

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

Complaint no.	:	6146 of 2022
First date of hearing:		19.01.2023
Date of decision	:	23.02.2024

Satish Kumar Prabhakar Address: - R/o: H. no. A-1/119, Sector-5, Near Vishram Chowk, Rohini, Delhi-110085	Complainant
Versus	
M/s Aawam Residency Pvt. Ltd. Office at: - Unit no. SB/C/2L/Office/017A, M3M Urbana, Sector-67, Gurugram-121101	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Rambir Singh Chauhan	Advocate for the complainant
Ms. Shriya Takkar	Advocate for the respondent

ORDER

1. The present complaint dated 22.09.2022 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 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:

S. No.	Heads	Information
1.	Name and location of the project	"M3M Soulitude", Sector 89, Gurugram Manesar Urban Complex, Gurugram
2.	Nature of the project	Residential floors
3.	Project area	52.275 acres
4.	DTCP License	32 of 2021 dated 03.07.2021 valid till 02.07.2026
	Name of the licensee	M/s Adhikaansh Realtors Private Limited M/s Aawam Residency Private Limited
5.	HRERA registered/ not registered	Registered Vide registration no. 69 of 2021 dated 03.07.2021
		Valid up to 30.09.2025
6.	Application dated	25.07.2021 (As per alleged by the complainant on page no.2-3 of complaint)
7.	Allotment letter dated	11.01.2022 (As per page no. 14 of complaint)
8.	Date of execution of flat buyer's agreement	Not executed

9.	Unit no.	H-69/4 on 4 th floor (corresponding plot no. A-158) (As per page no. 16 of the complaint)
10.	Carpet Area	782.77 sq. ft. (As per page no. 16 of the complaint)
11.	Possession clause	30.09.2025 Taken from allotment letter dated 11.01.2022 on page 15 of complaint.
12.	Due date of delivery of possession	30.09.2025
13.	Payment plan	Time linked payment plan (As per page no. 19 of the complaint)
14.	Total consideration	Rs.96,37,268/- (As per payment plan on page no. 19 of the complaint)
15.	Total amount paid by the complainant	Rs. 12,47,977/- (Rs. 9,47,977/- + Rs. 3,00,000/-) (As alleged by the respondent on page no. 20 of reply) Earlier, the complainant made application for another project of M/s M3M India Private Limited and booking amount of Rs. 3,00,000/- was paid in that

		regard. On request of complainant for transfer of project to "M3M Soulitute", such amount was adjusted in amount paid by the complainant.
16.	Pre-cancellation notice (As it gives 15 days to the complainant to make payment)	08.02.2022 (As per page no. 34 of the complaint)
17.	Last and final opportunity letter dated	15.03.2022 (As per page no. 35 of the complaint)
18.	(Pre) Cancellation letter dated	22.03.2022 (As per page no. 108 of the reply)
19.	Email by respondent confirming cancellation	26.03.2022 (As per page no. 109 of the reply)
20.	Creating third party rights	20.04.2022 (As per page no. 114 of the reply)
21.	Emails by respondent for initiating refund	19.05.2022, 08.06.2022, 04.07.2022 and 27.07.2022 (As per page no. 110-113 of the reply)
22.	Legal notice by complainant for executing BBA	28.07.2022 (As per page no. 36 of complaint)
23.	Occupation Certificate	NA
24.	Offer of possession	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. That on 25.07.2021, the complainant had booked a unit no.H-69/4 in the above said residential project of the respondent namely M3M Solitude at Sector-89, Gurugram, Haryana and accordingly, the complainant paid Rs.1,00,000/- towards booking.
5. That the complainant paid a total sum of Rs.12,47,977/- to the respondent which is more than 10% of the total payable/consideration amount.
6. That the respondent had issued an allotment letter dated 11.01.2022 in favour of the complainant along with the project details, payment plan in the form of annexure-A and specifications of the unit/flat.
7. That as per the annexure-A, the complainant has paid more than 10% of the total sale consideration/payable amount to the respondent. At the time of booking of the said unit/flat, the respondent has not provided the details of the payment plan to the complainant which has now been provided by the respondent to the complainant alongwith the allotment letter. Therefore, the complainant was not aware about the payment schedule, however, the complainant paid more than 10% of the total payable amount as mentioned in the payment plan (Annexure-A).
8. That after going through the payment plan/annexure-A, the complainant has come to know that he had to pay/deposit 30% amount within 30 days of the booking subject to signing of builder buyer agreement. Accordingly the complainant had approached and requested the respondent to execute a builder buyer agreement so that the complainant can submit the same alongwith the loan documents with the bank. Without execution of builder buyer agreement, the complainant was not bound to pay the 30% amount within 30 days of the booking of

- the flat/unit. Hence the pre-condition of execution of builder buyer agreement was there before making 30% amount within 30 days from the date of booking.
9. That the complainant got shocked and surprised when he received the pre-cancellation notice dated 08.02.2022, last and final opportunity notice/letter dated 15.02.2022 and finally cancellation notice dated 22.03.2022. After receiving the said notices, the complainant approached the respondent and drawn his attention about non execution of builder buyer agreement, upon which the respondent handed over a blank performa of builder buyer agreement to the complainant with the instructions to the complainant to fill-up its blank particulars/spaces and to submit the same in the office alongwith sum of Rs.24,21,340/- by 01.05.2022. Accordingly, the complainant filled the requisite particulars in the abovesaid builder buyer agreement and also filled-up a cheque bearing No.000094 dated 13.05.2022 of Rs.24,21,340/- drawn on HDFC Bank Ltd. and visited the office of the respondent on 01.05.2022 but the authorized persons of the respondent refused to sign the said builder buyer agreement.
 10. That thereafter various communications in the form of emails and phone calls were exchanged between the complainant and the respondent for refunding the amount of the complainant deposited by him i.e. Rs.12,47,977/-. In the last email dated 27.07.2022, the officials of the respondent sent an email to the complainant whereby he had demanded documents from the complainant.
 11. That in response to the email dated 27.07.2022, the plaintiff clarified that since no builder buyer agreement was ever executed between the plaintiff and the respondent, hence the question of submitting the same

does not arise at all. Even though the complainant does not wish to cancel the allotment of the flat/unit as he is ready and willing to pay the payment as per payment plan as soon as the builder buyer agreement would be executed.

12. That the complainant sent a legal notice dated 28.07.2022 to the respondent through his counsel by way of speed post dated 29.07.2022 thereby requesting the respondent to execute the builder buyer agreement with the complainant and it was also made clear that the complainant is ready to make the 30% amount as per the payment plan/annexure-A and further submitted to make the future payments as per the said payment plan. The respondent was requested to comply with the said notice within 15 days. The said notice was duly served upon the respondent at its address of Sector-65, Gurugram, Haryana but the envelope from the second address of the respondent has been received back un-served. But despite the service of the legal notice, the respondent has neither replied nor complied with the same till date.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s)
- I. Direct the respondent to execute the buyer's agreement with complainant so that subsequent terms & conditions/ formalities can be fulfilled.
 - II. Restrain the respondent and its officials from transferring, disposing, selling or creating any kind of third-party interest in the unit no. H-69/4 (3 BHK) at M3M Soulitude.
14. On the date of hearing, the authority explained to the respondent /promoter on the contravention as alleged to have been committed in

relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

15. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -
16. That the complainant after making independent enquiries approached the respondent through their real estate agent. The complainant, thereafter applied for booking an independent floor residence in the project 'M3M Soulitude' situated in Sector-89 Gurugram as forming part of affordable plotted colony being developed under DDJAY scheme by the respondent and accordingly submitted an application form for booking/allotment.
17. That the complainant had signed and submitted the application form after duly understanding all the clauses stipulated therein and paid an amount of Rs. 8,00,000/- and Rs.1,47,977/- on 5.11.2021 and 12.11.2021 respectively. The complainant opted for the possession linked payment plan. The terms and conditions contained in the application form were the indicative terms and conditions of the agreement to be executed between the parties.
18. That as per the payment plan opted by the complainant was to make the payment of 10% of consideration value i.e. Rs.9,63,727/- within 10 days of booking. Since the complainant had paid only Rs. 9,47,977/-, the respondent vide demand letter dated 03.01.2022, requested the complainant to clear his outstanding dues of Rs. 15,750/- payable towards the first instalment on or before 12.01.2022.

19. That vide demand letter dated 04.01.2022 the respondent raised the second demand and vide the said letter also requested the complainant to clear his previous outstanding dues on or before 01.02.2022.
20. Thereafter, the respondent allotted H-69/4 having carpet area admeasuring 782.77 sq. ft. vide allotment letter dated 11.01.2022. The total consideration of the unit was Rs. 91,78,350/- plus taxes and other charges. The complainant on his own free will and after fully understanding his obligations opted for possession linked payment plan.
21. That the complainant had earlier expressed his interest in booking of a ready to move in unit in one of the OC received projects of Associate Company M/s. M3M India Pvt. Ltd. and admittedly had paid an amount of Rs. 1,00,000/- and Rs.2,00,000 /- on 25.07.2021 and 02.08.2021 respectively .
22. That thereafter the complainant requested that the amount of Rs. 3,00,000/- paid to M/s. M3M India Pvt. Ltd. towards booking of a ready to move in unit in one of its OC received projects be transferred towards the booking made in the project 'M3M Soulitude'. On the request of the complainant the amount of Rs.3,00,000/- was also adjusted towards the unit in 'M3M Soulitude' without any deductions. It is a matter of fact that the complainant was already aware of the total consideration of the unit and the payment plans as stated in the allotment letter.
23. After various conversations and deliberations with the complainant, the respondent vide cover letter dated 07.02.2022 sent two copies of the buyers agreement to the complainant for execution at his end, which was duly received by the complainant.

24. That a pre-cancellation notice was sent to the complainant vide letter dated 08.02.2022 as the payment was due on part of the complainant,
25. That on 04.03.2022, the respondent sent copies of other related documents vide cover letter and requested the complainant for execute the same.
26. That along with the other documents, a letter was also sent to the complainant stating that a waiver of common area, maintenance charges for a period of 12 months from the date of notice of offer of possession was offered to the complainant subject to execution of the said letter by the complainant.
27. That despite repeated follow ups the complainant neither returned the signed copies of buyer's agreement nor made timely payment of outstanding dues despite repeated requests. Thus, the complainant was in default of his contractual obligations as per the terms and conditions of application form/allotment.
28. Thereafter, the respondent vide letter dated 15.03.2022 offered a last and final opportunity to the complainant thereby requesting the complainant to clear outstanding dues within 7 days. The respondent was entitled for immediate cancellation/termination of the allotment of unit and forfeiture of amounts but as a goodwill gesture, the respondent gave 7 days to the complainant to clear dues.
29. That on account of wilful breach of the terms of application form/allotment letter by failing to clear the outstanding dues despite repeated requests, the respondent was constrained to terminate the allotment of the said unit vide cancellation letter dated 22.03.2022 and forfeit the amounts paid in accordance with the terms of the application

form/allotment letter. The complainant was also informed about the cancellation of his allotment vide email dated 26.03.2022.

30. That the respondent has incurred various losses/damages on account of the breach of the terms of the allotment and application by the complainant, which the complainant is liable to pay as per the terms of the application.
31. That the complainant was very well aware about the fact that in the event of failure on his part to execute the documents or comply with the terms and conditions of allotment/application form, the respondent is entitled to terminate the provisional allotment and forfeit the amount paid by the complainant as per the terms of the application form/allotment.
32. Despite various reminders, the complainant did not come forward to take the refund, after deductions as per agreement, nor did he execute the documents and is now making false allegations against the respondent company.
33. Furthermore, after the termination, the respondent company has further re-allotted the unit to one Ms. Pooja Mehrish vide allotment letter dated 20.04.2022. Thus, the complainant is not entitled to get any reliefs. The failure on the part of the complainant to perform his contractual obligations disentitles him from any relief.
34. 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 on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

35. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The

objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

36. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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

37. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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 execute the buyer's agreement with complainant so that subsequent terms & conditions/ formalities can be fulfilled.
- II. Restrain the respondent and its officials from transferring, disposing, selling or creating any kind of third-party interest in the unit no. H-69/4 (3 BHK) at M3M Soulitude.

38. In the present complaint the complainant is seeking relief w.r.t execution of buyer's agreement. The complainant was allotted a unit bearing no. H-69/4 on 4th floor in the project named "M3M Soulitute" at Sector-89 Gurugram vide allotment letter dated 11.01.2022. The total sale consideration of unit was Rs.96,37,268/- and the complainant has paid a sum of Rs. 9,47,977/- towards the said unit. Earlier, the complainant made application for another project of M/s M3M India Private Limited and booking amount of Rs. 3,00,000/- was paid in that regard. On request of complainant for transfer of project to "M3M Soulitute", such amount was adjusted in amount paid by the complainant.
39. As per the payment plan the complainant has to make first instalment i.e., 10% of the total consideration value (TCV) within 10 days of booking, second instalment i.e., 30 % of TCV has to be paid within 30 days of booking (subject to signing of builder buyer agreement. The respondent started raising payments from the complainant however, the complainant defaulted in making payments and the respondent was to issue reminder letters dated 08.02.2022, 15.03.2022, 22.03.2022. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter the complainant failed to act further and comply with their contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 26.03.2022. Now the question before the authority is whether the cancellation issued vide letter dated 26.03.2022 is valid or not.
40. The authority observes that as per the payment plan the complainant has to pay the first instalment i.e., 10% of TCV within 10 days of booking and thereafter the complainant has to pay the second instalment i.e., 30% within 30 days of booking subject to signing of builder buyer agreement.



The total sale consideration of the unit was Rs.96,37,268/- and the complainant on the booking has paid an amount of Rs. 9,47,977/- . Moreover an amount of Rs. 3,00,000/- paid by the complainant towards the another project of M/S M3M India Private Limited earlier booked by the complainant was adjusted in the said unit. Thereafter the respondent raised second instalment i.e., 30% of the TCV within 30 days of booking and subsequently sent builder buyer agreement for signing on 07.02.2022 which the complainant has failed to execute and not paid the 30% of the amount as per payment plan. The respondent issued reminder letters dated 08.02.2022, 15.03.2022 and pre cancellation letter dated 22.03.2022 but the complainant failed to comply with his contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 26.03.2022. Therefore, the cancellation of the unit is valid.

41. Keeping in view the above-mentioned facts the promoter was to return the paid-up amount on the date of cancellation itself and in the present matter the respondent has already refunded the total paid up amount Rs. 12,47,977/-. Hence, no case for refund of any amount is made out.

III. Complaint stands disposed of.

IV. File be consigned to registry.

(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2024