

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

<b>Complaint no.</b>	:	<b>792 of 2024</b>
<b>First date of hearing:</b>		<b>24.05.2024</b>
<b>Order Reserve On :</b>		<b>26.07.2024</b>
<b>Order Pronounced On :</b>		<b>09.08.2024</b>

1. Yattan Yadav 2. Shashi Yadav Both R/o: - 1853/29, Gali no. 11, Surat Nagar, Phase I, Gurugram	<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>Respondent</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>

<b>APPEARANCE:</b>	
Sh. Mukul Sawariya (Advocate)	On behalf of complainants
Ms. Shriya Takkar	On behalf of respondent

**ORDER**

1. The present complaint dated 26.03.2024 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:

Sr. No.	Particulars	Details
1.	Name of the project	Smartworld Gems, Sector-89, Gurugram, Haryana.
2.	Nature of the project	Residential Floors
3.	Project area	52.275 acres
4.	RERA Registered/ not registered	Registered 70 of 2021 dated 25.10.2021 valid upto 30.09.2025
5.	DTCP License No.	32 of 2021 dated 03.07.2021
6.	Unit no.	NA
7.	Unit admeasuring	NA
8.	Allotment Letter	Not provided
9.	Agreement to sell	Not executed
10.	Date of making payment	Rs. 21,000/- on 12.02.2022 Rs. 79,000/- on 26.02.2022 Rs. 2,00,000/- on 17.03.2022
11.	Amount paid by complainants	Rs. 3,00,000/- (as stated by both parties)

12.	Amount refunded by respondent after cancellation	Rs. 2,70,000/- vide RTGS on 18.01.2024 Rs. 30,000/- vide RTGS on 06.04.2024	
13.	Occupation certificate	Not obtained	
14.	Offer of possession	Not offered	

### **B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint: -
4. That the 2.5 BHK unit bearing no. T - 73 B, admeasuring 1067 Sq. ft., at 2nd floor in the project for a total sale consideration of Rs. 77,21,000/- was booked by the complainants on subvention scheme by paying booking amount of Rs. 3,00,000/- vide three transactions dated 12.02.2022 amounting Rs. 21,000/-, dated 26.02.2022 amounting to Rs. 79,000/- and Rs. 2,00,000/- from the account of mother of the complainants namely Suman Yadav.
5. That the complainant no. 1 while he was visiting one of his friend at Dwarka Courts, Delhi in discussion of his present case found that that he has lost the booking/ payment receipts. Consequent upon this he filed an online complaint the S.H.O. Crime branch Delhi.
6. That the respondents assured that they will execute the agreement to sell with the complainants and provide all other necessary documents to the complainants so that the complainants could avail loan to arrange the balance sale consideration but till date the respondents neither executed

any such agreement to sell nor did issued any allotment letter or any document to the complainants with regard to the unit booked by the complainants.

7. That the respondents demanded the 50% of the amount the total sale consideration without even providing any agreement to sell with regard to the unit to the complainants and didn't even stated anywhere in their communication, their intention to execute such agreement to sell.
8. That the complainants found that the respondent transferred Rs. 2,70,000/- in the account of the mother of the complainants.
9. That the respondents have wrongfully without any proper channel or mode have made the demands and till date have not even shared any draft of the agreement to sell rather have cancelled the unit bearing no. T - 73 B of the complainants arbitrarily without following the provisions envisaged in the RERA and Rule therein.

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

10. The complainants have sought following relief(s)

- I. Direct the respondent to refund the amount paid by complainants along with interest.

11. 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**

12. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

13. That the complainants have not approached this Hon'ble Authority with clean hands and has tried to mislead this Hon'ble Authority by making

incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of suppression very suggestion falsi. The complainants has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.

14. That the present complaint has been filed by the complainants with malafide intentions to unjustly enrich themselves as there is no cause of action for the relief sought has been made out in the present complaint. The complainants had expressed their interest to book a unit in the project of the respondent company i.e. 'Smartworld Gems', Sector 89 Gurugram after conducting requisite market research and tendered a sum of Rs. 3,00,000/- in three instalments of Rs. 21,000/- on 12.02.2022, Rs. 79,000/- on 26.02.2022 and Rs. 2,00,000/- on 17.03.2022 towards their expression of interest, which was duly acknowledged by the respondent company.
15. That the respondent company supplied the complainants with a cost breakdown detailing the prices of units based on their dimensions within the project, to facilitate the complainants in selecting a unit in the project of the respondent company and to freeze the price of the selected unit.
16. The complainants were well aware about their duty to come forward to select the unit, confirm booking, complete all booking formalities including but not limited to depositing 10% of sales consideration and execute all requisite documents. The complainants despite being well aware of their obligations, failed to come forward to complete the booking formalities nor came forward to pay the complete booking amount being 10% of the sale consideration as a consequence of which

the respondent company was constrained to cancel the booking and refund the amount deposited against the booking.

17. That the complainants had paid an amount which is less than 10% of the sales consideration towards the booking. The complainants failed to choose the unit and further to pay even 10% of the sales consideration and did not come forward to complete the booking formalities as a result of which the said booking could not crystalize into allotment. Thus, no unit was ever allotted to the complainants, hence there is no privity of contract entitling the complainants to file and maintain the instant complaint.

18. That without prejudice to its rights, being a customer-oriented company, to bring closure to the matter the respondent company refunded an amount of Rs. 2,70,000/- post necessary deductions vide RTGS on 18.01.2024. However, as a goodwill gesture and to put quietus to the issue, the respondent company has subsequently refunded the balance amount paid by the complainants.

19. 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**

20. 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**

21. 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**

22. 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 respondent to refund the amount paid by complainants along with interest.
23. The complainant's shows interest in the project of the respondent company namely "Smartworld Gems" at Sector-89 Gurugram. The complainants have made a payment of ₹ 3,00,000/- in three instalments of ₹ 21,000/- on 12.02.2022, ₹ 79,000/- on 26.02.2022 and ₹ 2,00,000/- on 17.03.2022 towards their expression of interest. The allotment letter for the said unit was not issued neither the buyer's agreement was executed between the parties regarding the said unit.
24. The plea of the complainants-allottees is that the respondent company has not issued any allotment letter and builder buyer agreement

therefore, they are seeking the refund of the amount paid by them along with interest.

25. 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 select their unit/confirm booking/complete all booking formalities. Therefore, the respondent was constrained to cancel the booking and refunded the full amount deposited by them through RTGS on 15.01.2024 and 06.04.2024.

26. The authority has noted that the complainants expressed interest in the respondent company's project, "Smartworld Gems," located at Sector-89, Gurugram, and made a payment of ₹3,00,000 in three installments: ₹21,000 on 12.02.2022, ₹79,000 on 26.02.2022, and ₹2,00,000 on 17.03.2022. Subsequently, the complainants did not proceed with selecting a unit, confirming the booking, or completing the necessary booking formalities. Consequently, the respondent cancelled the unit and refunded the total amount paid by the complainants through RTGS on 15.01.2024 and 06.04.2024. The complainant's request for a refund is therefore moot, as the respondent has already effectuated the refund in full.

27. Hence no case for refund is made out.

28. Complaint stands disposed of.

29. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 09.08.2024