11.04.2021, 21.04.2021 and 06.05.2021. That due to defaults of the complainant the respondent no. 1 was constrained to issue a pre-termination letter dated 18.05.2021, wherein the complainant was afforded an opportunity to clear the outstanding dues failing which the allotment was to be cancelled as per the agreed terms and conditions of the UBA. However, despite receiving the reminder letters and pre-termination letter, the complainant failed to discharge his obligation of making payment and therefore, the respondent no. 1 was left with no

option but to terminate the allotment of the complainant vide termination letter dated 01.07.2021.

XVII. That under clause 4 of the UBA, it was mutually agreed between the parties that in the event the complainant fails to perform any of his obligations or commit breach of any of the terms and conditions mentioned in the UBA, then the allotment of the complainant shall be cancelled and the company shall have the right to forfeit the earnest money and non-refundable amounts.

XVIII. That it was agreed that the respondent no. 1 shall pay the complainant assured return. Accordingly, the respondent no. 1 as per the agreed terms and conditions paid an amount of Rs. 16,37,143/- as assured return. However, the complainant, with a malafide intention, did not disclose the correct amount which was received by the complainant as an assured return.

XIX. That the complainant under the complaint is alleging that the respondent no.1 in arbitrary and unilateral manner altered the original allotted unit i.e., GF-79 to GF-102 and reduced the super area from 714 sq. ft. to 712.53 sq. ft. without obtaining any prior consent from the complainant.

XX. That under Recital C of Allottee's representation in the UBA the complainant has acknowledged that the respondent no.1 had applied for revision/modification in the building plans already sanctioned by the competent Authority and also admitted that he had applied for the unit basis the revised/modified building plans and has also given consent for such revisions/modifications.

XXI. That the respondent no.1 as per the TOD policy, applied for revision in existing building plans before DTCP, Haryana. That on 21.11.2019, the respondent no.1 invited objections for approval of revised building

plans of the project from all the existing allottees. That no objection was raised by the complainant to the objections invited by the respondent no.1. Thereafter, the plans were revised and the respondent no.1 duly intimated the complainant about the change in nomenclature of the unit and the area of the unit. That only 1.47 sq. ft. is reduced due to the revision in plans which is well within the agreed limit under the UBA.

XXII. That on 19.06.2020 the respondent no.1 received an email from the complainant wherein the complainant raised some concerns in regard to the renumbering of the unit etc. That vide email dated 23.06.2020 the respondent no.1 clarified the concern of the complainant and assured him that as per the revised and final layout, only the numbering system has changed and the unit location remains intact and unaltered and also the same has been done as per the terms of the UBA. On 02.07.2020, the respondent no.1 received an email from the complainant wherein he gave his acceptance for the renumbering of the unit from GF-0079 to GF-102.

XXIII. That the complainant is alleging that on the demand of the respondent no.1 the complainant had made a cash payment of Rs. 31,50,000/- to the respondent no.2 and the said cash transaction is acknowledged by the respondent no.2 by issuance of handwritten receipt dated 27.11.2016. The respondent no.1 denies any knowledge of the alleged transaction. That the respondent no.1 never demanded nor received any payment in the form of cash payment from the complainant or the respondent No.2.

XXIV. That the complainant vide the present complaint under reply is alleging that the construction was delayed therefore, he is entitled to delayed possession charges. The complainant had invested in the instant project with the sole motive of earning lease rental by getting the subject unit leased through respondent no.1. That it was never agreed between the

complainant and the respondent no.1 that the physical possession of the subject unit shall be handed over to the complainant or the complainant shall lease out the subject unit by themselves. That the whole idea behind the leasing of the subject unit through the respondent no. 1 was that the subject unit should be leased out along with other units of the project, thereby generating lease rental for all the allottees of the project who, by themselves, could not get big brands to take their units on lease.

XXV. That as per clause 1.2 of the UBA, the construction of the project was to be completed within a period of 54 months or 60 months, including the grace period. Thus, as per the said clause, the construction of the project was to be completed by 01.09.2022. Furthermore, as per clause 11 of the UBA, the possession of the subject unit in terms of the UBA was to be made within 30 days of receipt of the occupation certificate. That due to continuous defaults of the complainant, the allotment of the complainant has already been cancelled as per the provisions of the RERA Act, 2016 and agreed terms and conditions of the UBA.

E. Reply by the respondent no. 2

7. The respondent no. 2 contested the complaint on the following grounds. The submission made therein, in brief is as under: -

XXVI. That the present complaint is liable to be dismissed on the ground that there is prima facie no case against the answering respondent no. 2. The complainant out of pure greed and nefarious intention have filed the aforesaid complaint and are wrongfully trying to extract compensation from the respondents without any deficiency of service on part of answering respondent no. 2.

XXVII. That there has arisen no cause of action in favour of the complainant to file the present complainant against the answering respondent no. 2 moreover complainant have failed to state as to how the cause of action arose in its favour for filing the present complaint against the answering respondent no. 2 in the absence of any deficiency on its parts as such the present complaint is liable to be dismissed on this score alone.

XXVIII. That the complaint is liable to be dismissed as the complainant have failed to disclose the deficiency in service as rendered by answering respondent no. 2. The answering respondent no. 2 has always acted in a bonafide manner and provided the best possible services to all its customer including the present one at all times.

XXIX. That the complainant have no cause of action to file present complaint against answering respondent, since it was only acted as dealer and the entire payment and documents were executed between the complainant and builder over which neither the answering respondent had any control nor any authority.

XXX. That the present compliant liable to be dismissed on the sole ground that the present complaint is not in proper format accordance with the Provisions of RERA Act.

8. 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 parties.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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.

F.II Subject matter jurisdiction

11. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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 relief sought by the complainant.

I. Direct the respondent no. 1 to handover the peaceful possession of the original allotted commercial unit bearing no. GF-79, admeasuring approx. 714 sq. ft. located on the ground floor in the project "AIPL Joy Central, Sector-65, Gurugram as per the unit buyer's agreement dated 01.09.2017.

II. Direct the respondent no. 1 to pay delay penalty/interest for the period of delay in handing over possession, calculated from the due date of possession i.e., 01.09.2020 till the actual date of delivery of possession, in terms of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

III. Direct the respondent no. 1 to pay the balance assured returns to the complainant at the agreed rate of Rs. 26,316/- per month for the period from July 2019 till the issuance of the notice of possession in accordance with clause 32 of the unit buyer's agreement dated 01.09.2017.

IV. Take cognizance of the fact that the respondents illegally accepted booking amount from the complainant in November 2016 without obtaining RERA registration in violation of section 3(1) of the RERA Act, 2016.

12. In the present complaint, the complainant seeks relief w.r.t the possession of the unit as well as delay possession charges. The complainant was allotted unit bearing no. GF-79, situated on Ground floor of the project titled "AIPL Joy Central", located at Sector-65, Gurugram. The apartment buyer agreement was executed between the parties on 01.09.2017 and thereafter on 11.10.2017 an addendum to buyer' agreement was executed.

13. The complainant has contended that the project in question has been delayed on the part of the respondent no. 1 and that the possession of the unit was to be handed over within a period of three years from the date of execution of the unit buyer's agreement and on such basis has sought grant of delay possession charges. It is further submitted by the complainant that he has paid an amount of Rs. 17,85,922/- out of the total sale consideration of Rs. 1,28,29,866/- and that the subsequent payments were withheld on account of the alleged unilateral and arbitrary change in the allotted unit from GF-79 to GF-102.

14. The respondent no. 1 on the other hand, submits that the complainant has failed to adhere to the payment plan annexed with the unit buyer's agreement dated 01.09.2017 which obligated the complainant to make payments on achievement of specified construction-linked milestones. The complainant out of total sale consideration of Rs. 1,28,29,866/-has paid an amount of Rs. 15,00,000/- and further a discount of Rs. 2,85,922/- was granted by respondent no. 1. It is further submitted that upon attainment of the milestone, the respondent no. 1 raised a

demand vide letter dated 26.03.2021 and thereafter issued reminder letters dated 11.04.2021, 21.04.2021 and 06.05.2021; however, the complainant failed to clear the outstanding dues. It is further submitted that a pre-termination notice dated 18.05.2021 was issued granting an opportunity to the complainant to make the requisite payment, failing which the allotment was liable to be cancelled. Despite such opportunity, the complainant did not comply with the payment obligations and consequently the respondent no. 1 proceeded to cancel the allotment vide termination letter dated 01.07.2021 in accordance with the terms and conditions of the agreement.

15. Now the question before the authority is whether the termination issued vide letter dated 01.07.2021 is valid or not.

16. Upon consideration of the documents placed on record and the submissions made by both the parties, the Authority is of the view that that a unit buyer's agreement dated 01.09.2017 was executed between the complainant and the respondent no. 1 in respect of the subject unit in the project namely "AIPL Joy Central, Sector-65, Gurugram" and the rights and obligations of the parties are governed by the terms and conditions of the said agreement. From the record, it emerges that the payment plan agreed between the parties was construction-linked, requiring the complainant to make payments on achievement of specified milestones. For ready reference, the payment plan as agreed between the parties is reproduced herein below:

S.No.	Milestone Name	Total Price in Rs.
1.	At the time of Booking	14,35,406/-
2.	On Completion of Super Structure – Retail Block	72,25,897/-
3.	On Offer of Possession	41,68,561/-

17. It is observed that the total sale consideration of the unit in question was Rs. 1,28,29,866/-, out of which the complainant has paid a sum of total sum of Rs. 17,85,922/- to the respondent no. 1 out of which the respondent no. 1 has given a discount of Rs. 2,85,922/- so, in total the complainant has paid an amount of Rs. 15,00,000/-. As per the payment plan, the complainant was required to make the first payment at the time of booking which no doubt he has paid. The second payment was required to be made 'On completion of Super Structure' for which the respondent no. 1 raised a demand on 26.03.2021, followed by reminder letters dated 11.04.2021, 21.04.2021 and 06.05.2021; however, the complainant failed to make the requisite payments in terms of the agreed schedule. The complainant has not been able to place any cogent material on record to demonstrate that the said demands were complied with or that there was any justification for withholding payment. Thus, it is evident that the complainant has committed default in discharge of his contractual obligations under the unit buyer's agreement. 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 despite issuance of reminders, the complainant has failed to clear the outstanding dues.

18. In the present case, the complainant has failed to adhere not only to the contractual stipulations but also to the statutory mandate, thereby disentitling himself from seeking equitable relief. It is also borne out from the record that prior to cancellation, the respondent no. 1 had issued a pre-termination notice dated 18.05.2021, thereby affording sufficient opportunity to the complainant to clear the outstanding dues, failing which the allotment was liable to be cancelled. Despite such

opportunity and repeated reminders, the complainant failed to discharge his payment obligations and consequently, the respondent no. 1 proceeded to terminate the allotment vide letter dated 01.07.2021 in accordance with the terms and conditions of the agreement. The Authority finds that due process was duly followed and principles of natural justice were complied with before effecting the cancellation.

19. Insofar as the contention of the complainant regarding change in unit number and marginal reduction in area is concerned, the same does not come to the aid of the complainant in the facts of the present case, as the material on record indicates that such changes were carried out pursuant to revision of building plans and were within the scope of the agreement executed between the parties. Moreover, the primary cause leading to cancellation of the allotment is the admitted non-payment of dues by the complainant under the agreed payment plan, which constitutes a fundamental breach of the terms of the agreement.

20. 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.

21. The paid-up amount shall be refunded after deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018.

22. The Hon'ble Apex court of the land in cases of ***Maula Bux Vs. Union of India (1973) 1 SCR 928*** and ***Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136,*** and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no.

2766/2017 titled as ***Jayant Singhal and Anr. Vs. M/s M3M India Ltd.*** decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted 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. So, it was held that 10% of the basic sale price is reasonable amount to be deducted in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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.*

23. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent no. 1 is directed to refund the deposited amount of Rs. 15,00,000/- after deducting 10% of the sale consideration along with an interest @10.80% (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 on the refundable amount, from the date of termination i.e., 01.07.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The amount already paid by respondent no. 1 on account of assured return shall also be adjusted while granting the refund.

V. Direct the respondent no. 1 to pay compensation for breach of contractual and statutory obligations, mental agony, financial loss, and commercial hardship caused to the complainant.

VI. Direct the respondents to pay litigation costs amounting to Rs. 2,00,000/- to the complainant.

24. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority

i. The respondent no. 1/builder is directed to refund the paid-up amount of Rs. 15,00,000/- to the complainant after deducting 10% of the sale consideration along with an interest @10.80% from the date of termination of allotted unit i.e., 01.07.2021 till the actual

refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

ii. The amount already paid by respondent no. 1 on account of assured return shall also be adjusted while granting the refund.

iii. A period of 90 days is given to the respondent no. 1 to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.01.2026