BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**5821 of 2025**
Date of Filing:		**25.11.2025**
Date of Decision:		**17.07.2026**

Charanjeet Kaur
Address at: 2/113, Sundar Vihar, Paschim Vihar, West Delhi – 110087, Delhi — **Complainant**

Versus

M/s Advance India Projects Limited
Office: AIPL Business Club, 5th Floor, Golf Course Extension Road, Sector-62, Gurugram – 122001, Haryana — **Respondent**

CORAM:
Shri Arun Kumar — **Chairman**

APPEARANCE:

Sh. Rishabh Jain — Advocate for the complainant
Sh. Venket Rao — Advocate for the 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 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 Joystreet", Sector- 66, Gurugram.
2.	Project area	3.9562 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	7 of 2008 dated 21.01.2008, valid till 20.01.2025 152 of 2008 dated 30.07.2008 valid till 29.07.2025
5.	Name of licensee	Landmark Apartments Pvt. Ltd.
6.	RERA Registered/ not registered	157 of 2017dated 28.08.2017 valid up to 31.12.2020
7.	Unit no.	43, Second Floor (page no. 62 of complaint)
8.	Area admeasuring (Super area)	483.88 sq. ft. (page no. 62 of complaint)
9.	Allotment letter in favour of original allottee	19.07.2016 (Page no. 45 of the complaint)
10.	Date of unit buyer's agreement in favour of original allottee	05.09.2016 (Page no. 58 of the complaint))
11.	Agreement to sell b/w original allottee and complainant	28.09.2016 (page no. 88 of complaint)
12.	Possession clause	***45. Force Majeure*** ………………

		Subject to 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 Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavors to handover the possession of the Unit to the Allottee within a period of ***42 months with a further grace period of 6 months from 1 January 2016.*** (Page no. 76 of the complaint)
13.	Assured return clause	***32. ASSURED RETURN:*** *Where the Allottee has opted for Payment Plan as per Annexure-A, attached herewith and accordingly,* ***the company has agreed to pay Rs.27,368/- per month by way of assured return to the allottee from 14.06.2016, or the date of execution for this agreement till the date of offer of possession of the unit****. The return shall be inclusive of all taxes whatsoever payable or due on the return.* (Page no. 72 of the complaint)
14.	Due date of possession	01.01.2020 (As per possession clause including grace period of 6 months as it is unqualified)
15.	Total sale consideration	Rs.30,04,411/- (As per payment plan at page no. 81 of complaint)
16.	Amount paid by the complainant	Rs.34,50,230/- (as per account statement submitted on 17.07.2026 during the court proceedings)
17.	Occupation certificate /Completion certificate	28.09.2020
18.	Offer of possession	31.10.2020 (Page no. 54 of the reply)

19.	Assured return paid	Rs. 11,79,855/- (From October 2016 till September 2020)
20.	Letter of Leasing of unit	09.08.2022, 02.09.2024 (Page no. 86-87 of reply)

B. Facts of the complaint

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

I. That the original allottee booked a unit vide application dated 16th April, 2016 in the project 'AIPL Joystreet' situated at Sector 66, Gurugram, Haryana by paying his hard-earned money amounting Rs. 5,00,000/- dated 14th April, 2016 as booking amount to the respondent.

II. That the respondent allotted a unit no. SF-43, on the second floor measuring 483.33 sq. ft via allotment letter dated 19th July, 2016 to the original allottee in the Project 'AIPL'. The respondent via allotment letter has confirmed that the original allottee has paid an amount of Rs. 16,48,116/- including the service tax and booking amount till 19th July, 2016.

III. That the unit buyer's agreement was executed on 5th September, 2016 between the respondent and the original allottee for purchase of commercial unit no. SF-43 on Second Floor measuring 483.88 sq. ft. of super area in the project AIPL Joystreet' at Sector 66, Gurugram, Haryana. The sale consideration of the unit is Rs. 26,65,659/- calculated at the rate of Rs.5509/-per sq. ft.

IV. That the respondent as per the agreement dated 5th September, 2016 agreed to pay a fixed amount of Rs. 27,368/- per month as 'Assured Return' to the original allottee from 14h June, 2016 or the date of execution till the date offer of possession for the said commercial unit. But, the respondent till date has failed to pay the fixed amount of assured return to the complainant.

V. That the complainant, Charanjeet Kaur purchased the said shop bearing No. SF-043 on the second floor measuring 483.88 sq. ft in the project 'AIPL Joystreet', situated at Sector 66, Gurugram, Haryana and an agreement to sell dated 28th September, 2016 was executed between the original allotee and the complainant.

VI. That the respondent vide letter bearing no. JOY/FCT/T1/0117 dated 1 October, 2016 on the request of the original allotee endorsed the said commercial unit in the favour of the complainant.

VII. That the complainant was always abided by the payment schedule and made payments as and when demanded by the respondent in timely manner. The complainant in total paid a sum of Rs. 34,50,531.70/- till June, 2021 towards sale consideration of the Unit to the respondent.

VIII. That the respondent via letter dated 9th August, 2022 informed the complainant that the respondent was able to sign a Lease Deed for the complainant's commercial unit bearing no. SF-43 with food court operator namely "GOKHANA". The respondent till date has failed to pay the rent for the said lease deed executed.

IX. That the respondent via letter dated 2nd September, 2024 informed the complainant that the respondent was able to lease the said premises to the brand Food Forum to which objections was raised by the complainant vide email dated 7th September, 2024 stating that the complainant does not agree with the terms and conditions that were stated in the lease.

X. That the respondent without replying to the objections of the complainant sent a letter dated 22nd November, 2024 stating the inability of the Food Forum to execute the lease deed.

XI. Furthermore, the respondent shared another letter dated 22nd November, 2024 wherein it stated that it is attempting for a Lease Deed with a brand named, Physique Ascension Club Gym.

XII. That the complainant vide email dated 3rd December, 2024 objected to the letter dated 22nd November, 2024, and further sent various emails to the respondent asking about the market rating and status of the brand from the respondent to which the respondent vide email dated 27" October, 2025 replied that the said unit has already been leased to the aforementioned brand and the fitouts are at the final stages of completion.

XIII. That the respondent till date has failed to provide the complainant the rent that was accrued by leasing out the complainant's commercial unit.

XIV. That the unit buyer's agreement was executed on 5th September, 2016 and the due date of possession of the said commercial unit comes out to be 5th September, 2019 based on the ratio laid down by the Hon'ble Supreme Court judgment in Fortune Infrastructure vs Trevor d lima [(2018) 5 SCC 442] and Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan [(2019) SC 725]. The Hon'ble Supreme Court has taken a considerate view that in cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration.

XV. That the respondent failed to fulfil its obligations as per the agreement to completely develop the Unit and handover the legal physical possession to the complainant on time. Even after a lapse of more than Six (6) years and Two (2) months from the due date of possession.

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 the legal and rightful physical possession of the commercial unit to the complainant, after receiving the occupation certificate (OC) and all required approvals and permissions from the competent authorities.

(ii) Direct the respondent to pay interest for every month of delay in offering the possession of the commercial unit since 5th September, 2019 to the complainant, on the amount taken from the complainant towards sale consideration for the aforesaid unit, with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal, physical and rightful possession of the commercial unit to the complainant.

(iii) Direct the respondent/ developer to pay the fixed amount of assured return of Rs. 27,368/- per month as per the unit buyers' agreement dated 5th September, 2016, till the legal, physical and valid offer of possession is issued by the respondent to the complainant.

(iv) Direct the respondent to justify the carpet area of the allotted commercial unit no. SF-43 vis-à-vis to the final super area of the commercial unit to the complainant.

(v) Direct the respondent to not charge anything which is not mentioned in the unit buyer's agreement.

(vi) Direct the respondent to pay to the complainant the entire rent accrued and continuing to accrue from leasing out the unit of the complainant along with the interest as prescribed by the Act.

(vii) Direct the respondent to execute the conveyance deed in favour of the complainant.

(viii) Direct the respondent to pay legal expenses of Rs. 2,00,000/- incurred by the complainant along with other charges.

D. Reply by the respondent.

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

I. That Mr Mrityunjan Kumar Singh with the intention of earning a lease rental invested in the instant project and submitted an application form dated 16.04.2016 whereby, the original allottees requested the respondent to allot a unit bearing no. 43, admeasuring 483.88 sq. ft. on 2nd Floor in the project of the respondent namely "AIPL Joystreet".

II. Considering the request of the original allottees, the subject unit was allotted to the original allottees vide allotment letter dated 19.07.2016.

III. That after allotment of the subject unit in favour of the original allottees, a request for endorsement/transfer of the subject in favour of the present complainant, i.e., Mr. Charanjeet Kaur, was received from the original allottees.

IV. Thereafter an agreement for sale dated 28.09.2016 was executed between the complainant and the original allottee.

V. In the meanwhile, upon completion of construction and development of the project an application was made before the competent authority on 17.07.2020 for issuance of the occupation certificate and the same was granted by the competent authority on 28.09.2020.

VI. After receipt of occupation certificate the respondent issued a notice of offer of constructive possession dated 31.10.2020, wherein respondent apprised the complainant about the receipt of the occupation certificate and requested the complainant to complete the requisite formalities for handover of 'Constructive Possession' of the unit and execution of conveyance deed.

VII. After the notice of possession dated 31.10.2020, the respondent had sent reminder letters dated 20.11.2020 and 24.12.2020, requesting the complainant to pay the outstanding dues and take the constructive possession of the unit as per agreed terms and conditions of the agreement.

VIII. Despite receiving multiple reminders from the respondent, the complainant failed to perform his obligations including payment of outstanding dues. Therefore, the respondent, was constrained to issue a pre-termination letter dated 16.01.2021.Despite receiving the pre-termination letter, the complainant did not come forward to pay the dues and continued to be a defaulter. Therefore, the respondent was constrained to cancelled the unit by issuing a termination letter dated 22.03.2021.

IX. After the termination of the subject unit, the complainant requested for revival of the allotment and made some partial payment. Therefore, the respondent gave one last opportunity to the complainant to fulfill his obligations under the agreement. However, despite the opportunity, the complainant still failed to fulfill his contractual obligation. The Respondent has issued several reminders dated 05.06.2021, 19.04.2022, 29.06.2022, 27.07.2022, 26.08.2022, 10.11.2022, 09.12.2022, 11.01.2023, 15.03.2023, 05.05.2023, 11.04.2024, 11.12.2024, 14.01.2025, 17.09.2025 and 10.10.2025 respectively, however, the complainant failed to make payment of the sale consideration as per the payment plan agreed between the parties.

X. That the present complaint has been preferred by the complainant before the Ld. Authority on frivolous and unsustainable grounds and the complainant has not approached the Ld. Authority with clean hands and is trying to suppress the material facts relevant to this matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and with the sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law, is devoid of merits and is fit to be dismissed in limine.

XI. That the primary understating between the complainant and the Respondent with respect to the Unit was that the complainant wanted to earn maximum returns on their 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 has invested in the instant project with the sole motive of earning lease rental by getting the subject unit leased through respondent. That it was never agreed between the complainant and the respondent 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 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.

XIII. It is reiterated herein that the arrangement between the parties was to transfer the constructive possession of the subject unit and the same was categorically acknowledged in application form and re-confirmed between the parties by executing the addendum agreement. It is pertinent to mention herein that no protest in this regard has ever been raised by the complainant and the same was willingly and voluntarily agreed between the parties.

XIV. That the complainant was under a clear and unequivocal obligation to make timely payment of the outstanding dues in accordance with the payment plan agreed under the agreement for sale. However, the complainant has willfully failed and neglected to discharge his contractual and statutory obligations. Despite repeated reminders issued by the respondent on 23.10.2020, 31.10.2020, 20.11.2020 and 24.12.2020, the complainant neither cleared the outstanding dues nor raised any bona fide dispute regarding the same. The persistent non-payment on part of the complainant clearly establishes deliberate default and lack of intent to honour the terms of the agreement.

XV. That the conduct of the complainant is in clear violation of section 19(6) of the real estate (Regulation and Development) Act, 2016, which mandates that an allottee shall be responsible to make necessary payments in the manner and within the time specified in the agreement for sale.

XVI. That the complainant has consistently failed to make timely payment of the outstanding dues despite repeated demands and reminders issued by the respondent. The payment schedule formed an essential and fundamental condition of the agreement executed between the parties, and adherence thereto was mandatory. The complainant's persistent defaults constitute a clear breach of the contractual obligations voluntarily undertaken by him.

XVII. That the flat buyer agreement expressly provides that in the event of continued non-payment of dues beyond the stipulated period, the respondent shall be fully entitled to cancel the allotment of the unit after following due process as contemplated under the agreement. The respondent, acting strictly in accordance with the said contractual provisions and without any arbitrariness or mala fide intention, finally cancelled the subject unit only after granting sufficient time and opportunity to the complainant to regularize the defaults.

XVIII. That despite repeated reminders and opportunities granted by the respondent to the complainant to clear the outstanding dues, the complainant consistently failed and neglected to make the requisite payments in terms of the builder buyer agreement. Owing to such continuous defaults, the respondent was constrained to issue a pre-termination notice dated 16.01.2021, clearly calling upon the complainant to make payments of the outstanding dues within the stipulated time. However, even after receipt of the said pre-termination notice, the complainant did not take any steps to comply with the contractual obligations or to make the pending payments.

XIX. That even after the pre termination letter sent by the respondent, the complainant has failed to honour his obligations and pay the remaining dues. Respondent, in good faith, further sent a reminder letter dated 13.01.2021, reminding the complainant about his dues which are pending as per the provisions of duly executed agreement between the parties. However, the complainant still failed to pay the dues.

XX. That the respondent, acting in a fair, reasonable, and bonafide manner, continued to grant multiple opportunities to the complainant to cure the default. Despite such indulgence, the complainant failed to pay the outstanding amounts. Consequently, having no other efficacious remedy available and in strict accordance with the terms and conditions of the builder buyer agreement, the respondent was compelled to issue the final termination letter dated 22.03.2021, thereby lawfully terminating the allotment of the said unit. The termination was thus effected solely due to the complainant's persistent and willful default, and no illegality or arbitrariness can be attributed to the respondent in this regard.

XXI. It is further submitted that the cancellation of the unit was neither unilateral nor illegal but was a direct consequence of the complainant's own acts of omission and commission. The respondent cannot be compelled to indefinitely keep the unit blocked to its grave financial prejudice, especially when the complainant showed complete disregard to the agreed payment terms.

XXII. That even after the lawful termination of the allotment on account of persistent defaults committed by the complainant, the respondent, with the sole intention of resolving the matter amicably and without prejudice to its rights, extended a further opportunity to the complainant to clear the outstanding dues and seek reinstatement of the unit.

XXIII. Despite the reinstatement of the unit and acceptance of partial payment, the complainant once again failed to adhere to the agreed payment schedule and continued to default in making timely payments of the remaining outstanding dues. The respondent issued multiple reminders and follow-ups to the complainant, calling upon him to regularize the account and comply with the financial obligations under the builder buyer agreement. However, the complainant consistently failed to make payments within the stipulated time and remained in breach of the contractual terms. Multiple reminders which were sent by the respondent are as follows:

Sr No.	Reminder Letter	Due as per the Letter in Rs
1.	05.06.2021	3,62,895/-
2.	19.04.2022	8,599/-
3.	29.06.2022	8,599/-
4.	27.07.2022	13,835/-
5.	26.08.2022	13,835/-
6.	10.11.2022	13,835/-
7.	09.12.2022	13,835/-
8.	11.01.2023	13,835/-
9.	15.03.2023	13,835/-
10.	05.05.2023	19,163/-
11.	11.04.2024	19,163/-
12.	11.12.2024	19,163/- + 2,17,800/- (Stamp Charges) +25,003/- (Registration charges)

13.	14.01.2025	19,163/- + 2,17,800/- (Stamp Charges) +25,003/- (Registration charges)
14.	17.09.2025	19,163/- + 1,47,900/- (Stamp Charges) +15,003/- (Registration charges)
15.	10.10.2025	19,163/- + 1,47,900/- (Stamp Charges) +15,003/- (Registration charges)

XXIV. It is respectfully submitted that as per the duly maintained and current account statement dated 30.01.2026, the complainant is liable to pay a sum of Rs. 3,26,907/- towards outstanding dues payable to the respondent. The said account statement forms part of the official records of the respondent and clearly reflects the complainant's persistent defaults in adhering to the agreed payment schedule.

XXV. That, despite repeated reminders, demands and opportunities granted by the respondent from time to time, the complainant has failed and neglected to clear the aforesaid outstanding amount. The continued non-payment is deliberate and amounts to a material breach of the terms and conditions of the agreement, wherein timely payment was expressly agreed to be the essence of the contract.

XXVI. That in furtherance of the aforesaid contractual authority, the respondent duly finalized a lease for the subject unit with a food court operator, namely "Gokhana", and an intimation dated 09.08.2022 was sent to the complainant informing him that the lease had been executed on his behalf. Subsequently, the respondent again executed a lease for the said premises with the brand "Food Forum", and an intimation dated 02.09.2024 was duly sent to the complainant communicating the execution of the said lease and enclosing the relevant details. Further the unit has been leased out to Physique Ascension Club and intimation to the complainant was sent on 22.11.2024, enclosing all the whereabouts of the lease terms

XXVII. That it is submitted that despite being duly informed about the lease arrangements, the identity of the lessees, and the utilization of the premises, the complainant failed and neglected to come forward to clear the outstanding dues payable in respect of the unit.

XXVIII. The respondent's obligation to remit lease rental is expressly conditional upon actual receipt of rent from the lessee.

XXIX. That as per clause 32 of the flat buyer agreement, the respondent was obligated to pay the assured return to the complainant, subject to the terms and conditions stipulated therein. The respondent has duly honoured the said contractual obligation and continued to pay the assured return despite repeated and continuous defaults on the part of the complainant in making timely payment of installments and other dues.

XXX. That the respondent has already paid a total sum of ₹11,79,855/- towards assured return to the complainant. The said payments were made bona fide and without prejudice, even though the complainant had failed to adhere to the agreed payment schedule under the flat buyer agreement. The respondent's conduct clearly demonstrates its readiness and willingness to perform its contractual obligations in letter and spirit.

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 the legal and rightful physical possession of the commercial unit to the complainant, after receiving the occupation certificate (OC) and all required approvals and permissions from the competent authorities.

11. The complainant has sought physical possession of the unit. The Authority observes that the original allottee was allotted a unit bearing no. 43, on Second Floor, admeasuring 483.88 sq. ft. The buyer's agreement for the said unit was executed between the original allottee and respondent on 05.09.2016. Thereafter, the unit was transferred in favour of complainant and an agreement to sell was executed between the complainant and original allottee on 28.09.2016. The agreement dated 05.09.2016 contained a leasing arrangement and clearly stipulated that the unit was meant exclusively for leasing purposes.

12. The said clause is reiterated as under:

> "33. LEASING ARRANGEMENT:
> At the request of the Allottee, **the Company agrees to put the Unit, individually or in combination with other adjoining units, on lease, for and on behalf of the Allottee, from the date of signing of this Agreement.** The Allottee has clearly understood the general risks involved giving any premises on lease to third parties and has

undertaken to bear the said risks exclusively without any liability whatsoever on th part of the Company. It is further agreed that:
(a) The Allottee shall execute documents as and when necessary and as may be desired by the Company in this connection without any objection or demur.
(b) The Company shall have the authority to negotiate and finalize the leasing arrangement in respect of the Unit, individually or combination with other adjoining units, with any suitable tenant/s, for whatever period and for whatever rent and with whatever conditions as may negotiated by the company with the intending lessee(s) and as may be thought fit and appropriate by the company and to execute the lease with the said intending lessee in its own name or behalf of the allottee for which the allottee has vested the company with all the powers and rights which shall not be questioned by the allottee subsequently."

13. In view of the explicit contractual terms contained in the Agreement dated 05.09.2016, the Allottee is not entitled to physical possession of the unit.

(ii) Direct the respondent to pay interest for every month of delay in offering the possession of the commercial unit since 5th September, 2019 to the complainant, on the amount taken from the complainant towards sale consideration for the aforesaid unit, with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal, physical and rightful possession of the commercial unit to the complainant.

(iii) Direct the respondent/ developer to pay the fixed amount of assured return of Rs. 27,368/- per month as per the unit buyers' agreement dated 5th September, 2016, till the legal, physical and valid offer of possession is issued by the respondent to the complainant.

14. The complainant in the present complaint has booked a unit in the project of the respondent namely 'AIPL Joystreet' situated at sector-66,

Gurugram, Haryana. The original allottee was allotted a unit bearing no. 43, on Second Floor, admeasuring 483.88 sq. ft. The buyer's agreement for the said unit was executed between the original allottee and respondent on 05.09.2016. Thereafter, the unit was transferred in favour of complainant and an agreement to sell was executed between the complainant and original allottee on 28.09.2016. The total sale consideration of the unit was Rs. 30,04,411/- and the complainant has paid an amount of Rs. 32,40,078/-.

15. The complainant is seeking unpaid assured returns on monthly basis as per agreement dated 05.09.2016 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent has stopped the payment of assured return. The respondent has objected the said and said that they have paid the assured return from October 2016 till September 2020.

16. The authority after considering all the documents on record, observes that the money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

17. The builder is liable to pay that amount as agreed upon. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and

allotee arises out of the same relationship and is marked by the original agreement for sale.

18. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. That this Authority has also deliberated the issue of assured return in number of case including ***Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021).***

19. In the present complaint, the assured return was payable as per clause 32 of agreement dated 05.09.2016, which is reproduced below for the ready reference:

> ***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.27,368/- per month by way of assured return to the allottee from 14.06.2016, or the date of execution for this agreement till the date of offer of possession of the unit.*** *The return shall be inclusive of all taxes whatsoever payable or due on the return."*

20. Thus, the assured return was payable @Rs.27,368/- per month w.e.f. 14.06.2016, till the offer of possession of the said unit. The authority further observes that the respondent has paid an amount of Rs. 11,79,855/- from October 2016 till September 2020 (AR Statement submitted during course of hearing on 17.07.2026).

21. In light of the reasons mentioned above, the authority is of the view that as per the agreement dated 05.09.2016, it was obligation on part of the respondent to pay the assured return. Accordingly, the Respondent shall be liable to pay amount which is due and payable, towards the assured return.

Delay Possession Charges:

22. In the present complaint, the complainant intends to continue with the project and are 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."*

23. As per the clause 45 of the buyer's agreement dated 05.09.2016 the possession of the subject unit was to be handed over within a period of 42 months with a further grace period of 6 months from 1 January 2016. The relevant clause is reproduced hereunder for ready reference:

> *45. Force Majeure*
> *............*
> *Subject to 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 Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavors to handover the possession of the Unit to the Allottee within a period of **42 months with a further grace period of 6 months from 1 January 2016.***

24. As per the possession clause the due date of possession comes out to be 01.01.2020 including the grace period of 6 months as it is unqualified.

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at

prescribed rate of interest. Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

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

27. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 17.07.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

28. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation. —For the purpose of this clause—*

> (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

30. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 01.01.2020. The occupation certificate for the said project was received on 28.09.2020 and subsequently unit was offered for possession on 31.10.2020. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

31. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?

32. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the agreement at the rate at which assured return has been committed by the promoter i.e., Rs.27,368/- per month and the respondent has already paid an amount of Rs. 11,79,855/- for the period October 2016 till September 2020. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the delay possession charges is much better.
33. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
34. On consideration of the documents available on record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the buyer agreement executed between the parties on 05.09.2016. As per the clause 45 of the buyer agreement dated 05.09.2016, the respondent undertook to offer possession of the unit to the complainant within 42 months with an extended period of 6 months from January 2016. Thus, the due date for handing over of possession of the unit to the complainant comes out to be 01.01.2020 including 6 months being unqualified. The occupation certificate was received on 28.09.2020 and thereafter the possession of the booked unit was offered on 31.10.2020. The authority is of the

considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

35. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay on the amount paid by complainant to the respondent from the due date of possession i.e., 01.01.2020 till the valid offer of possession (31.10.2020) plus two months i.e., 31.12.2020 as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

(iv) Direct the respondent to justify the carpet area of the allotted commercial unit no. SF-43 vis-à-vis to the final super area of the commercial unit to the complainant.

36. 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.

(v) Direct the respondent to not charge anything which is not mentioned in the unit buyer's agreement.

37. The respondent shall not charge anything from the complainant which is not part of the buyers' agreement.

(vi) Direct the respondent to pay to the complainant the entire rent accrued and continuing to accrue from leasing out the unit of the complainant along with the interest as prescribed by the Act.

38. The complainant is seeking payment of rent, the Authority is of the considered view that the Agreement executed between the parties does not contain any specific stipulation or clause providing for payment of lease rent by the respondent. In the absence of any contractual provision to that effect, the Authority cannot grant or allow a claim towards lease rent. However, the parties shall execute the Lease Deed in accordance with the terms agreed between them and any payment towards lease rent shall be governed strictly by the terms and conditions contained in the duly executed Lease Deed.

(vii) Direct the respondent to execute the conveyance deed in favour of the complainant.

39. 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.

40. The occupation certificate has been obtained on 28.09.2020 and subsequently unit was offered the constructive possession on 31.10.2020. 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.

(viii) **Direct the respondent to pay legal expenses of Rs. 2,00,000/- incurred by the complainant along with other charges.**

41. 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

42. 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 is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 01.01.2020 till the valid offer of possession (31.10.2020) plus two months i.e., 31.12.2020 as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

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

iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.80% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

iv. The respondent/promoter 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.

v. The respondent/promoter shall not charge anything from the complainant which is not the part of the BBA/MoU.

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

44. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.07.2026