

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

<b>Complaint no. :</b> 1691 of 2023	
<b>Order Pronounced On :</b> 09.08.2024	
1. Kshetrimayum Samarendra Singh 2. Dipanita Soram Both R/o: - Sngjamei Wangma Kshetri Leikai, Kshetri Leirak, PO Imphal, Basihkhong, Singjamei, Imphal East, Imphal, Manipur - 795008	<b>Complainants</b>
Versus	
M/s Adhikaansh Realtors Pvt. Ltd. M/s Aawam Residency Pvt. Ltd. Registered Office at: - SB/CL/2L/Office/017A, M3M Urbana, Sector-67, Gurugram	<b>Respondents</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
None	Complainants
Ms. Shriya Takkar	Respondents

**ORDER**

- The present complaint dated 11.04.2023 has been filed by the complainants/allottees 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 complainants, 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 and location of the project	"Smartworld Gems" situated at Sector-89 Gurgaon.
2.	Nature of the project	Affordable plotted colony - DDJAY
3.	Project area	19.843 acres
4.	DTCP license no. and validity status	32 OF 2021 dated 03.07.2021
5.	Rera registered or not	<b>Registered</b> Vide 502/234/2021/70 dated 25.10.2021 up to 30.09.2025
6.	Allotment Letter	04.10.2022 (page no. 17 of complaint)
7.	Date of apartment buyers' agreement	17.10.2022 (page no. 27 of complaint)
8.	Unit No.	J-36, 3 <sup>rd</sup> Floor (page no. 31 of complaint)
9.	Unit area admeasuring	782 sq. ft. (page no. 31 of complaint)
10.	Due date of possession	30.09.2025 (As per registration certificate)
11.	Possession clause	<b>5 Possession</b>

		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....
12.	Total sale consideration	Rs. 91,23,280/- (As per page 61 of complaint)
13.	Amount paid by the complainant	Rs. 9,12,328/- (page 111 of reply)
14.	Pre cancellation letter	28.10.2022 (page 109 of reply) - payment was to be made within 7 days from the receipt of this letter
15.	Cancellation letter	22.11.2022 (page 111 of reply)
16.	Completion certificate	Not obtained
17.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

4. That complainants have duly believed the statement of the representative of respondents and applied for the allotment of a flat bearing No J/36C having the super area of 132.20 Sq. mtr. In Jade Block on 3rd Floor in the said project situated at Sector-89, Gurugram and paid Rs.9,12,328/- as booking amount to respondents vide receipt no. Cr-4192 dated 01.10.2022

amounting Rs.6,50,000/- and receipt no. Cr-4191 dated 01.10.2022 amounting Rs.2,00,000/- and receipt no.7302 dated 26.10.2022 amounting Rs.62,328/- with the payment plan in PLP 40:60 inclusive of all charges. The more than earnest money has been paid by complainants and remaining was to be paid as per payment plan on start of construction and excavation of the project site.

5. That the complainant no.1 during his posting at Delhi booked a unit No. J-36C in Smartworld Gems at Sector 89 Gurugram with his wife i.e. complainant no.2 as co applicant in Oct 2021 with the respondents with payment plan of 40:60 payment. On 08<sup>th</sup>October2022, the complainants got a call from the respondents company that the unit had been allotted in the name of complainants and they have to come for BBA registration at Gurugram on 17<sup>th</sup>October2022. The demand note was issued on 06<sup>th</sup>October2022 and sent to the previous Delhi address of complainants. The demand note was returned back undelivered and collected by the agent of complainants from Smartworld office on 15<sup>th</sup>October 2022 and the same was handed over to the complainants on 16<sup>th</sup>October2022 and the due date of the first instalment was 26<sup>th</sup> October 2022as per 40:60 payment plan. The complainants came from Jamnagar (Gujarat) to Gurugram for registration of BBA and the said BBA was got executed and

registered on 17<sup>th</sup>October2022 between the parties dated 17.10.2022 registered in the office of Sub Tehsil Harsaru, Gurugram.

6. The complainants met Mr Shakti Singh who is/was employee of the respondents company and said to the complainants that the copy of the BBA Agreement will be delivered in next 7 to 10 days. The complainants also discussed with the said Mr. Shakti Singh that the payment will be late (as due date was 26 Oct). That on 29<sup>th</sup> November 2022, the complainants again submitted the signed TPA through their agent.
7. That on 12.12.2022 the complainants received a mail from Ms. Deepshikha Shukla CRM of respondents and she told to the complainants that they have send the TPA format in word to Ms. Shreya. That on 29<sup>th</sup> December 2022 Mr. Sameer Wadhwa employee of respondents has informed to the complainants that your unit number J-36C has been cancelled. The complainants contacted to respondents and one employee of the respondents Ms. Deepshikha Shukla told the complainants that your unit can not be restored as we have sent a pre cancellation mail on 28.10.2022 and another mail on 22.12.2022 for final cancellation. The complainants not received any cancellation or pre cancellation mails till today and the complainants asked the said Ms. Deepshikha Shukla to send screenshot of pre cancellation or

cancellation mails but she said that all the mails might have gone to spam and missed. The complainants couldnot recover the mail asspam mails are destroyed automatically after 30 days by the gmail system. The complainants shocked to know about the cancellation information as the cancellation was illegal, unlawful and not informed before the process of cancellation. The complainants were regularly requested the respondents and tried to contact to respondent's higher authorities to restore the unit through emails, whatsapp chat, telephonically calls and messages to restore the unit but all in vain.

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

8. The complainants have sought following relief(s)

- I. Direct the respondents to restore the unit.
- II. Direct the respondents to pay litigation cost.

9. On the date of hearing, the authority explained to the respondents /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**

10. The respondents have contested the complaint on the following grounds.

The submission made therein, in brief is as under: -

11. That it is very pertinent to submit on facts that as a special case and to bring closure to the present matter, the answering Respondents has already refunded the entire amount deposited by the Complainants (vide RTGS:

**ICICR52023040600803677/HDFC0000139/DIPANITASORA**  
**M** dated 06.04.2023), and in furtherance thereof the unit in question has been re-allotted to one Ms. Lata Gupta vide Allotment letter dated 31-01-2023. Accordingly, since the amount paid by the Complainants stands refunded, and the unit in question having been re-allotted, therefore nothing survives in the complaint and the same is most liable to be dismissed.

12. That the Complainants being clued up of the Respondent's distinguished and upright reputation in the market approached the respondents after conducting their own due diligence exhibiting an interest in buying a unit in the Respondent's project "Smartworld Gems" situated in Sector 89, Gurgaon, Haryana being developed by the Answering Respondent. It is noteworthy to mention that the Complainants requested for booking an Independent Floor Residence located in the said project vide Application form and tendered an amount of Rs.6,50,000/- towards booking of an independent floor. It is submitted that the Respondents had signed the Application Form after duly understanding all the clauses stipulated under the Application Form and being completely satisfied with the particulars/ details of the project. The Complainants pursuant to the receipt of Application form was further tendered with an allotment letter & welcome letter both dated 04.10.2022 wherein the desired unit

i.e., J-36C, in the said project was allotted to the Complainants for a total consideration value of Rs. 91,23,280 /- plus other charges amounting to Rs. 2,09,783/-.

13. That the Complainants had duly collected the copies of Agreement For Sale/Buyers Agreement for execution at their end. After constant follow ups by the Answering Respondent, the Agreement for Sale was executed on 17.10.2022 and the same was duly registered. It is submitted that the Agreement for Sale lays down rights and liabilities of both the parties.

14. That vide demand letter dated 06.10.2022 the Complainants were called upon to remit a sum of Rs. 36,49,311/- which was due on part of the complainants in lieu of the purchase of the unit which was payable on or before 26.10.2022 after duly completing the formalities of execution and registration of Agreement for Sale. It is submitted that an amount of Rs. 9,12,328 /-was only paid after issuance of the demand letter, thus totalling the outstanding amount to Rs. 27,36,983. Since the complainants failed to clear his outstanding dues despite issuance of pre-cancellation notice, the respondents were constrained to cancel the allotment of the complainants vide cancellation letter dated 22.11.2022.

15. It is submitted that the Complainants after defaulting in the payout multiple times finally approached the respondents and



requested to make timely payments and sought an extension wherein the said cancellation letter dated 22.11.2022 was halted in its operation subject to receipt of outstanding dues. Thus, the Respondents being a customer oriented Company conceded to the request of the Complainants and gave an opportunity to the Complainants to clear their dues and further asked for rendering the relevant documents being the TPA and Sanction letter alongwith outstanding dues.

16. It is submitted that the cancellation of the unit has been done in accordance with the terms of the Buyers Agreement. In the present case, the allotment of the complainants were revoked on the wilful default on part of the Complainants to clear his outstanding dues totalling to Rs.27,36,983/-. Pertinently, despite assurances given to clear dues (as had been requested in demand letter dated 06.10.2022), the Complainants failed to do so. Thus, the Respondents were forced to cancel the allotment of the unit on account of wilful breach of terms and conditions of the Agreement for Sale vide cancellation letter dated 22.11.2022. It is submitted that as per the terms of the Agreement for Sale the Respondents were entitled to forfeit the entire amount paid by the Complainant, which had also been duly notified to the Complainants vide cancellation letter dated 22.11.2022.

17. **That** as per the records of the respondents the amount paid by the Complainants were Rs.9,12,328/-. The respondents to close the matter refunded an amount of Rs.9,12,328/-, vide the details of RTGS bearing no.: **ICICR52023040600803677/HDFC0000139/DIPANITASORAM** dated 06.04.2023, though as per the terms of the Agreement for Sale , the respondents were entitled to deduct the earnest money (10% of total sale consideration) along with non-refundable amounts as stated in terms of the Agreement For Sale, and as had been duly notified to the Complainants in the cancellation letter. That in furtherance of the cancellation of the unit in question the same has been re-allotted to one Ms. Lata Gupta vide Allotment letter dated 31-01-2023. Thus, the present complaint is infructuous.

18. 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**

19. 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**

20. 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**

21. 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 complainants.**

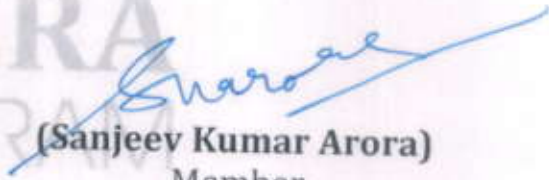
- I. Direct the respondents to restore the unit.
- II. Direct the respondents to pay litigation cost.

22. The complainant's shows interest in the project of the respondents namely "Smartworld Gems" at Sector-89 Gurugram. The complainants have made a payment of ₹9,12,328/- vide receipt dated 01.10.2022/- towards their booking. The allotment letter for the said unit was issued on 04.10.2022 and the buyer's agreement was executed between the parties regarding the said unit on 17.10.2022.

23. The plea of the complainants-allottees is that the respondents have delayed in issuing the buying agreement and not send issued any pre cancellation letter before cancellation letter therefore, they are seeking restoration of the subject unit.

24. The plea of the respondent-builder is otherwise and submitted that the complainants are a defaulter as they are well aware about their duty to come forward and pay the outstanding dues within time. Therefore, the respondents have constrained to cancel the allotment and refunded the full amount deposited by them through RTGS on 06.04.2023 (before the filing of this case).
25. The authority has noted that the complainants expressed interest in the respondents company's project, "Smartworld Gems," located at Sector-89, Gurugram, and made a payment of ₹9,12,328/- out of total sale consideration of Rs. 91,23,280/-. Subsequently, the complainants did not proceed with paying the outstanding dues. Consequently, the respondents cancelled the unit on 22.11.2022 and refunded the total amount paid by the complainants through RTGS on 06.04.2023.
26. Hence no case is made out as complainants have already received the paid amount before filing of this case.
27. Complaint stands disposed of.
28. File be consigned to registry.

**HARERA**  
**GURUGRAM**

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 09.08.2024