

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

<b>Complaint no.:</b>	<b>2528 of 2023</b>
<b>Date of filing:</b>	<b>09.06.2023</b>
<b>Date of decision:</b>	<b>05.07.2024</b>

1. Esha Jain 2. Sumedha Kaushal <b>R/o:</b> 116 A, Shivam Enclave DDA Flats, Shahdra, East Delhi - 110032	<b>Complainants</b>
<b>Versus</b>	
Suposha Realcon Private Limited. <b>Regd. Office:</b> Unit no. SB/C/2L/Office/017A, M3M Urbana Sector - 67, Gurugram, Haryana- 122102	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Mr. Hemant (Advocate)	Complainants
Ms. Shriya Takkar	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

2. The particulars of the project, the details of 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.	Project name and location	'Smart World Orchard, Sector-61, Gurugram
2.	Nature of the project	Residential
3.	DTCP license no. and validity status	68 of 2021 dated 16.09.2021 valid up to 15.09.2026
4.	RERA registered/ not registered	Registered dated 03.11.2021 vide no. 74 of 2021 valid up to 31.12.2024
5.	Date of booking/EOI	18.07.2021 (Page 20 of the complaint)
6.	Allotment letter	Not on record but a date has been mentioned in facts as 01.11.2021 (Page 16 of the complaint)
7.	Date of agreement	Not executed
8.	Total sale consideration	Rs. 1,58,33,500/- [Page no. 16 of complaint and 10 of reply]
9.	Total amount paid by the complainants	Rs. 17,00,000/- [As per page no. 16 of complaint]
10.	Mail w.r.t refund of paid up amount sent by respondent	14.03.2023 (page 28 of reply)
11.	Occupation certificate	Not obtained
12.	Offer of possession	Not offered



## B. Facts of the complaint

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

- i. That allured by the fancifulness of the sale brochures, specification details, shown layout and plans garnished with the verbal assurances by the respondent, complainants on 18.07.2021 expressed their interest for booking an Apartment/Unit having area of 1630 Sq. Ft (Approx) and in lieu of the same for confirmation of the Expression of Interest Submitted the Cheque (073785) of Rs. 5,00,000/- (Rupees Five Lakhs Only) which was cleared on 20/07/2021.
- ii. They on 01.11.2021 issued two cheques amounting to Rs 12 lakhs having Cheque No. 000049 and Cheque No. 000050 of Rs. 6 Lakhs each dated 01.11.2021 and 10.11.2021, respectively, which has been duly acknowledged by the Respondent vide its E-Mail dated 02.08.2022. It is Further submitted that soon after receiving of the above said Cheques, Respondent issued unit No: - I-29/A for the total Consideration of Rs: 1,58,33000/- (Approximately) which is having Priority NO: 928. The complainants have made several visits to the respondent's office in order to execute the agreement for the allotment of the unit. Despite the complainant's efforts to establish a written agreement, the respondent failed to provide any concrete documentation or formalize the allotment of the unit.
- iii. The complainants, feeling clueless and neglected after a period of more than 9 months, visited the CRM Office again on August 2, 2022, seeking information about the allotment of unit and execution of agreement. During this visit, the executives at the

- office informed the complainants that phase 2 had not yet commenced for allotments.
- iv. To their utter surprise, in November 2022, the respondent's executive informed them that their unit had been sold to someone else. Upon inquiry, the respondent assured the complainants that an alternative unit or same unit would be re-allocated to them. That the detailed email dated 18-11-2022 was written by the complainants to the respondent to raise the above-mentioned issue, which serve as evidence to substantiate the aforementioned fact.
- v. The complainants made numerous efforts to address the issue by corresponding with government authorities and officials from November 2022 until February 2023. They sought assistance and intervention to resolve the matter and secure possession of their dream house. However, despite their persistent attempts and reaching out to relevant authorities, their efforts did not yield any positive outcomes. Unfortunately, they were left empty-handed, as their attempts to seek resolution and assistance from government authorities proved futile.
- vi. That Surprisingly, on February 22, 2023, an amount of INR 10,79,047 was credited to the complainant's bank account by the respondent, without seeking consent or providing any prior notification to the complainants. It is important to note that the complainants never received any communication regarding this refund at any point in time. Additionally, no demand letters or requests for refund were ever received by the complainant. It is emphasized that the complainants have already paid the full



amount, in accordance with the demands raised by the respondent. It is further submitted that the respondent has only refunded a partial amount of INR 10,79,047, despite having collected a total of INR 17,00,000 from the complainant.

**C. Relief sought by the complainants**

4. The complainants have filed the present compliant for seeking following relief:
- I. Direct the respondent to restore the subject unit having priority no. 928 which is having area of 1630 Sq. Ft. to the complainant.
  - II. Direct the respondent to allocate original property to the complainants at the original cost as agreed upon earlier.
  - III. Direct the respondent to execute the builder buyer agreement and to give the possession of the property as per the completion date submitted in RERA registration to the complainants along with registration of sale deed and project facilities in all respect.
5. On the date of hearing, the authority explained to the respondent/promoter about 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**

6. The respondent has contested the present complaint on the following grounds:
- i. That without prejudice to the aforementioned contentions it is stated that the Complainants have approached this Hon'ble Authority with unclean hands and have 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 *suppressio very suggestion falsi*. The Complainants have 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.

- ii. It is submitted that the Complaint filed by the Complainants is baseless, vexatious and is not tenable in the eyes of law therefore the Complaint deserves to be dismissed at the very threshold. It is submitted that the Complainants had submitted an Expression of Interest (EOI) through their broker M/s. Bullmen Reality Pvt. Ltd. for booking/allotment of a ready to move in residential apartment/commercial unit in one of the projects acquired by the Respondent. The Complainants herein along with the Expression of Interest (EOI) also tendered a sum of Rs. 5,00,000/- towards the confirmation of their EOI. It is submitted that the Complainants had signed and submitted the EOI through their broker after duly understanding all the clauses stipulated under the EOI. It is submitted that the EOI clearly stipulates that:

*"I/We understand and agree that this EOI is merely my/our intent and desire to seek and purchase a unit available/allotted to you in a project wherein Occupation Certificate has been received, and that EOI and payment tendered by me/us and acknowledgement (if any) thereof by the company neither in any manner amounts to booking nor does it create any right or interest whatsoever in my/our favour in respect of any unit, nor shall it create any obligations on the company towards me/us nor it is any investment scheme.*

*I/We agree and understand that this EOI only constitutes an offer/registration of EOI and is not an acknowledgement or promise of any allotment or any agreement. I/We understand and agree that by submitting this EOI, I/we do not become entitled to and eligible for a unit; I shall visit your offices so that available units, their final prices and site visit can be arranged so as to enable me to conclude the transaction; the allotment shall be at the company's discretion and subject to availability, execution of the application form and issuance of an allotment letter in due course of time and further execution of the agreement as*



*per the applicable law. In the event, a unit is allotted to me/us, I/we agree to sign and execute all necessary documents and complete all formalities including but not limited to execution of standard agreement(s), affidavits, undertakings, declarations etc. with the Company and with the respective developer and unequivocally agree to abide by the terms and conditions laid down therein. The allotment of a unit once made shall be final and binding on me/us. The amount tendered by me / us as above shall be adjusted towards the booking of the unit as finally allotted to me / us in the project and/or at our request in any other project of the Company / its affiliates/ associates (at the relevant time) upon completion of all formalities as conveyed to me/us by the company."*

Thus, from the perusal of the aforementioned clause of the EOI it is clear that the EOI did not constitute allotment of any specific unit. Thereafter, the Complainants expressed their interest to book a unit in under construction project of the Respondent Company i.e. Smartworld Orchard, Sector 61 Gurugram and on their own free will paid an amount of Rs. 6,00,000/- vide two cheques dated 01.11.2021 and 10.11.2021 towards the Expression of Interest.

- iii. The Complainants were well aware about their duty to come forward to select the unit, confirm booking, complete all booking formalities and execute all requisite documents. The Respondent sent an email dated 13.11.2022 to the Complainants, requesting them to visit the sales gallery and meet sales head Mr. Prashant for further discussion regarding the Expression of Interest signed and submitted by them.
- iv. The complainants were well aware about the fact that in the event of failure on their part to execute the documents or comply with the terms and conditions of EOI, the Respondent was constrained to terminate the EOI and refund the amount deposited after necessary deductions.
- v. The Respondent Company informed the Complainants about refund of the amount deposited post necessary deductions vide email dated 14.03.2023. It is submitted that the Complainants had

signed and submitted the Expression of Interest after duly understanding all the clauses stipulated at their own free will and thus is not entitled to relief claimed. It is submitted that the Respondent is acting in accordance with the terms of the EOI.

- vi. The present Complaint itself is infructuous as the Respondent has refunded an amount of Rs. 15,79,047/- post necessary deductions vide RTGS on 22.02.2023. However, as a goodwill gesture and to put quietus to the issue, the Respondent Company has refunded the entire amount paid by the complaint. The details of the transactions are reproduced hereinbelow for ready reference:

S. No.	Transaction ID	Date	Amount
1.	Transaction ID ICICR52023022200835423	22.02.2023	Rs. 5,00,000/-
2.	Transaction ID KKBKR520323022200992426	22.02.2023	Rs. 10,79,047/-
3.	Transaction ID 000361945915	09.11.2023	Rs. 1,20,953/-

- vii. Snap shot of the bank account statements evidencing the payment of the payments of Rs.17,00,000/- . Thus, the entire amount paid by the Complainants stands refunded.
- viii. That the Complainants herein do not fall under the definition of "Allottee" as provided under Section 2 (d) of the Real Estate (Regulation & Development Act, 2016) read with HRERA Rules and Regulations thereunder. That despite repeated reminders the Complainants did not come forward to select the unit and complete the booking formalities as a consequence of the same no unit was ever allotted to the Complainants and the Respondent cancelled the EOI and refunded the entire amount deposited by the complainants. Thus, the present complaint is infructuous as the



Respondent to close the matter has refunded an entire amount of Rs. 17,00,000/- vide RTGS on 22.02.2023 and NEFT dated 09.11.2023.

ix. Thus, the Complainants have no locus standi to approach this Hon'ble Authority. Therefore, the present complaint is liable to be dismissed on this ground alone.

7. Copies of all the relevant documents have been filed and placed on 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**

8. 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**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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**

10. 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) *The promoter shall-*

- (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.*

11. 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 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 restore the subject unit having priority no. 928 which is having area of 1630 Sq. Ft. to the complainant.
- II. Direct the respondent to allocate original property to the complainants at the original cost as agreed upon earlier.
- III. Direct the respondent to execute the builder buyer agreement and to give the possession of the property as per the completion date submitted in RERA registration to the complainants along with registration of sale deed and project facilities in all respect.

12. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected

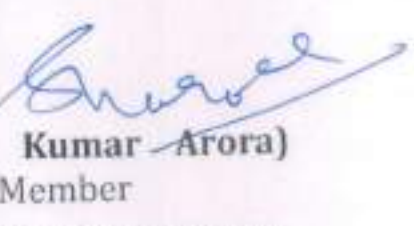
13. In the present complaint, the complainants intend to continue with the project and is seeking restoration of the originally allotted unit.



14. Vide proceeding dated 03.05.2024, the counsel for the complainants stated that they have booked the unit on 18.07.2021 and further alleged that respondent refunded a sum of Rs. 15.79 lakhs on 22.02.2023 and further a sum of Rs. 1.21 Lakhs was paid on 09.11.2023 (after the filing of the complaint) on the contrary counsel for the respondent stated that as per EOI dated 18.07.2021, complainants had booked a ready to move in unit by paying a sum of Rs. 5 lakhs and further paid a sum of Rs. 12 lakhs without any demand from the respondent. Also, no allotment was ever given to the complainants.
15. As per documents on record, the respondent sent a mail to complainants on 13.11.2022 to visit their office and meet the concerned personnel. The counsel for the respondent further stated that there was failure on complainant's part to execute the required documents or comply with the terms and conditions of EOI, therefore respondent was constrained to terminate the EOI and refund the amount deposited after necessary deductions. .
16. It is to mention here that respondent has refunded an amount of Rs. 15,79,047 through RTGS and the balance amount after filing of the complaint.
17. In the present complaint, despite the requests made by the respondent, the complainants failed to come forward to complete the booking formalities and thus, the respondent was constrained to terminate the booking of the complainants and has already refunded full amount received by it regarding the said expression of interest vide NEFT on 22.02.2023 and 09.11.2023 to the complainants.
18. As per the expression of interest, "it is clearly agreed upon by the complainants that if for any reason whatsoever, failure in execution of

documents or not complying with the terms and conditions of the allotment pursuant to the EOI, the company shall be entitled to treat the EOI as terminated and shall be entitled to forfeit the amounts paid by the complainants."

19. Keeping in view the above-mentioned facts the promoter has already refunded the amount paid i.e., Rs. 15.79 lakhs and Rs. 1.21 lakhs (before and during the pendency of the case) to the complainants through NEFT on 22.02.2023 and 09.11.2023 respectively and the same has been accepted by them. Hence, cancellation is deemed to have been accepted by the complainants.
20. Complaint stands disposed of.
21. File be consigned to registry.



(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory  
Authority, Gurugram

Dated: 05.07.2024

HARERA  
GURUGRAM