BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**4816 of 2025**
Date of Filing:		**09.09.2025**
Date of Decision:		**17.07.2026**

Hardik Sachdeva
Address at: D-57, 2nd Floor, Central Park Flower Valley, Sector-32-33, Badshahpur Sohna Rd, Gurugram, Haryana - 122102

Complainant

Versus

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

Respondent

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:

Ms. Neha Yadav Advocate for the complainant
Ms. Shikha Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/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 Gallery, Sector 66, Gurugram.
2.	Nature of project	Commercial Colony
3.	Project area	4.418 acres
4.	DTCP license no.	197 of 2008 dated 05.12.2008 valid up to 04.12.2026
5.	Name of licensee	M/s Advance India Project Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 20 of 2020 dated 17.08.2020 valid up to 13.05.2025
7.	Unit no.	1005, 1st Floor (as per agreement dated 13.07.2021 at page no. 34 of complaint)
8.	Area admeasuring	423.01 sq. ft. (as per agreement dated 13.07.2021 at page no. 34 of complaint)
9.	Allotment letter	27.09.2021 (page no. 63 of reply)
10.	Date of agreement for sale	13.07.2022 (page no. 32 of complaint)
11.	Addendum to agreement	13.07.2022 (page no. 117 of reply)
12.	Possession clause	*5. Time is Essence:*

		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 by ***13 May 2025*** *as disclosed at the time of registration of the Project with the Authority from time to time.*
13.	Due Date of possession	*13.05.2025*
14.	Assured return clause	*3. Assured Return* *Subject to Para 3.2 herein below and the Allottee making the due payments as per the agreed Payment Plan as per Schedule 'A', the Promoter has agreed to pay* ***Rs 1,30,874/-*** *per month by way of assured return to the Allottee from* ***15-09-21*** *or the succeeding day* ***from the date of receipt & realization of Rs. 1,46,67,962/- from the Allottee and credited to the bank account of the Promoter, 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.*
15.	Total sale consideration	Rs. 1,38,74,682/- (as per payment plan of agreement dated 13.07.2021 on page no. 71 of complaint)
16.	Paid up amount	Rs. 1,50,87,210/- (as per SOA at page 156 of reply)
17.	Application of OC	04.12.2023 (page no. 129 of reply)

18.	Occupation certificate	09.05.2024 (page no. 92 of complaint)
19.	Offer of Constructive Possession	18.05.2024 (page no. 83 of complaint)
20.	Leasing of unit	12.02.2025 (page no. 91 of complaint)
21.	AR already paid by respondent	Rs. 36,93,918/- (as per calculation sheet provided at page 159 of reply) from 15.09.2021 to December 2023

B. Facts of the complaint

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

I. That the complainant booked a unit in the project of the respondent and paid a booking amount on 14.09.2021, a unit bearing no. 1005, 1st floor admeasuring 423.01 sq. ft. was allotted in favour of the complainant. Subsequently, an agreement for sale was executed on 13.07.2022 between the respondent and the complainant in respect of the subject unit for a total sale consideration of Rs. 1,36,34,700/-. As per clause 5 of the agreement, the respondent is obligated to complete the said project by 13.05.2025.

II. That complainant had paid the entire sale consideration to the tune of Rs. 1,50,87,210/- against the total consideration of Rs. 1,36,34,700/- as per statement of account dated 08.04.2025. However, in spite of the present complainant having fulfilled its obligations being an allottee, the respondent has not fulfilled their contractual obligation and has not handed over physical possession of the subject unit.

III. That the Complainant does not intend to withdraw and wishes to continue in the subject project. So, in the light of the facts mentioned above, the respondent is liable to pay the delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules of 2017 from the due date of possession i.e., 13.05.2025 till actual handing over of physical possession of the unit as per the provisions of section 18 of the Act of 2016.

IV. That clause 7 of the Agreement shockingly redefines possession as symbolic, constructive or notional, explicitly disclaiming responsibility for physical handover.

V. That after receiving occupation certificate on 09.05.2024, the respondent offered the possession of the subject unit vide letter dated 18.05.2024 to the complainant along with the certain illegal demands such as Sinking Funds, Labor cess, Infrastructure Augmentation Charges, Electric Switch-in station & Deposit Charges, Sewage/Storm Water/Water Connection Charges, Electric Meter Charges, Electric Switch-in-station & Deposit Charges, Brokerage, Common area maintenance charges (CAM) and Mall Operations and Marketing Charges. Further, the complainant is not liable to pay CAM charges as only constructive possession has been offered and the complainant is not in actual physical possession of the subject unit.

VI. That despite receiving the occupation certificate on 09.05.2024, the offer of possession dated 18.05.2024 issued by the respondent is patently invalid and illegal for the following reasons: Firstly, it nowhere talks about physical handing over of possession and no actual physical possession was offered, Secondly, the said offer is accompanied by many illegal demands as deliberated hereinabove, Thirdly, the super area of the unit was arbitrarily reduced from 984.02 sq. ft. to 967 sq. ft. without any supporting documentation or non-disclosure about the change in carpet area. Thus, in view of the above, the said notice of offer of possession is illegal, unlawful and not valid in the eyes of law. Thus, it is requested that a fresh offer of possession be issued by the respondent after removing all such illegal demands/charges and a fresh statement of account be issued. That the respondent was liable to put the said unit on lease in terms of clause 19 of the said agreement.

VII. That the respondent sent a letter dated 12.02.2025 to the Complainant stating that lease terms have been finalized with National Fashion & Accessories brand and has also shared brief terms of the Lease. The Lease Commencement date was 1st May 2025 (Tentative) i.e., date of physical handover of site to the brand. However, it is matter of fact that the complainant has not received any lease rental till date. Thus, the respondent has failed to fulfill its obligation envisaged under clause 19 of the Agreement.

VIII. That clause 20 of the agreement gives right to the Allottee to seek physical possession of the said Unit if the unit remains vacant/unleased for a continuous period of 6 months in any financial year.

IX. That the occupation certificate from the Directorate of Town and country Planning, Haryana was obtained on 09.05.2024 and subsequently, the offer of possession was made to the complainant vide letter dated 18.05.2024. It was only vide letter dated 12.02.2025 that the respondent had informed that the commercials have been finalized with National Fashion & Accessories and the lease commencement date is 01.05.2025. However, the complainant has not received any lease rental till date.

X. Under clause 20, the complainant is entitled to demand physical possession if the unit remains unleased for a continuous period of 6 months. The unit remained unleased from 09.05.2024 to 01.05.2025 i.e., around 1 year. Therefore, the complainant is legally entitled to seek immediate physical possession of the said unit.

XI. That it is pertinent to mention here that an Addendum to Agreement was also executed providing for an assured return of Rs. 1,30,874/- per month from 15.09.2021 till the filing of the application for occupancy certificate (OC).

XII. That the respondent was obligated to pay assured return w.e.f. 15.09.2021 till the date of filing of application for grant of occupancy certificate for the unit with DGTCP by the Promoter. As per occupation certificate, the application was made by the promoter on 20.03.2024. Thus, the respondent was liable to pay assured return till 20.03.2024. However, the respondent ceased payments in January 2024, hereby breaching this binding obligation. As per the agreed terms between the parties, the respondent has increased the amount of assured return payable to the complainant and has been paying a sum of Rs.1,83,522/- to the complainant since April 2023. Thus, the respondent remain liable to pay assured return @ Rs.1,83,522/- w.e.f. January 2024 until 20.03.2024.

XIII. That the complainant sent a legal notice dated 29.05.2025 to the respondent stating various grievances including one-sided and arbitrary clauses in the agreement for sale dated 13.07.2022, illegal and unjustified monetary demands made at the time of offering possession post-occupation certificate dated 09.05.2024, unauthorized reduction in super area of the unit, and failure to disclose the updated carpet area.

It further stated that the respondent failed to fulfill its contractual obligation to lease the said unit and has not paid lease rentals or continued the assured return as agreed inter se parties. The complainant sought immediate physical possession of the unit under clause 20 due to its prolonged vacancy and demanded issuance of a fresh offer of possession after removing illegal charges, a revised statement of account and compensation for harassment and legal expenses. The notice also warns of legal action in case of noncompliance within 15 days. Despite the serious allegations and clear demands made in the legal notice, the respondent has failed to file any response or reply to the said legal notice.

C. Relief sought by the complainant:

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

(i) Direct the respondent to handover physical possession of the unit to the complainant/allottee in accordance with clause 20 of the Agreement dated 13.07.2022.

(ii) Direct the respondent to pay delay possession charges at the prescribed rate of interest as prescribed under Rule 15 of the Rules of 2017 from the promissory date of delivery of subject unit i.e., 13.05.2025, till the date of actual handover of possession of subject unit in view of section 18 of the Act.

(iii) Direct the respondent to pay assured return @ Rs. 1,83,522/- w.e.f. January 2024 until 20.03.2024.

(iv) Direct the respondent to issue a fresh offer of possession after removing all illegal and unwarranted charges (sinking fund, labour cess, infrastructure augmentation charges, electric switch in station &

Deposit charges, sewage/storm water connection charges, electric meter charges, electric switch in station & deposit charges, brokerage, common area maintenance charges and mall operation and marketing charges.

(v) Direct the respondent to furnish a revised statement of account reflecting correct area and applicable charges.

(vi) Direct the respondent to cease levying CAM charges upon the complainant as neither physical possession has been offered to the complainant nor subject unit has been put on lease.

(vii) Direct the respondent to furnish details and justification for any increase or decrease in carpet area of the subject unit.

(viii) Refrain the respondent from charging any holding charges.

(ix) Direct the respondent to execute conveyance deed in favour of the present complainant as per provisions of section 17 of the Act.

(x) Direct the respondent to pay compensation for the harassment caused to my client amounting to Rs. 2,50,000/-.

(xi) Direct the respondent to pay a cost of litigation amounting to Rs. 1,00,000/-.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.

I. That at the very outset, it is submitted that the present complaint is untenable both in fact and law and is liable to be dismissed at the very outset. Moreover, the complaint is filed without any cause of action and hence is liable to be dismissed.

II. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions, etc., from filing the present complaint. The respondent has already offered possession of the unit in question to the complainant, who has failed to complete all the formalities and execute the conveyance deed of the unit, as such, the respondent has already complied with its obligations under the agreement for sale dated 13.07.2022. The present complaint is not maintainable in law or on the facts.

III. That the complainant has not come before this Hon'ble Authority with clean hands and has suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.

IV. That the complainant, being interested in the real estate development of the respondent, known under the name and style of "AIPL Joy Gallery" located at Sector 66, Gurugram, Haryana (the "Project"), booked a unit in the said project.

V. That the complainant booked a retail shop space vide an application form subsequent to which was allotted a unit no. 1005, on Ist Floor, tentatively admeasuring carpet area 423.01 sq. ft. and super area 984 sq. ft. vide allotment letter dated 27.09.2021.

VI. That the complainant prior to approaching the respondent had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regards to all aspects of the project including but not limited to the capacity of the respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit un-influenced in any manner by the respondent. The complainant consciously and willfully opted for a flexi payment plan as per his choice for remittance of the sale consideration for the unit in question, and further represented to the respondent that they shall remit every installment on time as per the payment schedule. That the respondent had no reason to suspect bonafide of the complainant.

VII. That thereafter, the agreement for sale dated 13.07.2022 (the "Agreement") was executed between the parties and the same has also been registered before the Sub-Registrar. That the parties also entered into an addendum to agreement for sale dated 13.07.2022. Accordingly, the rights and obligations between the parties are to be seen from the agreement dated 13.07.2022 and the addendum executed therein.

VIII. That there is no iota of evidence put forth by the complainant to show that the agreement was executed under coercion, unlike alleged by the complainant. In fact, it is a matter of fact that no objection/protest whatsoever was made by the complainant at any point in time since the execution of the said agreement till the date of filing this complaint. On the contrary, the parties executed the agreement after having read and understood all the terms and conditions therein, as evident from Clause L. of the agreement dated 13.07.2022,

IX. That in such a circumstance whatsoever, no challenge to the duly and lawfully executed and registered agreement can be made and the allegations of the complainant should be rejected in toto. Furthermore, the entire complaint is bereft of any valid claim and hence, the same is bound to be dismissed, on the basis of the grounds as noted hereunder:

X. That the area of the unit was tentative and subject to change. The respondent has sent a letter dated 22.02.2023 to the allottee intimating that the super area of the unit was revised from 984.02 sq. ft. to 967 sq. ft.

XI. That there has been a change of only 1.7% in the super area of the unit, which is permissible under the agreement to sale dated 13.07.2022 and Model RERA Agreement.

XII. That since the very beginning, the intention of the parties has been ex-facie and prima facie clear to take the constructive possession of the unit to earn the rental income from the unit as noted in clause k of the application form.

XIII. That the sole intention of booking was to lease the unit and with that understanding, an offer was made by the complainant by filing the application form upon the acceptance of which an allotment was made on 27.09.2021.

XIV. That there has been no ambiguity with respect to the delivery of constructive possession of the unit clauses 5 and 7.1 of the Agreement categorically state that possession shall always mean constructive possession and not the physical handover of the Unit.

XV. In addition to the above and the categorical understanding between the parties, the complainant had granted the leasing right to the promoter, and the promoter has agreed to put the unit in combination with other units for their leasing. That complainant categorically agreed to lease the unit by entering into a leasing arrangement with the respondent. The allottee had also understood the general risks involved in giving the premises on lease.

XVI. That the relationship between the parties is contractual in nature and is governed by the agreement executed between the parties. The rights and obligations of the parties flow directly from the agreement. At the outset, it must be noted that the complainant willingly, consciously, and voluntarily entered into the agreement after reading and understanding the contents thereof to their full satisfaction, as is also evident from Clause K of the agreement.

XVII. That in consonance with the terms and conditions agreed between the parties under clause 19 of the agreement, the unit has been put on lease with a brand known under the name and style of "National Fashion & Accessories" and the same was communicated to the complainant vide letter dated 12.02.2025. The complainant cannot be allowed to go beyond their contractual obligation and demand physical possession of the unit and the present complaint needs to be dismissed.

XVIII. That the complainant is with regards lease of the unit which is beyond the jurisdiction that this Ld. Authority has been dressed with. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a Developer and Allottee with respect to the development of the project as per the Agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the Allottee. It is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to adjudicate upon "Lease" and "Minimum Lease Rental/ Commitment".

XIX. That without prejudice to the submissions of the respondent regarding the jurisdiction of the Authority to adjudicate upon lease, it is submitted that the it was agreed between the parties at the time of execution of the agreement that the respondent no. 1 shall be fully authorized, negotiate and finalize the leasing arrangement including the rentals. That rent, period and other terms and conditions of such lease were to be decided as per the prevailing market terms, prevailing market practice and the outcome of negotiations conducted by the respondent with the intending lessee.

XX. As per clause 5 r/w clause 7.1 of the agreement, the possession was proposed to be handed over by 13.05.2025 as per the timelines disclosed at the time of registration of the project with the Authority or the extended period as may be intimated and approved by the Authority. The proposed due date of handing over of possession was subject to force majeure and Court orders, Government policy/ guidelines, and decisions affecting the regular development of the real estate Project.

XXI. That there has been no delay in the offer of possession of the unit. That the respondent vide application dated 04.12.2023 applied for grant of occupation certificate and rightly received the occupancy certificate on 09.05.2024, after which offered the possession on 18.05.2024. That once an application for the grant of an occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilized by the statutory authority to grant an occupation certificate to the respondent is necessarily required to be excluded from the computation of the period utilized for the implementation and development of the project.

XXII. That the respondent has charged all charges as per the terms agreed between the parties vide the agreement for sale dated 13.07.2022; hence, the complainant is liable to make payment of charges due as per the agreed terms and conditions of the agreement.

XXIII. That the complainant defaulted in making the payment and in taking the constructive possession. That in such a circumstance, the complainant is bound to pay the maintenance charges from the date of the offer of possession per the agreed terms and conditions between the parties, whether the unit is leased or not. The respondent has charged the maintenance charges as per the agreed terms of the agreement.

XXIV. That all the charges demanded from the complainant at the time of are valid and the complainant is liable to clear the outstanding dues raised by the respondent vide notice of offer of possession dated 18.05.2024.

XXV. That the complainant was duly offered the possession of the unit on 18.05.2024 and the complainant was obligated to make payment of the outstanding dues and take the possession of the unit. That the timely payment of the sales consideration of the unit was the essence of the agreement executed between the parties.

XXVI. That out of the total sales consideration of Rs. 1,52,87,850/- the complainant had only made payment of Rs. 1,50,87,210/-.

XXVII. That the respondent is one of the renowned developers in the industry. The act of timely offer of possession on the part of the respondent needs to be appreciated and seen in line with the fact that the respondent has not stood in breach of any obligation. However, on the other hand, the complainant allottee has miserably violated the terms of the agreement. It needs to be categorically noted that, as per clause 7.4 of the agreement, the complainant was obligated to take constructive possession of the unit within 30 days from the notice of offer of possession, however, the same was not done and consequently several reminders were sent to the complainant requesting the complainant to make payment of the outstanding dues along with the possession documents.

XXVIII. That as per clause 3.1 of the addendum to agreement to sell dated 13.07.2022, the respondent was only liable to pay the assured return till the date of filing of the application for the grant of occupation certificate. The respondent had paid the complete payment of assured return as per the terms and conditions of the addendum amounting to Rs. 41,04,354 from Sept 2021 till Dec 2023 i.e, application for grant of occupation certificate to the complainant.

6. 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.

E. Jurisdiction of the authority

7. The respondent has 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.

E.I Territorial jurisdiction

8. 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.

E.II Subject-matter jurisdiction

9. 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.*

10. 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 reliefs sought by the complainant:

(i) Direct the respondent to handover physical possession of the unit to the complainant/allottee in accordance with clause 20 of the Agreement dated 13.07.2022.

11. The complainant has sought the relief of physical possession of the unit. The builder-buyer agreement was executed on 13.07.2022 subsequently addendum buyer's agreement was executed on the same day i.e., 13.07.2022. The occupation certificate was issued on 09.05.2024. Subsequently, the respondent offered constructive possession to the complainant on 18.05.2024.
12. The complainant contends that clause 21 of the builder-buyer agreement deals with the physical possession of the unit and specifically provides that the Allottee may seek physical possession of the unit only in the event the entire unit remains vacant and unleased for a continuous period of six months in any financial year. The complainant submits that since the unit has never been leased out after the offer of possession he is entitled to physical possession.
13. The respondent, in its reply, submits that the said unit is exclusively meant for leasing purposes and that only constructive possession can be handed over; physical possession cannot be delivered. The respondent further asserts that the provision for constructive possession is consistently reflected in the application form and in the builder-buyer agreement.
14. The authority after considering all the documents on record observes that as per Clause (k) of the application form, the unit is not meant for self-occupation. Further, Clause 7 of the agreement stipulates that "possession" shall always mean constructive possession of the unit. Clause 19 of the agreement deals with the leasing arrangement and provides that the complainant shall not claim physical possession.
15. The Authority now proceeds to examine Clause 20, which is reiterated as under:

"That the Allottee can seek physical possession of the Unit only in case the entire Unit remains vacant/unleased for a continuous period of six (6) months in any financial year. It is hereby clarified that in case part of the Unit is leased in combination with other units by way of merging it as part of the larger area whether horizontally and/or vertically, even in such case the Allottee cannot seek physical possession of the part of the Unit remaining vacant/unleased."

16. As per this clause, the Allottee may seek physical possession of the unit only if the entire unit remains vacant and unleased for a continuous period of six months. There is no doubt that the unit has not gone on lease till date. However, a careful interpretation of the clause is necessary. The clause further clarifies that if the unit is leased in combination with other units by way of merging it as part of a larger area whether horizontally or vertically then even in such circumstances the Allottee cannot claim physical possession of the part of the unit that remains vacant or unleased.

17. Clause 20 of the agreement dated 13.07.2022 states that the unit forms part of a larger area in combination with other units, merged horizontally and/or vertically. Therefore, the Allottee is not entitled to seek physical possession of the said unit.

(ii) Direct the respondent to pay delay possession charges at the prescribed rate of interest as prescribed under Rule 15 of the Rules of 2017 from the promissory date of delivery of subject unit i.e., 13.05.2025, till the date of actual handover of possession of subject unit in view of section 18 of the Act.

18. In the present complaint, the complainant is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

*"**Section 18: - Return of amount and compensation***
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —
....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."
(Emphasis supplied)

19. The complainant booked a unit in the project of the respondent namely, AIPL Joy Gallery situated at sector-66, Gurugram. The complainant was allotted a unit bearing no. 1005 on First Floor admeasuring 423.01 sq. ft. vide allotment letter dated 27.09.2021. Subsequently the builder buyer agreement was executed between the parties on 13.07.2022. Subsequently on 13.07.2022 an addendum to buyer's agreement was executed between the parties.

20. Clause 5 of agreement to sale dated 13.07.2022 provides for the schedule for possession of the unit and the same is reproduced below:

    5. Time is Essence
    *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 by **13 May 2025** as disclosed at the time of registration of the Project with the Authority from time to time.*

21. As per the possession clause the due date of handing over of possession is 13.05.2025. Therefore, the due date of possession is 13.05.2025.

22. In the present case the Authority observes that the respondent has obtained the occupation certificate on 09.05.2024 and subsequently offered the unit to the complainant for possession on 18.05.2024

23. The Authority is of the considered view that the respondent has completed the construction of the project and offered possession of the allotted unit to the complainant prior to the stipulated date of possession, as per the terms of the agreement. In light of this timely

completion and offer of possession, the complainant is not entitled to any delay possession charges (DPC).

24. It is a settled principle under Section 18 of the Real Estate (Regulation and Development) Act, 2016, that a promoter becomes liable to pay compensation in the form of delay possession charges only in the event of a failure to complete the construction or hand over possession within the agreed timeline. In the present case, no such delay has occurred. On the contrary, the respondent has demonstrated due diligence by obtaining the occupation certificate on 09.05.2024 and offering possession on 18.05.2024.

25. Since there has been no breach of the agreement as well as of the provisions of Section 18(1) of the Act of 2016 for delay in the completion of the project, therefore the Authority finds no justification for awarding delay possession charges to the complainant. Accordingly, no case for delay possession charges is made out.

(iii) Direct the respondent to pay assured return @ Rs. 1,83,522/- w.e.f. January 2024 until 20.03.2024.

26. In the present complaint, the complainant booked a unit in the project of the respondent namely, AIPL Joy Gallery, situated at Sector- 66 of Gurugram. The complainant was allotted a unit bearing no. 1005 on First Floor admeasuring 423.01 sq. ft. vide allotment letter dated 27.09.2021. Subsequently the builder buyer agreement was executed between the parties on 13.07.2022. Subsequently on the same day i.e., 13.07.2022 an addendum to buyer's agreement was executed between the parties. The respondent has obtained the occupation certificate on 09.05.2024 and subsequently offered the constructive possession of the unit on 18.05.2024.

27. The complainant in the present complaint has sought relief regarding payment of assured return. The Authority observes that addendum buyer's agreement dated 13.07.2022 contains a clause no. 3 regarding payment of assured return. The said clause is reiterated as under:

> *3. Assured Return*
> *Subject to Para 3.2 herein below and the Allottee as per Schedule 'A', the Promoter has agreed to pay* ***Rs 1,30,874/-*** *per month by way of assured return to the Allottee from* ***15-09-21*** *or the succeeding day* ***from the date of receipt & realization of Rs. 1,46,67,962/- from the Allottee and credited to the bank account of the Promoter, 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 making the due payments as per the agreed Payment Plan 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.*

28. As per the said clause 3 of the addendum to buyer's agreement dated 13.07.2022 the respondent is liable to pay the assured return of Rs. 1,30,874/- per month from 15.09.2021 till the date of application of occupation certificate. The application of occupation certificate was filed on 04.12.2023. hence, the respondent is liable to pay assured return from 15.09.2021 till 04.12.2023.

29. On consideration of documents available on record and submissions made by both the parties, the authority observes that the respondent has already paid an amount of Rs. 36,93,918/- on account of assured return for the period starting from 15.09.2021 to December 2023 (as per the calculation sheet provided at page 159 of reply). Therefore, in view of the aforesaid payment already made towards assured return

for the relevant period, no further liability survives upon the respondent to make any payment towards assured return for the said period. Accordingly, the respondent cannot be held liable to pay any further amount on this account.

(iv) Direct the respondent to issue a fresh offer of possession after removing all illegal and unwarranted charges (sinking fund, labour cess, infrastructure augmentation charges, electric switch in station & Deposit charges, sewage/storm water connection charges, electric meter charges, electric switch in station & deposit charges, brokerage, common area maintenance charges and mall operation and marketing charges.

(v) Direct the respondent to furnish a revised statement of account reflecting correct area and applicable charges.

(vi) Direct the respondent to cease levying CAM charges upon the complainant as neither physical possession has been offered to the complainant nor subject unit has been put on lease.

30. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.

(vii) Direct the respondent to furnish details and justification for any increase or decrease in carpet area of the subject unit.

31. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties.

(viii) Refrain the respondent from charging any holding charges.

32. The respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

(ix) Direct the respondent to execute conveyance deed in favour of the present complainant as per provisions of section 17 of the Act.

33. The complainant is also asking for the relief of conveyance deed getting executed. As per section 11(4) (f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

34. The occupation certificate has been obtained on 09.05.2024 and subsequently unit was offered the constructive possession on 18.05.2024. Therefore, the respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

(x) Direct the respondent to pay compensation for the harassment caused to my client amounting to Rs. 2,50,000/-.

(xi) Direct the respondent to pay a cost of litigation amounting to Rs. 1,00,000/-.

35. 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

36. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f):

    i. The respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

37. Complaint as well as applications, if any, stands disposed off accordingly.

38. File be consigned to registry.

Arun.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.07.2026