

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

**Complaint no. : 2414 of 2021**  
**Date of first hearing : 20.07.2021**  
**Date of decision : 20.07.2021**

Jasvir Singh Nara  
**R/o-** Gali no. 6, Block C, Vatika Kunj,  
Bhondsi, District Gurugram, Haryana  
Versus

**Complainant**

1. Advance India Pvt. Ltd.  
**Regd. Office:** 232B, 4th floor, Okhla  
Industrial Estate, Phase-III, New Delhi-  
110020  
2. Landmark Apartments Pvt. Ltd.  
**Regd. Office:** A11 C.R. Park, New Delhi-  
110019

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Sh. Ishwar Singh Sangwan  
Sh. MK Dang

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 14.06.2021 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), 11(4)(f) and 17(1) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the flat buyer's agreement executed inter se them.

**A. Unit and project related details**

2. The particulars of the project, the details of 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.no	Particulars	
1.	Name and location of the project	"AIPL JOY Street", Sector- 66, Gurugram
2.	Nature of the project	Commercial Colony
3.	Total Project area	108.1245 acres
4.	DTCP license no.	1. <b>07 of 2008</b> dated 21.01.2008 valid till 20.01.2025 for project of 2.8875 acres 2. <b>152 of 2008</b> dated 30.07.2008 valid till 29.07.2025 for project area of 1.0687 acres
5.	Name of licensee	M/s Landmark Apartments Pvt. Ltd.
6.	HRERA registered/ not registered	Registered vide no. <b>157 of 2017</b> dated 28.08.2017
	RERA registration valid up to	30.12.2020
7.	Unit no.	Unit- 26, Ground floor

		[As per buyer's agreement on page 34 of complaint]
8.	Unit area	169.53 sq. ft.
9.	Endorsement of unit	30.06.2017 [As per page 70 of complaint]
10.	Change in unit vide addendum to unit buyer's agreement dated 03.11.2017	Unit- 25A, Ground floor [As per page 206 of complaint]
11.	Changed unit area	254.18 sq. ft.
12.	Payment plan	Time linked plan [As per page 63 of complaint]
13.	Date of execution of unit buyer's agreement	17.08.2016 [As per page 32 of complaint]
14.	Total consideration as per statement of account dated 03.06.2021	Rs. 48,49,702.88/- [As per page 192 of complaint]
15.	Total amount paid as per statement of account dated 03.06.2021	Rs. 54,47,205.24/- [As per page 194 of complaint]
16.	Occupation certificate	28.09.2020 [As per page 207 of complaint]
17.	Constructive offer of possession	05.10.2020 [As per page 206 of complaint]

**B. Facts of the complaint.**

3. That the present complaint is being filed by the complainant against the respondents as the respondents have, in a pre-planned manner, cheated and defrauded him of his hard earned money and have rendered deficient services by not providing possession of the shop as well as delayed interest of possession and compensation. The complainant for his own business purpose purchased the property

in question and deposited the amount with the respondents in good faith to fulfil his dreams of own shop/commercial space during his lifetime.

4. That initially, Mrs. Vijay Laxmi wife of Dhanesh Kumar resident of M- 63- B, 3rd floor, Malviya Nagar, New Delhi- 110017 purchased commercial space /Unit No. GF-26 on ground floor having super area of 169.53 sq. Ft. in the project Joy Street at Sector 66, Gurugram vide agreement dated 17.08.2016 at Rs. 16700/- per sq. ft. Smt. Vijay Laxmi had paid the total amount of Rs. 16,15,121/- consisting of Rs. 2,00,000/- cash, Rs. 11,05,000/- through cheque, Rs. 2,25,000/ through cheque and Rs. 85,121/ were paid through cheque to the respondents.
5. That thereafter, the complainant had purchased the above said commercial space/shop no. GF-26 on ground floor having super area of 169.53 square from Smt. Vijay Laxmi W/o Dhanesh Kumar for a total sale consideration of Rs.31,01,975/. Accordingly, the complainant had paid the entire amount of Rs. 16,15,121/- to Smt. Vijay Laxmi and rest of the amount has been paid to the respondents through various cheques. Thus, Smt. Vijay Laxmi endorsed the name of the complainant as owner in the record of the respondents vide endorsement dated 30.06.2017.

6. That the respondents in collusion with each other hatched a conspiracy with their malafide intention and evil design to cause wrongful loss to the complainant and to gain wrongful provided false information regarding the super area i.e. GF-26 on ground floor is the second shop from the corner and there is no other adjoining shops between the GF-25 and GF-26. Copy of site map reveals the same but AIPL and ALPL intentionally and deliberately changed the layout plan by adding three additional unit between GF-25 & G-26 to cause irreparable loss to the complainant.
7. That the respondents have no authority or right to change the layout plan without prior permission or sanction from the concerned authorities. The complainant several times asked the respondents to provide the copy of sanctioned layout site plan, but they flatly refused to provide the same and the respondents for their vested interest, changed the layout site plan.
8. That as per terms and conditions of the unit's buyers agreement dated 17.08.2016, there is no provision to change the layout plan without prior permission from the concerned Authorities /Government under intimation to the intending purchaser/buyer. But the respondents have failed to comply the terms and conditions of the said unit's buyers agreement and as such they have played

fraud and cheated with the complainant knowingly and deliberately.

9. That the complainant is running from pillar to post for his genuine grievances but the respondents not only threatened him with dire consequences as well as life & limb but also flatly refused to consider his genuine request and were adamant to add/construct the additional units between the GF-25 & GF-26
10. That when the complainant came to know about the above said illegal act of the respondents, it approached them and asked for the same location of the super area i.e. 2<sup>nd</sup> shop from the corner. But they raised illegal demand of Rs 24,000/- per sq. ft. extra area from the complainant orally and on which he flatly refused to accept their illegal demand and asked to comply the terms and conditions of the unit's buyers agreement as well as commitments and assurances given at the time of negotiation between them at their office at Golf Course Road, Gurugram but the respondents with their vested interest flatly refused to consider the genuine request and violated the conditions of the agreement.
11. That all the above said illegal act of the respondents is carried out at AIPL Joy Street Sector-66, Gurugram with the complainant, which is absolutely illegal, unlawful, unethical and against the principles' of natural justice and against the conditions of the

agreement. The respondents have raised construction in the shape of additional shops and covered the common area/super area of the said project as well as shown in sanctioned layout plan. The complainant also sent various emails to the respondents regarding the above said illegal act but there was no response from them. They did not pay any heed to the request of complainant by emails. Then, the complainant filed a written complaint against the respondents and its Directors in Police Station, Sector-53, Gurugram, and on which the officials/Advocate of the respondents appeared before Sector-53, Police Station, Gurugram and gave assurances that they will issue the allotment letter for the changed unit in favour of the complainant.

12. That the respondents have issued an allotment letter against the booking ID JOY/RET/1/0035 on dated 02.11.2017 to the complainant in respect of unit no. 25A (changed unit from G-26), measuring 254.18 sq. Ft. (earlier measuring 169.53 sq. Ft.) at basic price of Rs. 17,415.35/- excluding development charges of Rs. 600/- per sq. Ft., IFMS Rs. 100/- per sq. Ft., PLC Rs. 897.50/ sq. Ft. Thereafter, the respondents raised demand of payment and accordingly, the complainant paid various amounts to the respondents through various cheques such as Rs. 5,00,000/- vide cheque no. 158944 of UBI, Rs. 17,05,024/- vide demand draft dated

14.03.2018, Rs. 10,00,000/- vide demand draft dated 02.11.2018, Rs. 2,94,976/- through RTGS from ICICI Bank, Rs. 49578/- vide cheque no. 274815 dated 06.03.2021. Some payments were adjusted/waived off as per account statement. It is pertinent to mention that Rs. 75860/- vide cheque no. 274814 dated 06.03.2021 was paid by complainant towards advance for maintenance.

13. That after making the entire payments as demanded by the respondents, the complainant continuously visited their office for execution and registration of the conveyance deed in his favour but initially, the respondents avoided the matter on one pretext or another.
14. That thereafter, the ICICI Bank, from where the complainant had taken loan over the above said property sent a message to the complainant regarding conveyance deed/ stamp paper and the said message was forwarded by it to the respondents, They sent a reply to the message through email in which clearly mentioned that "Registry Stamp need to be bought and payment needs to be remitted by the customer himself" through email dated 01.02.2021. On the said assurance, the complainant had purchased Non-Judicial Stamp of Rs 3,37,800 vide Stamp Certificate no. GOH2021B1204



dated 08.02.2021 and copy of the same has been sent to the respondents as well as to the concerned Bank.

15. That it is pertinent to mention here that the ICICI Bank issued NOC in favour of the complainant and copy of the same has been sent to the respondents to the effect that they do not have any objection in getting the registered sale/lease deed executed in favour of Mr. Jasvir Singh Nara/Sharmila and the possession can be handed over to customer on the execution of the registered Sale /Lease Deed.
16. That thereafter, the complainant sent various emails to the respondents for handing over the possession and to pay the interest on the delayed possession to the complainant, but the respondents sent vague and evasive reply of the same and did not handover the possession till date.
17. That the action of the respondents is violative of the principles of natural justice and the services rendered are deficient, malafide, unfair, unjust and illegal. The said practices are against the norms of ethical business and are liable to be severely deprecated by this hon'ble authority.
18. That the respondents have caused monetary loss to the complainant. Even more damaging, they have caused immense mental agony, insecurity and pain the complainant and has also

incurred costs towards the legal/documentation and other expenses due to no fault of his own.

19. That the respondents are guilty of deficiency in service as per Act of 2016. The complainant has suffered on account of deficiency in service by the respondents' by not delivering the possession of the shop/commercial space of the complainant within time.

**C. Relief sought by the complainant:**

The complainant has sought following relief(s):

- (.) Direct the respondents to execute the conveyance deed of the above said unit.
  - (i) Direct the respondent to deliver the possession of the commercial space/unit.
20. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a), 11(4) (f) and 17(1) of the Act of 2016 to plead guilty or not to plead guilty.
21. The counsel for the respondent no. 1 appeared on the date of hearing and has made oral submissions. However, no written reply has been submitted by in the respondent.

**D. Jurisdiction of the authority**

**D.1 Territorial jurisdiction**

22. 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 District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**D.II Subject matter jurisdiction**

23. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per Section 11(4)(a), 11(4)(f) and 17(1) of the Act of 2016 leaving aside compensation which is to be decided by the adjudicating officer.

**E. Findings on the relief sought by the complainant**

**Relief sought by the complainant:**

- (i) The respondents be directed to execute the conveyance deed of the above said unit.
- (ii) Direct the respondent to provide delayed penalty Rs.5/- or Rs.54 per sq. mtrs. of the super area of the flat per month for the period of delay as per clause no. 33 of unit buyer's agreement.

**E.I Execution of conveyance deed**

24. In the present complaint, the complainant intends to continue with the project and is seeking relief under the section 17(1) of the Act. Sec. 17(1) & proviso reads as under.

***“Section 17: - Transfer of Title***

*17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.*

25. Clause 14 of unit buyer’s agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***“14 CONVEYANCE OF THE UNIT***

***Clause 14.:***

*“The Company and the Developer shall execute a Conveyance deed/ Sale Deed/ or any other documents to convey the title of the unit in favour of the Allottee, provided the allottee has paid the entire Total Price in accordance with this agreement and the Allottee is not in breach of any of the terms of this agreement.....”*

The authority has gone through the conveyance clause of the agreement and observe that the conveyance has been subjected to

all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters.

26. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a), 11(4)(f) of the Act by not executing a registered conveyance deed in favour of allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority. By virtue of clause 14 of the agreement executed between the parties on 17.08.2016, respondents were under obligation to execute a registered conveyance deed in favour of the complainant. Accordingly, the non-compliance of the mandate contained in section 11(4)(f) read with section 17(1) of the Act on the part of the respondents is established.

**F. Directions of the authority**

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

- i. The respondents are directed to handover the physical possession to the complainant and to execute the conveyance deed within one month.
  - ii. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement.
  - iii. The complainant is directed to pay outstanding dues, if any.
28. Complaint stands disposed of.
29. File be consigned to registry.

**(Samir Kumar)**  
Member

**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 20.07.2021**