



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

55

Day and Date	Tuesday and 14.05.2024
Complaint No.	CR/1910/2023 Case titled as Kapil Dev Khullar and Sanju Khullar VS Advance India Private Limited
Complainant	Kapil Dev Khullar and Sanju Khullar
Represented through	Shri K.K. Kohli Advocate
Respondent	Advance India Private Limited
Respondent Represented	Shri Dhruv Rohatgi Advocate
Last date of hearing	27.02.2024
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint was filed on 17.05.2023 and the reply on behalf of respondent was received on 05.10.2023.

Succinct facts of the case as submitted in the complaint and reply are as under:

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joy Street", Sector-65, Gurgaon
2.	Nature of project	Commercial colony
3.	RERA registered/not registered	157 of 2017 dated 28.08.2017 Valid up to 31.12.2020
4.	Allotment letter in favour of original allottee	01.03.2017 [Page no. 22 of complaint]
5.	Agreement for sale in favour of original allottee	13.09.2017 [Page no. 29 of complaint]
6.	Unit no.	0066AB on ground floor (retail shop) [Page no. 34 of complaint]



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7.	Unit area admeasuring	410 sq. ft. [Super area] [Page no. 31 of complaint]
8.	Date of agreement for sell executed between the original allottee and the complainant herein	27.08.2021 (Page no. 112 of the complaint)
9.	Date of endorsement	1.10.2021 previous allottee endorsed the said unit in favour of complaint (Page no. 57 of complaint)
10.	Possession clause	Allottee shall be handed over of possession of the unit from the company only after the allottee has fully discharged all his obligations and total price against the unit
11.	Due date of possession	N/A
12.	Total sale consideration	Rs.92,11,289/- [As per account statement on page no. 142 of reply]
13.	Amount paid by the complainant	Rs.92,47,154/- [As per account statement on page no. 142 of reply]
14.	Assured Return Clause	Clause 32 of Agreement <i>Where the Allottee has opted for Payment Plan as per Annexure-A attached herewith and accordingly, the Company has agreed to pay Rs.37,583.00 per month by way of assured return to the Allottee from 04/03/2017 till the date of issue of Notice of Possession of the Unit. The return shall be inclusive of all taxes whatsoever payable or due on the return.</i>
15.	Occupation certificate	24.12.2021 [Page no. 109 of reply]
16.	Offer of possession to the complainant for unit no. GF- 78, ground floor	15.01.2022 [Page no. 61 of complaint]



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Relief Sought by the complainant

1. Direct the respondent to pay the delayed possession charges calculated since due date of possession till date of physical handover the unit.
2. Direct the respondent to make payment of the assured returns as per the terms of BBA.

The counsel for the complainant brought to the notice of the Authority towards certain major clauses of the ACT, 2016 and Rules 2017 as amended in 2019 regarding agreement for sale as detailed in Annexure A which is mandatory and any agreement for sale which is not in line with the annexure A is an illegal agreement for sale when the allottee has made to sign a subsequent agreement after the rules framed on 28th July, 2017 imposing some conditions of "constructive possession" which does not exist at all in the Annexure A being the Agreement to sale.

The counsel for the respondent draws attention towards clause 43 of the Application form wherein it is clear that the unit is not for self-occupation and is for the purpose of leasing arrangement has been agreed between the parties. The offer of possession has been made to the complainant in terms of allotment and BBA on 15.1.2022 before the due date of possession and there is no delay and hence the relief of DPC being sought by the complainant is not admissible.

The counsel for the respondent draws attention towards the BBA that possession is to be handed over by the respondent on payment of dues and the said provision does not provide for constructive possession and clause 12 of the BBA provides for handing over of the possession. As far as clause 33 of the BBA, the same provides for leasing arrangement but the same is solely on request of allottees and no request has been made to lease out of the unit. Further stated that option of not taking physical possession was at the time of application only but not agreed at the time of execution of BBA.

The counsel for the complainant has placed on record a copy of orders dated 20.3.2024 passed by this authority in CR No.7993 of 2022 titled as Naresh Saran V/ Advance India Projects Ltd. and requests to decide the matter in terms of this orders.



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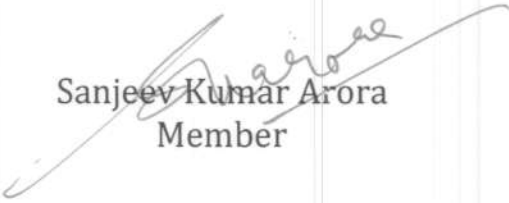
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Arguments heard.

Order reserved.

Both the parties may submit written submissions within a period of 15 days with an advance copy to each other.

Matter to come up on **27.08.2024** for pronouncement of order.


Sanjeev Kumar Arora
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman
14.05.2024