

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

Complaint no.: 1466 of 2024
Order pronounced on: 20.01.2026

Ravinder Kumar
R/o: Flat No.B-502, Ridgeview IFS Apartments,
Sector-54, Opposite Sushant University,
Gurgaon-122011.

Complainant

Versus

M/s Advance India Projects Limited.
Registered office at: AIPL Business Club, 5th Floor, Golf
Course Extension Road, Gurugram-122002, Haryana.

Respondent

CORAM:

Arun Kumar
Phool Singh Saini

Chairman
Member

APPEARANCE:

Garvit Gupta, Advocate
Dhruv Rohtagi, Advocate

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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 related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 and location of the project	"AIPL JOY GALLERY", Sector 66, Gurugram
2.	Nature of the project	Commercial Complex
3.	DTCP license No.	19 of 2008 dated 05.12.2018
4.	RERA registration	20 of 2020 dated 17.08.2020
5.	Application Form	10.09.2020 (As per page 29 of complaint)
6.	Allotment Letter	03.10.2020 (As per page 48 of complaint)
7.	Unit no.	0076, Ground Floor, Type-Retail shop space (As per page 55 of complaint)
8.	Unit Area	242.07sq.ft [Carpet Area] 527.41sq.ft. [Super Area] 263.71 sq.ft. [Covered Area] (As on page no. 55 of complaint)
9.	Agreement For Sale	05.01.2022 (As per page 52 of complaint)
10.	Addendum to BBA	17.02.2022 (As per page 94 of complaint)
11.	Assured Return Clause	3.1 of Addendum to BBA <i>Subject to Para 3.2 hereinbelow, and the Allottee making the due payments as per the agreed Payment Plan as per Schedule "A", the Promoter has agreed to pay Rs.22,995.00 (Twenty Two</i>

		<p><i>Thousand Nine Hundred Ninety Five Only) per month by way of Assured Return to the Allottee from 11.09.2022 till the date of filing of Application for grant of Occupancy Certificate for the Unit/Project with DGTCP by the Promoter.</i></p> <p><i>[Emphasis supplied]</i></p> <p>(As on page no. 96 of complaint)</p>
12.	Agreement regarding filing of application for grant of OC	<p>17.02.2022</p> <p>(As per page 102 of complaint)</p>
13.	Clause 1 of the said agreement	<p><i>That it has been agreed by the Company that in case the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP is post 11/09/2023, in such case, the Company will pay to the Allottee penalty of Rs.102.80/- per sq ft per month on super area till (the construction and services work in the Project is complete in terms of the provisions of the Haryana Building Code for the purposes of filing of application for grant of Occupancy Certificate with DGTCP) the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP. The return shall be inclusive of all Taxes and Cesses whatsoever payable or due on the return. All payments made to the Allottee shall be subject to applicable tax deduction at source as per the provisions of the Income Tax Act.</i></p> <p><i>[Emphasis supplied]</i></p> <p>(As on page no. 103 of complaint)</p>
14.	Application for grant of OC	<p>04.12.2023</p> <p>(As per page 113 of complaint)</p>
15.	Due date of possession	<p>13.05.2025</p> <p>(As per BBA at page no 64 of complaint)</p>
16.	Payment Plan	<p>Possession linked</p> <p>[1. At the time of booking-Any</p> <p>2. By September 30, 2020-20%</p> <p>3. On completion of retail super structure-40%</p>

		4. On application of OC-40% 5. On offer of possession-0%]
17.	Sale Consideration	Rs. 1,33,85,243/- (As per page 58 of complaint)
18.	Amount paid by the complainant	Rs. 85,05,533/- (As per page 138 of complaint)
19.	Demand Letter as per payment plan on competition of Retail Super Structure	01.03.2023 (As on page no. 100 of reply)
20.	Reminder letter against demand letter dated 01.03.2023	16.03.2023, 26.03.2023, 05.04.2023 (As on page no. 101-103 of reply)
21.	Demand letter on Application of OC	01.02.2024 (As on page no. 108 of reply)
22.	Reminder letter against demand letter dated 01.02.2024	17.02.2024, 27.02.2024 (As on page no. 109-110 of reply)
23.	Pre-Termination Letter	12.03.2024 (As on page no. 130 of complaint)
24.	Cancellation Letter	17.04.2024 (As per page 133 of complaint)
25.	Occupation Certificate	09.05.2024 (Page 105 of reply)
26.	Offer of Possession	Not Offered
27.	Assured Returns Paid by the respondent till date	Rs.8,61,867/- (Page 110 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent offered for sale units in a commercial complex known as 'AIPL Joy Gallery' comprising of several facilities on a piece and parcel of land situated in Sector-66, Gurugram, Haryana. The complainant received a marketing call from the office of the respondent in the month of June, 2020 for booking in the said project.
- II. That the complainant induced by the assurances and representations made by the respondent, decided to book a unit in the project of the respondent as he required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent who also confirmed that the complainant would be entitled to assured returns till the time construction is complete and the respondent applies for the Occupation Certificate and thereafter the unit would be leased to the third party by the respondent.
- III. On the basis of the representations made by the respondent and on its demand, the complainant made the payment of the Rs.5,00,000/- on 01.09.2020, accordingly the same was acknowledged by the respondent vide receipt dated 02.09.2020. The complainant signed several blank and printed papers at the instance of the respondent who obtained the same on the ground that the same were required for completing the booking formalities.
- IV. As per Clause (j) of the Booking Application Form, the possession of the unit was to be handed over on or before 13.05.2025. Also as per Clause (l) of the Booking Application Form, the respondent had been fully authorized to negotiate and finalize the leasing arrangement in respect of the unit in question on behalf of the complainant.
- V. Vide allotment letter dated 03.10.2020, the respondent allotted a unit no. 0076 on Ground floor with a super area of 527.41 sq. ft. at the rate

of Rs.21,960/- per sq. ft of the said project to the complainant. The payment plan was also annexed by the respondent vide the said allotment letter. Moreover, the total sale consideration was also specified in the said payment plan to be Rs.1,20,03,851.60/-. As per the payment plan, the respondent could demand and the complainant was liable to make the payment of 20% of the amount by 30.09.2020; 40% of the amount on completion of retail super structure and remaining 40% on application of Occupation Certificate.

- VI. That after numerous reminders and requests, the respondent after a lapse of more than 1.5 years from the date of booking provided the complainant with a copy of the Agreement. After going through the Agreement, the complainant realized that the provisions contained in the said Agreement were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the respondent and were totally unbalanced and unwarranted.
- VII. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the Agreement to the respondent. The complainant repeatedly requested the respondent for execution of an Agreement with balanced terms. It was specifically informed to the respondent by the complainant that the draft agreement as shared with the complainant was absolutely silent on the quantum of the assured return which was payable by the respondent to the complainant. The complainant was left with no other option but to sign the one-sided Agreement.
- VIII. That on 17.02.2022, an Addendum to Agreement for Sale was executed between the respondent and the complainant. As per Clause 3.1 of the Addendum to Agreement for Sale, it was agreed that the respondent would pay Rs.22,995/- per month by way of assured return to the

complainant from 11.09.2022 till the date of filing of application for grant of Occupation Certificate. The relevant portion of Clause 3.1 of the Addendum to Agreement for Sale is reproduced hereunder:

"3.1. ...the promoter has agreed to pay Rs 22,995 (Twenty-Two Thousand Nine Hundred Ninety-Five Only) per month by way of assured return to the Allottee from 11-09-2022, till the date of filing of application for grant of Occupation Certificate for the Unit/Project with DGTC by the Promoter."

- IX. Furthermore, it was also agreed vide Clause 4 of the said Addendum to Agreement for Sale that in case the respondent fails to comply with the said provisions of making payment towards the monthly assured returns, the complainant can stop making further payments as per the payment plan till the time the respondent corrects its mistake. Clause 4 of the said Addendum to Agreement for Sale is attached herewith: -

"4. In case of default by the Promoter under the conditions listed above. Allottee is entitled to the following:

- (i) Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction/development milestones and only thereafter the Allottee be required to make the next payment without any interest for the period of such delay....*

- X. That on the said date, another agreement was executed between the complainant and the respondent. It is submitted that as per Clause 1 of the said Agreement dated 17.02.2022, the respondent was liable to pay a penalty of Rs.102.80/- per sq. ft. per month on super area in case of any delay from 11.09.2023 in filing the application for grant of Occupation Certificate by the respondent. It was also specifically mentioned in the said clause that the application for grant of Occupation certificate could be made only when the construction and service work in the project is complete in terms of the provisions of the Haryana Building Code. Relevant portion of Clause 1 of the Agreement dated 17.02.2022 is reproduced hereunder:

“ That it has been agreed by the Company that in case the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTC is post 11/09/2023, in such case, the company will pay to the Allottee penalty of Rs 102.80/- per sq. ft. per month on super area....”

- XI. That the complainant based on the payment plan continued to make further payments and additionally paid Rs.30,00,000/- on 30.04.2023 vide cheque dated 800369 and Rs.23,47,411/- on 30.04.2023 vide cheque dated 800371. Accordingly, the respondent acknowledged the payments of said amounts vide receipts dated 01.05.2023. The complainant thereafter made another payment of Rs.48,174/- and the same was acknowledged by the respondent vide receipt dated 07.07.2023.
- XII. That the respondent vide the said agreements and addendum to Agreement had categorically assured the complainant that the monthly assured returns would be paid till the filing of application for grant of OC. The complainant has not received any payment towards Assured return from the respondent for the month of August, 2023 onwards.
- XIII. That vide email dated 02.01.2024, the respondent categorically stated that the respondent had applied for the grant of the Occupation Certificate. When the respondent shared the copy of the application for the grant of the Occupation certificate, the complainant realized that such application was filed by the respondent on 04.12.2023. As per the admission of the respondent itself, the Respondent was in default of Clause 1 of the Agreement dated 17.02.2022 as it had failed to apply for the grant of the Occupation certificate on or before 11.09.2023, and hence is liable to make payment towards the penalty as agreed to the complainant.

- XIV. That the complainant upon visiting the site of the project was shocked to see that the structure was far from ready or completed, rather the project was still under construction and there was no chance of the Occupation Certificate being granted to the respondent for the said project. The labour was still at the site and the construction of the tower in which the unit of the complainant was located was still underway.
- XV. That it was evident from the construction site that the respondent had merely applied for the grant of Occupation Certificate to somehow circumvent from the liability of paying monthly assured returns as the same were payable till the time of application for grant of the OC as stated above in this complaint and the project was nowhere near completion. Yet, the respondent vide the email dated 01.02.2024 has demanded the remaining 40% of the payment which was to be demanded by the respondent at the time of valid application for grant of the OC.
- XVI. That the complainant requested the respondent to continue making the payment of assured returns and the penalty but the respondent has been dilly-dallying the matter. Rather, the respondent vide its letter dated 12.03.2024 sent a pre-termination letter on the basis of the illegal demand of 40% of the payment. Thereafter, the complainant protested against the said pre-termination letter vide his emails.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
- i. Order that the application for grant of OC be considered as invalid in nature.
 - ii. Direct the respondent to make payment towards the assured return from August 2023 onwards till the grant of 'valid offer of possession'.

- iii. Direct the respondent to make payment towards penalty amount as prescribed in Clause 1 of the Agreement dated 17.02.2022.
 - iv. Declare the termination dated 17.04.2024 null and void and not binding upon the complainant.
 - v. Direct the respondent to immediately revoke the intimation of termination dated 17.04.2024.
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 by filing reply on the following grounds: -
- I. That the complainant is not an "Allottee" but an Investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The said fact is also evident from the fact that the complainant, wanted to sell the unit in question at a profit, but did not have adequate funds to pay the outstanding dues, against the unit and hence, defaulted in the payments. As, such the complainant under no circumstances is entitled to restoration of his allotment. The respondent, in terms of Clause 9.3 of the Agreement to Sell dated 05.01.2022, is entitled to forfeit the earnest money, brokerage charges and any other marketing costs of the unit in question from the complainant, since no fault has been attributed to the respondent
 - II. That the complainant had approached the respondent and expressed an interest in booking an apartment in the commercial colony developed by the respondent and booked the unit in question, bearing number 0076, Ground Floor admeasuring 242.08 sq. ft. (tentative area) situated in the project developed by the respondent, known as "AIPL Joy Gallery" at

Sector 66, Gurugram, Haryana. Thereafter, the complainant vide application form applied to the respondent for provisional allotment of a unit bearing number 0076 in the project.

- III. That the complainant consciously and wilfully opted for "Construction Linked Payment Plan for remittance of the sale consideration for the unit and further represented to the respondent that he shall remit every instalment on time as per the payment schedule.
- IV. That the booking was categorically, willingly and voluntarily made by the complainant with an understanding of the same being for leasing purposes and not self-use, as can be noted in Clause (I) of the Application form:

(I). I/We have represented to the Company that the investment proposed to be made by me/us in the Unit is solely with an intent and purpose to lease the Unit. Since I/we do not have requisite experience and knowledge of leasing, hence, to avail the benefit of experience, knowledge, and brand of the company in leasing, I/we shall grant the Lease Grant Right in favour of the Company at the time of execution of the Agreement for Sale, and the Company shall be fully authorized to negotiate and finalize the leasing arrangement in respect of the Unit, individually or in combination with other adjoining units (whether horizontally and vertically), with any intending tenant/lessee/licensee, on such commercial terms including but not limited to lease/license tenure, rent/license fee, fit out period, rent/license fee free period, lock-in-period, security deposit, penalty(ies), maintenance charges, power back-up/utility charges, parking charges, etc., and whatever conditions as may be negotiated by the Company, in its sole discretion, and to execute the lease/leave and license with the said intending tenant/lessee/licensee in its own name or on my/our behalf, as may be decided by the Company. I/We hereby further confirm and agree that I/We shall bear the cost pertaining to such leasing/leave and license, lease/leave and license renewals, subsequent leases/leave and licenses, etc. including but not limited to brokerage, registration charges, stamp duty for registration, administrative charges, fit out cost, interior cost, etc. to be incurred for lease/renting out of the Unit (as an individual unit and/or in combination with other units by way of merging it as part of the larger area whether horizontally and/or vertically).

- V. That upon the specific request of the complainant vide email dated 03.10.2020, the copy of the Unit Buyer's Agreement / Agreement to Sell, in respect of the unit in question was handed over to the complainant's channel partner.
- VI. That simultaneous to the allotment of the unit, the respondent approached the complainant, vide an email dated 03.10.2020, whereby, the respondent sought a Cheque from the complainant, towards generation of E-challan for registration of the Buyer's Agreement. That having waited for a substantial time and upon receiving no response, the respondent again issued a reminder e-mail dated 03.04.2021 to the complainant, for payment of the fee for registration of the Unit Buyer's Agreement.
- VII. That after much delay, the complainant made the requisite payment towards the registration of the Buyer's Agreement and thereafter, vide an e-mail dated 23.12.2021, intimated the scheduled date for the execution of the Unit Buyer's Agreement/ Agreement to Sell between the parties for 05.01.2022, at the office of the Sub-Registrar.
- VIII. Vide an email dated 16.01.2022, the respondent informed the complainant that the executed copy of the Agreement to Sell dated 05.01.2022 was received from the office of the Sub-Registrar and that the complainant could collect a copy thereof from the office of the respondent.
- IX. That along with the Agreement to Sell dated 05.01.2022, an Addendum Agreement was also executed between the parties, for the payment of Assured Returns of Rs.22,995/- per month, from 11.09.2022 till the date of filing of the Application for grant of Occupation Certificate for the unit/project. However, such payment of Assured Returns was subject to the complainant making timely payments as per the Payment Plan. Accordingly, the respondent started making payment of Assured Returns to the complainant.

- X. That the complainant neither contested of not having received a copy of the Buyer's Agreement, nor objected to any of the terms or conditions of the Allotment or the Buyer's Agreement or that he was made to sign any blank papers etc., as have been raised in the present complaint. It is submitted that the complainant is estopped from raising such frivolous pleas, after a lapse of over 4 years of the date of booking. Thus, it is evident that such pleas raised by the complainant, in the present complaint are untenable, frivolous, objectionable, afterthought and an attempt to make out a false case for himself, in order to mislead the Authority and get favourable orders.
- XI. That in terms of Clause 5, 7, 9, 10, 19 and 20 of the Agreement to Sell dated 05.01.2022, the respondent assured to give constructive possession of the unit to the complainant by 13.05.2022, subject to the complainant, honouring its part of the obligations under the contract.
- XII. That vide letter dated 18.01.2023, the respondent intimated to the complainant on the construction update and specifically requested the complainant to be ready with an amount of Rs.53,95,584/- as part of instalment payable on completion of the retail super structure. Thus, on 01.03.2023, the respondent raised a demand on achieving the milestone of completion of the retail Super Structure, on the complainant.
- XIII. That the complainant failed to abide by the terms and conditions of the Agreement for sale and defaulted in remitting timely instalments and the respondent was constrained to issue reminder letters dated 16.03.2023, 26.03.2023 and 05.04.2023, to the complainant for payment of the instalment. Ultimately, the said demand was paid by the complainant after much delay on 01.05.2023.
- XIV. Pursuant thereto, the respondent completed the construction of the unit and applied for the grant of Occupation Certificate on 04.12.2023, which

was granted on 09.05.2024. The respondent, in terms of the Payment Plan opted by the complainant, raised a demand of achieving this milestone and sought payment from the complainant. However, the complainant, miserably failed to discharge his obligation of payment. The respondent thereafter issued reminders to the complainant for payment of the said demand on 01.02.2024, 17.02.2024 and 27.02.2024.

XV. That the principal amount demanded against the said unit was Rs.1,33,85,243.88/- out of which only Rs.85,05,533/- was paid by the complainant against the unit. Constrained by the non-responsive and defaulting conduct of the complainant, the respondent thereafter issued a Pre-Termination Letter dated 12.03.2024. Thereafter, the respondent terminated the allotment of the complainant vide Intimation of Termination dated 17.04.2024.

XVI. That the complainant did not have adequate funds to pay the instalments, therefore, the complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the Agreement for Sale. Therefore, there is no equity in favour of the complainant.

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 those undisputed documents and oral as well as written submissions 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 for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11.... (4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

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 relief sought by the complainants.

F.I. Order that the application for grant of OC be considered as invalid in nature.

F.II Declare the termination dated 17.04.2024 null and void and not binding upon the complainant.

F.III Direct the respondent to immediately revoke the intimation of termination dated 17.04.2024.

12. In the present complaint, the complainant intends to continue with the project and is seeking setting aside the Termination of the unit alongwith delayed possession charges and payment of outstanding assured returns.

13. In the present case, the complainant had applied for booking a shop in the project "AIPL Joy Gallery" situated at Sector-66, Gurugram, being developed by the respondent and was allotted a shop bearing no. 0076 on Ground floor, Type-Retail shop space, admeasuring area 242.07 sq.ft of carpet area, 527.41sq.ft of Super Area and 263.71sq.ft. of Covered Area vide Allotment Letter dated 03.10.2020. Thereafter, the Agreement For Sale was executed on 05.01.2022 inter-se parties for a sale consideration of Rs.1,33,85,243/- against which the complainant had paid an amount of Rs.85,05,533/-. An Addendum to Agreement For Sale was executed between the complainant and respondent on 17.02.2022 relating to the terms and conditions of Assured Returns. As per clause 3.1 of the Addendum Agreement dated 17.02.2022, the respondent agreed to pay Rs.22,995/- per month from 11.09.2022 till the application of Occupation certificate. The said clause is reiterated below:

*"3.1 Subject to Para 3.2 hereinbelow and the Allottee making the due payments as per the agreed Payment Plan as per **Schedule 'A'**, the Promoter has agreed to pay **Rs.22,995.00 (Twenty Two Thousand Nine Hundred Ninety five only)** per month by way of assured return to the Allottee from **11.09.2022**, till the date of filing of application for grant of Occupancy certificate for the Unit/Project with DGTCP by the Promoter. The Assured Return shall be inclusive of all Taxes and Cesses whatsoever payable or due on the Assured return. All payments made to the Allottee shall be subject to applicable tax deduction at source as per the provisions of the Income Tax Act.*

[Emphasis supplied]

14. As per clause 1 of the Addendum Agreement dated 17.02.2022, the respondent undertook to pay penalty of Rs.102.80/- per sq.ft. per month on the super area till the date of filing of the application by the respondent for Occupation Certificate, in case the date of filing of application for Occupation certificate is post 11.09.2023. The same is reiterated below:

"1. That it has been agreed by the Company that in case the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP is post 11/09/2023, in such case, the Company will pay to the Allottee penalty of Rs.102.80/- per sq ft per month on super area till {the construction and services work in the Project is complete in terms of the provisions of the Haryana Building Code for the purpose of

filing of application for grant of occupancy Certificate with DGTCP} the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP. The return shall be inclusive of all Taxes and Cesses whatsoever payable or due on the return. All payments made to the Allottee shall be subject to applicable tax deduction at source as per the provisions of the Income Tax Act.

[Emphasis supplied]

15. As per clause 5 of the Agreement For Sale dated 05.01.2022, the respondent undertook to handover possession of the unit to the complainant by 13.03.2025.
16. The respondent has cancelled the unit of the complainant vide cancellation letter dated 17.04.2024 due to non-payment of outstanding dues. Now the question arises before the Authority whether the cancellation letter dated 17.04.2024 is valid or not, in the eyes of law?
17. On the consideration of documents available on the record and submissions made by both the parties, the Authority observes that the respondent has raised a demand letter dated 01.02.2024 as per the Payment Plan i.e., "On Application of the OC" , thereafter, issued Reminder Letter on 17.02.2024 and 27.02.2024. The respondent sent a Pre-Cancellation Letter on 12.03.2024 and subsequently, issued a Cancellation Letter on 17.04.2024.
18. Clause 9.3(c) of the Agreement for Sale dated 05.01.2022 delineates the circumstances constituting default on the part of the Allottee. The said clause further prescribes the procedure to be followed by the Promoter in issuing demand notices and specifies the contingencies under which the allotment may be cancelled. The relevant portion of Clause 9.3(c) is reproduced hereunder for ready reference:

" 9.3 The Allottee shall be considered under a condition of default, on the occurrence of the following events:

- a.
- b.
- c. *In case of Default by Allottee under the condition listed above continues for a period beyond 90(ninety) days after notice from the Promoter in this regard, the Promoter may cancel the Allotment of the Said unit in favour of the Allottee and refund the money paid to the Promoter by the Allottee by forfeiting the Booking Amount, interest component on delayed*

payment and non-payment of any due payable to the Promoter. The rate of interest payable by the Allottee to the Promoter shall be the State Bank of India highest marginal cost of lending rate plus 2% (two percent). Subject to Para 2.2, the balance amount of money paid by the Allottee shall be returned by the Promoter to the Allottee within 90 (ninety) days of such cancellation. On such default, the Agreement and any liability of the Promoter arising out of the same shall thereupon stand terminated. Provided that the Promoter shall intimate the Allottee about such termination at least 30(thirty) days prior to such termination.

[Emphasis supplied]

19. However, in the present case, the aforesaid procedure has not been adhered to by the respondent. The respondent raised a demand on 01.02.2024 calling upon the complainant to make the requisite payment, and proceeded to terminate the allotment on 17.04.2024. The said termination was effected prior to the expiry of the stipulated period of ninety days, and is therefore in contravention of the agreed terms.
20. In view of the reasons quoted above and documents available on record, the Authority is of the view that the notice for termination letter dated 17.04.2024 is not valid in the eyes of law, as the procedure prescribe under clause 9.3(c) of the Agreement For Sale dated 05.01.2022 has not been complied with by the respondent. The cancellation/termination dated 17.04.2024 is hereby set aside. In the light of these observations, the respondent is directed to restore the allotted unit of the complainant, in case, if the same is not available, the respondent shall offer an alternative unit to the complainant of same size, at similar location and at the same rate and specifications at which the unit was earlier purchased in the said project, within 30 days from the date of this order.
- F.IV. Direct the respondent to make payment towards the assured return from August 2023 onwards till the grant of 'valid offer of possession'.**
- F.V. Direct the respondent to make payment towards penalty amount as prescribed in Clause 1 of the Agreement dated 17.02.2022.**

21. The complainant has sought the relief of pending Assured returns from the period August 2023 till the grant of valid offer of possession. The Authority observes that as per Clause 3.1 of the Addendum to Agreement For Sale, it was agreed between the complainant and the respondent that the respondent would pay Rs.22,995/- per month by way of Assured return to the complainant from 11.09.2022 till the date of filing of application for grant of Occupation Certificate. The complainant has admitted that the respondent has paid the Assured return till July, 2023 and from August 2023 onwards the same has been due. The respondent has submitted that the payment of Assured return of Rs.22,995/- per month was payable from 11.09.2022 till the date of filing of the application for grant of Occupation Certificate, however, such payment of Assured returns was subject to the complainant making timely payments as per the Payment plan. The complainant defaulted in making the payments and thus, the Assured returns are no longer payable to the complainant
22. Further, the complainant is seeking payment towards penalty amount as per Clause 1 the Agreement dated 17.02.2022. The Authority observes that as per clause 1 of the Agreement dated 17.02.2022, the respondent undertook to pay a penalty of Rs.102.80/- per sq.ft. per month on super area till the filing of application for grant of Occupation Certificate. The said Clause is reiterated below:

That it has been agreed by the Company that in case the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP is post 11/09/2023, in such case, the Company will pay to the Allottee penalty of Rs.102.80/- per sq ft per month on super area till {the construction and services work in the Project is complete in terms of the provisions of the Haryana Building Code for the purposes of filing of application for grant of Occupancy Certificate with DGTCP} the date of filing of application by the Promoter for grant of Occupancy Certificate with DGTCP. The return shall be inclusive of all Taxes and Cesses whatsoever payable or due on the return. All payments made to the Allottee shall be subject to applicable tax deduction at source as per the provisions of the Income Tax Act.

[Emphasis supplied]

23. The Authority is of the view that the assured return in this case is payable as per clause 3.1 of the Addendum to Agreement For Sale dated 17.02.2022. The fixed return cum assured return has been committed by the promoter is an amount of Rs.22,995/- per month from 11.09.2022, till the date of filing of application for grant of Occupation Certificate. The relevant clause is reproduced below for ready reference:-

3.1 of Addendum to BBA

Subject to Para 3.2 hereinbelow, and the Allottee making the due payments as per the agreed Payment Plan as per Schedule "A", the Promoter has agreed to pay Rs.22,995.00 (Twenty Two Thousand Nine Hundred Ninety Five Only) per month by way of Assured Return to the Allottee from 11.09.2022 till the date of filing of Application for grant of Occupancy Certificate for the Unit/Project with DGTCP by the Promoter

24. If we compare this assured return with delayed possession charges payable under clause 1 of the Agreement dated 17.02.2022, the assured return is much better i.e., assured return in this case is payable a Rs.22,995/- per month whereas the delayed penalty are payable approximately Rs.54,217/- per month. By way of fixed return, the promoter has assured the allottee that he would be entitled for this specific amount till the application for Occupation Certificate.
25. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed penalty charges under the Agreement dated 17.02.2022, then the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
26. On consideration of the documents available on the record and submissions made by the parties, the Authority observes that the amount of unpaid delayed penalty is more than the amount of unpaid assured returns. It is matter of record that the amount of assured return was paid by the respondent/promoter from September 2022 till August 2023.

27. The respondent is directed to pay a penalty of Rs.102.80/- per sq.ft. per month on super area from 11.09.2023 till the filing of application for grant of Occupation Certificate i.e., 04.12.2023.

G. Directions of the authority

28. 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 cancellation letter dated 17.04.2024 is not valid and is bad in eyes of law and is hereby set aside. Therefore, the respondent-promoter is directed to restore the allotted unit of the complainants, in case, if the same is not available, the respondent is directed to offer an alternative unit of same size, similar location and at the same rate and specifications at which the unit was earlier purchased in the said project, within 30 days from the date of this order.
- ii. The respondent is further directed to handover the physical possession of the allotted unit to the complainants within 2 months of this order.
- iii. The respondent is directed to pay a penalty of Rs.102.80/- per sq.ft. per month on super area from 11.09.2023 till the filing of application for grant of Occupation Certificate i.e., 04.12.2023 within a period of 90 days of this order, failing which the amount would be payable with interest @ 8.80% p.a. till the date of actual realization.
- iv. The respondent is directed to issue a revised account statement after adjustment of delayed penalty within a period of 30 days and the complainant is directed to pay the outstanding dues, if any remains after adjustment of interest for delayed period.
- v. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e.,

10.80% by the respondent-promoter which is same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per Section 2(z) of the Act.

- vi. The respondent shall not charge anything from the complainant which is not the part of the agreement.

29. Complaint stands disposed of.

30. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.01.2026

HARERA
GURUGRAM