



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

Complaint no. : 7490 of 2022  
First date of hearing: 10.05.2023  
Date of decision : 03.01.2024

Dilip Kumar

**Address:-** House No. e-35, Mayurkunj Gali  
No.02, Near CD International School,  
Bhondsi(168)

**Complainant**

Versus

Adhikaansh Realtors Private Limited  
**Address:-** Unit No. SB/C/2L/Office/017A,  
M3M Urbana Sector-67, Gurugram Manesar  
Urban Complex Gurugram Gurgaon HR  
122102

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Jitender Sharma

Ms. Shriya Takkar and Shri Chhatresh

Advocate for the complainant

Advocate for the respondent

**ORDER**

1. The present complaint dated 27.12.2022 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 as provided under the

provision of the Act or the Rules and regulations made there under or to the allottee 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:

Sr. No.	Particulars	Details
1.	Name of the project	Smartworld Gems, Sector-89, Gurugram
2.	Area of the project	37.181 acres
3.	Independent floor no.	J-75d, 4 <sup>th</sup> floor
4.	Floor Area	1107 sq. ft.
5.	Payment plan	Time linked plan 10:80:10
6.	Provisional allotment letter dated	29.11.2021 (Page 84 of reply)
7.	Date of execution of buyer's agreement	03.02.2022 [Page 98 of reply]
8.	Possession clause 5	<b>5.1 Time is Essence</b> <i>The Promoter shall abide by the time schedule for completing the Project as disclosed at the time of registration of the Project with the Authority and towards handing over the</i>



*Independent Floor Residences along with right to use the undivided demarcated proportionate right to use terrace and basement area alongwith one car parking space to the Allottee(s) ("Completion Time Period. The Completion Time Period shall stand reasonably extended on account of (i) any Force Majeure events: and /or (if) reasons beyond the control of the Promoter and or its agents; and/or (il) due to non-compliance on the part of the Allottee(s) including on account of any default on the part of the Allottee(s). In case the Promoter are unable to offer possession on or before the Completion Time Period for any reasons other than those set out in the foregoing, then on demand in writing by the Allottee(s), the Promoter shall pay interest in accordance with this Agreement or refund the amounts received from the Allottee(s) along with prescribed interest in accordance to the applicable laws or pay monthly instalments in respect of the said payments. For the purpose of this Agreement, "Force Majeure" event shall mean (a) war, civil commotion, pandemic or act of God; (b) any notice, order, rule, notification of the Government*

		<i>and / or other public competent authority / Court adversely affecting the construction works of the Project.</i>
9.	Due date of possession	30.09.2025 [As per the certificate of registration of the project ]
10.	Total consideration	Rs. 72,01,020/- [As per the payment plan on page 134 of reply]
11.	Total amount paid by the complainant	Rs. 7,56,110/-
12.	Occupation certificate	Not received
13.	Offer of possession	Not offered
14.	Demands letter cum Tax invoice letter dated	08.02.2022 [Page 135 of reply]
15.	Pre cancellation notice issued on	13.03.2022 [Page 136 of reply]
16.	Cancellation notice	25.03.2022 [Page 137 of reply]
17.	Legal notice sent by the complainant to the respondent on	02.07.2022

**B. Facts of the complaint**

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



- I. That during October 2021, the Respondent issued Advertisement for an upcoming project J-75D, Smart world Gems, Sector-89, Gurugram, Haryana to be completed within 42 months i.e., on or before September 2025. That the Complainant made an Expression of Interest dated 18.07.2021 to the Respondent under the Construction Linked Plan and paid an amount of Rs. 7 Lakhs by cheque/transfer/NEFT/RTGS. Complainant wanted to own a flat in Gurugram as the Complainant works in Gurugram and this flat would avoid the travel and result in saving of time and resources.
- II. That the respondent issued Welcome letter dated- 28.11.2022 and Allotment letter dated 29 Nov 2021 to Complainant for Flat J-75D, SMARTWORLD GEMS, Sector-89, Gurugram, Haryana under the Construction Linked Payment Plan for a total sale consideration of Rs.75,61,071/- with Payment Plan Ratio of 10:80:10.
- III. That the Complainant made payments of a total sum of Rs 7,71,860/- towards the costs of the flat. That the complainant paid the final application amount at starting February 2021 and complainant reached out the respondent several times to get the BBA executed then the respondent get the BBA executed, but after the BBA execution the respondent kept the BBA with himself.
- IV. That the Complainant applied a housing loan of Rs. 56,00,000/- from ICICI Bank Limited to make the payment to the Respondent towards the sale



- consideration of this flat. Then the complainant applied for loan from his personal responsibility. The respondent did not provided loan on the said unit on time and made a pressor on the complainant for the demanded payment or otherwise the allotted flat will be cancelled or terminated the agreement.
- V. That the complainant tried to get BBA from the respondent, so the complainant can apply for loan from his bank, but the respondent did not provide the said BBA papers to the complainant, Respondent intention was clear, neither to provide the BBA agreement and nor to provide the loan as the respondent had promised to the complaint at the time of receiving the application amount.
- VI. That the complainant applied for the Housing Loan at March 2022 for the allotted unit payment, and the respondent didn't hand over the BBA agreement papers to the complainant. When complainant had applied and his loan was approved by their bank, but loan was never disbursed by bank due to BBA was not hand over to the bank for loan disbursement and during this period the respondent had cancel their allotted unit.
- VII. That the Complainant requested the Respondent many times for his payment which he paid to the respondent for his flat booking. However, the Respondent officers are stating that they will not pay. Complaint has also sent a Legal Notice ref. no. LS/GGM/LN/2020/275 dated



02.07.2022 and the respondent had also replied to legal notice dated-02.08.2022. The Respondent is thus liable to pay the applicable amount with interest to the Complainant for the period i.e., from July 2021 to till date. Additionally, the Respondent is also liable to compensate the Complainant for their above acts and deeds causing loss of time, opportunity and resources of the Complainant. The Complainant has not been able to buy another flat in Gurugram and continues to travel daily which is causing a loss of money, time and resources.

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

4. The complainant has sought following relief:

- i. Direct the respondent to refund the entire amount along with interest.

**D. Reply filed by the respondent**

5. The respondent had contested the complaint on the following grounds:

- I. That the Respondent wants to bring to the kind knowledge of this Authority that the Complainant has not approached this Authority with clean hands and is guilty of suppression of material facts absolutely relevant for just and proper adjudication of this Complaint. Initially the Complainant expressed his interest for booking of a ready to move in unit in one of the properties acquired by M/s. Suposhaa Realcon Pvt. Ltd. That M/s. Suposhaa Realcon Pvt. Ltd. is in the business of



Real Estate and one of its business activities is to acquire RERA registered built-up properties, both residential and commercial, which have received occupation certificate from the Competent Authority and then sell/lease the same at appropriate time. The M/s. Suposhaa Realcon Pvt. Ltd. has in the past acquired properties/units under various business arrangements in RERA registered and OC received projects which it is selling by way of usual business transactions. The Complainant paid an amount of Rs. 2,00,000/- to M/s. Suposhaa Realcon Pvt. Ltd. on 18.07.2021 towards expression of interest in the ready to move in unit.

- II. That thereafter the Complainant after conducting his own due diligence requested for booking in the project being developed by the Respondent herein and submitted an Application Form seeking provisional allotment of an independent floor residence in project 'Smartworld Gems', Sector 89, Gurugram, an affordable plotted colony under Deen Dayal Jan Awas Yojana of the Respondent Company and paid an amount of Rs.5,00,000/- towards booking amount vide cheque dated 30.10.2021 bearing no. 023323. It is submitted that the Complainant had signed the Application Form after duly reading and understanding all the clauses stipulated under the Application Form and after conducting his own due diligence. The terms and conditions contained in the Application Form were the indicative terms and conditions of the Agreement to be executed between the parties.





III. In due consideration of the booking amount paid by the Complainant and his commitment to comply with the terms of booking/Allotment and make timely payments of demands the Complainant was allotted an Independent floor residence bearing no. J-75D in project 'Smartworld Gems', 2.5 BHK+2TT on Level-4 corresponding to Plot no. A4-16 of approved zoning plan admeasuring 1107 sq. ft. vide Allotment letter dated 29.11.2021 along with welcome letter. It is submitted that total sale consideration of the unit as mentioned in the Allotment letter is Rs, 75,61,071/- plus other charges. That the Complainant, on his own free will and due understanding of the legal import opted for specific payment plan (10:80:10). Thereafter Complainant approached the Respondent Company and requested that the amount of Rs.2,00,000/- paid to Associate Company M/s. Suposhaa Realcon Pvt. Ltd. towards booking of a ready to move in unit be transferred towards the unit in question. The Answering Respondent being a customer oriented Company acceded to the request of the Complainant and caused the transfer of the amount of Rs. 2,00,000/- which was paid towards unit L-3B in 'Smartworld Orchard', Sector 61 Gurugram. That as per the payment plan opted by the Complainant, 10% was due at the time of submission of Application Form being the booking amount. Despite being well aware of the same the Complainant failed to deposit the entire amount. That after constant follow ups, the Complainant made the payment of Rs. 56,107/- vide cheque bearing no.023324 dated 01.02.2022 after a period of



- about 3 months. It is submitted that the Complainant failed to make timely payments. Thus, payment of the balance amount was belatedly made thereby completing first installment.
- IV. In furtherance of the allotment the Respondent Company had sent the Buyers Agreement/ Agreement for Sale to the Complainant for due execution at his end. After constant follow ups with the Complainant, the Buyers Agreement was duly registered on 21.02.2022.
- V. It is further pertinent to highlight that as per Clause 1.15 of the Agreement the responsibility of getting loan sanctioned and processed was duty of the Complainant. That the payment plan opted by the Complainant on his own will was specified payment plan (10:80:10) wherein 10% of the amount was to be paid at the time of booking , 80% of the TCV was to be financed through financial institute and the remaining 10% was to be paid at the time of possession. It is submitted that the Complainant being the allottees, on their own will and after due understanding of the legal import and effect had opted for a specific payment plan whereunder the Complainants agreed to have a part of the Sale Consideration for the said independent floor funded through a loan facility from the amongst the various loan facility proposals, as floated by the banks / financial institution / NBFCs as per their own specifications, eligibility and requirements. It was the obligations of the Complainant to make further payment for the consideration towards the said floor as per the demands raised from time to time. It is submitted that for the



Complainant to avail any loan facility for the said floor, the critical and essential factor was their eligibility which was solely dependent on their credentials and it was for the Complainant himself to satisfy and meet the eligibility criteria and factors for the due sanction of the loan facility. It is submitted that some of the other allottees in the same Project of the Respondent Company also availed lending facility(ies) from various banks / financial institution / NBFCs as per their own specifications, eligibility and requirements and having done so, the disbursements so request by the said allottees have from time to time been remitted to the order of the said allottees to the Respondent against their respective allotment of the independent floor in the said Project. It is further submitted that the Project of the Respondent Company is a RERA registered Project of which the development is being undertaken.

- VI. It is imperative to state that the Answering Respondent is merely required to be one of the three signatories to the Loan Facility Agreement/ Tripartite Agreement as the independent floor in question would be in the ownership of the Respondent till the conveyance. Furthermore, the Respondent/Developer is only saddled with minor rights and duties within the Tripartite Agreement, which is primarily entered into between the Financial Institution and the allottee for finance of an independent floor. Despite repeated requests, the Complainant failed to share the sanction letter from the financial intermediary. it is submitted that the Complainant



himself has failed to obtain loan from financial intermediaries and the Complainant is responsible for his own default.

VII. That the Respondent Company raised demand for an amount of Rs. 34,02,479/- vide demand letter dated 08.02.2022 being due on start of construction payable on or before 15.02.2022.. It is submitted that all the demands were raised by the Respondent as per the payment plan opted by the Complainant on the achievement of relevant construction milestone. That since the Complainant failed to clear his dues, the Respondent issued pre-cancellation notice dated 13.03.2022. Despite repeated requests, the Complainant failed to share the sanction letter from the financial intermediary. It is submitted that the Complainant himself has failed to obtain loan from financial intermediaries and the Complainant is responsible for his own default.

VIII. That the Respondent was constrained to cancel the allotment of the floor vide cancellation letter dated 25.03.2022 on account of wilful default by non-payment of demands raised by the Respondent Company. That the default of the Complainant in making timely payments and complying with other obligations is duly covered under the Buyers Agreement. It is submitted that vide emails dated 26.03.2022 and 12.05.2022 the Respondent again informed the Complainant that despite numerous follow-ups with the Complainant as well as his banker, the Respondent neither received loan sanction letter nor paid the outstanding dues as a consequence of which the allotment of floor was cancelled. It is submitted



that the Complainant had paid an amount of Rs.7,56,110/- against the total dues of Rs. 41,58,589/- to the Respondent Company towards the floor in question.

- IX. It is submitted that the Respondent has incurred various losses/damages on account of breach of terms and conditions of Buyers Agreement by the Complainant. It is pertinent to mention herein that instead of performing his obligations to come forward to make payment of the outstanding dues, the Complainant chose to raise false and frivolous allegations in order to get rid of contractual obligations. It is submitted that the Complainant was very well aware about the fact that in the event of failure on his part to make timely payments as per the payment plan opted by the Respondent or comply with the terms and conditions of Buyers Agreement, the Respondent Company was entitled to terminate the allotment and forfeit the amount paid by the Complainant being 10 % of sales consideration. Thus, the Complainant is not entitled to get any reliefs whatsoever as sought from this Authority. Failure on the part of the Complainant to perform his contractual obligations disentitles him from any relief.
- X. The Respondent Company as a goodwill gesture has refunded the amount paid by the Complainant i.e. Rs. 7,56,110/- via RTGS ICICR52023030100541609 dated 01.03.2023 despite being entitled to forfeit the entire amount being earnest money ( 10% of sales consideration). That the present complaint filed by the Complainant is nothing but an attempt



to extort money to unjustly enrich himself. Therefore, the Complainant is not entitled to any relief whatsoever.

- XI.** That the Complainant has failed to fulfil the obligations stated in the terms of the Buyers Agreement executed between the parties and is trying to take the benefit of his own wrong for not making payment of pending dues. That, as per the terms of Agreement, the Complainant was under an obligation to make payments in a timely manner as and when demanded by the Respondent as per payment plan opted by him. Hence, being fully aware about the payment as per the payment plan, the Complainant intentionally failed to make timely payments and therefore is a defaulter. That under Section 19 (6) RERA states that the Complainant is responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the Complainant is liable to pay interest for delay under **Section 19(7)** of RERA.
- XII.** It is submitted that as per clauses of the Buyers Agreement, which is binding on the Complainant and the Respondent, both parties have agreed upon their respective obligations and consequences in case of breach of any of the conditions specified therein. In view of the above, the captioned Complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the Court is to interpret appropriately the

existing contract and decide the rights and liabilities of the parties within the four corners of the contract.

- XIII.** That the Complainant has defaulted in making the payment on time contrary to the agreed terms. It is submitted that various reminders were issued and follow ups were made with the Complainant for complying with his obligations under the Buyers Agreement to make payment of outstanding dues. Despite repeated reminders the Complainant was not ready to come forward and comply with his obligations to make payment of outstanding dues. Hence, the Complainant is not entitled to get any reliefs from this Hon'ble Authority.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

**E. Jurisdiction of the authority**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

8. 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.

### **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)(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.*

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 complainants at a later stage.

### **F. Findings on the relief sought by the complainant**

- i. Direct the respondent to refund the entire amount along with interest.
10. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follow:





- (i) Admittedly, complainant in this case had purchased the floor in the project of the respondent in the year 2021 against which an amount of Rs. 7,56,110/- has been paid by the complainant against the sale consideration of Rs. 72,01,020/-.
- (ii) In view of the Authority, that the unit in question was booked in November 2021 by the complainant. Allotment letter dated 29.11.2021 was issued in his favour and thereafter builder buyer agreement got executed between the complainant and the respondent on 03.02.2022 and the due date for completion of the project and offer of possession was fixed on 30.09.2025. In terms of clause 1.5 of it, the allottee was liable to pay the amount on time and as per the payment plan. In the present situation the complainant is failed to honour its contractual obligation till date without any reasonable justification. The respondent issued reminder and pre-cancellation letter for outstanding amount i.e., 08.02.2022 and 13.03.2022 thereafter, issued cancellation letter to the complainant on 25.03.2022.

11. Now the proposition before the authority is whether the cancellation made by the respondent vide letter dated 25.03.2022 is valid or not.

12. As per 1.5 and 1.14 the terms of the builder buyer agreement the complainant was liable to make the payment as per the payment plan and the relevant clauses of the builder buyer agreement are reproduced under for ready reference:



**1.5** The Allottee(s) shall make the payment as per the payment plan set out in Schedule-V (Payment Plan).

**1.14** It is understood by the Allottee(s) that 10% of the Basic Price, shall be construed, considered and treated as "Earnest money", to ensure the performance, compliance and fulfilment of the Allottee(s) obligations under this Agreement.

13. The respondent issued reminder and pre-cancellation letter for outstanding amount i.e., 08.02.2022 and 13.03.2022 thereafter, issued cancellation letter to the complainant on 25.03.2022. The complainant has failed to adhere to the terms and conditions of the builder buyer agreement. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid. That the Respondent as a goodwill gesture already refunded the entire amount of Rs. 7,56,110/- without any deductions vide RTGS ICICR52023030100541609 dated 01.03.2023. As per the terms of the Buyers Agreement and as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018 the Respondent was entitled to deduct the earnest money (10% of sale consideration). Keeping in view, the present complaint is infructuous and not maintainable as the allegation raised by the complainant is already settled and the complaint is liable to be dismissed. No case is made out against the respondent.

14. Complaint stands disposed of.

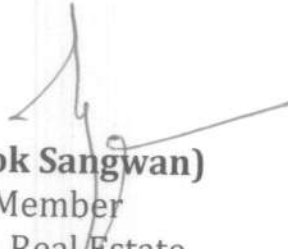
15. File be consigned to registry.



**HARERA**  
**GURUGRAM**

Complaint No. 7490 of 2022

Dated: 03.01.2024

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**