

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

Complaint no.: 1900 of 2023
Date of filing 21.04.2023
Date of decision: 22.10.2024

Sh. Ramit Gahlaut & Sudesh Gahlaut
Both RR/o: - B-35, block-B, South City-I, Near
Signature Tower, Industrial Estate, Gurugram-
122007

Complainants

Versus

Suposhaa Realcon Private Limited.
Regd. office at: - 12A, Tower-2, M3M International
Financial Center, Sector-66, Gurugram, Haryana-
122002

Shoperty Consultants Private Limited
Regd. Office at:- Spaze Business Park, Tower-A, 5th
floor, Sector 66, Gurugram.

Respondents

CORAM:

Shri. Arun Kumar
Shri. Vijay Kumar Goyal
Shri. Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Shri Shajat Kataria (Advocate)
Ms. Shriya Takkar & Ms. Smriti Srivastava (Advocates)
None

Complainants
Respondent no.1
Respondent no.2

ORDER

1. This complaint has been filed by the complainant/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 thereunder or to the allottees 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	"Smart world Orchard", Sector- 61, Gurugram Manesar Urban Complex, Gurugram, Haryana
2.	Project area	20.60 Acres
3.	Nature of the project	Affordable Plotted colony (DDJAY)- Independent Floor Residence
4.	DTCP license no. and validity status	68 of 2021 dated 16.09.2021 valid upto 15.09.2016
5.	Name of licensee	Auspicious infrastructure and 10 others.
6.	RERA Registered/ not registered	74 of 2021 dated 03.11.2021 valid upto 31.12.2024
7.	Unit no.	E-16D 4 ⁿ Floor in Independent floor IPaee no. 46 of the complaint)
8.	Unit area admeasuring	1549 Sq. Ft. super area (Page 51 of complaint)
9.	Allotment Letter issued in favour of the complainants on	30.09.2022 (Page 46 of complaint)
10.	Date of execution of flat buyer's agreement	14.11.2022 (Page no. 43 of reply)
11.	Possession clause	7. Possession of floor Residence 7.1 Schedule for possession of the Floor residence: - The Promoter agrees and understands that timely delivery of possession of the Independent Floor Residence along with right to use the undivided demarcated proportionate right to use terrace and basement area along with one car parking space, is the essence of the Agreement. ii. The



		<p><i>Promoter assures to offer possession of the Independent Floor Residence along with exclusive right to use undivided demarcated proportionate terrace and basement area and one car parking space as per agreed terms and conditions herein on or before the Completion Time Period i.e., 31 Dec 2024 unless there is delay due to Force Majeure Event, reasons beyond the control of the Promoter, non-compliance on the part of the Allottee(s) including on account of any default on the part of the Allottee(s), Court orders, Government policy/guidelines, decisions affecting the regular development of the Project or due to any event or reason, which is recognised as a ground for extension by the Authority. If, the completion of the Independent Floor Residence is delayed due to the above conditions, then the allottee(s) agrees that the promoter shall be entitled to the extension of time for delivery of possession of the independent floor residence along with exclusive right to use undivided demarcated proportionate the terrace and basement area and one car parking space as may be approved by the competent Authorities. (Calculated as per possession clause)</i> (Page 96 of complaint)</p>
12.	Due date of possession	31.12.2024
13.	Total sale consideration	Rs. 1,87,67,607/- (Page 75 of of BBA attached with reply)
14.	Amount paid by the complainants	Rs. 19,11,079/- (as alleged by the complainants at page no. 9 of complaint)
15.	Demand letter	03.10.2022 (Page no. 76 of reply)
16.	Pre-cancellation	11.11.2022 (Page no. 78 of reply)
17.	Cancellation letter	02.12.2022 (page 79 of reply)

18.	Opportunity given by the respondent to the complainants for making payment of the outstanding dues vide email dated	02.12.2022 (page 27 of dismissal application)
19.	Final cancellation by the respondent vide email dated	23.12.2022
20.	Amount refunded by the respondent to the complainants vide RTGS dated 06.05.2023	Rs.18,51,079/- Note: An amount of Rs.60,000/- was deducted by the respondent towards two vouchers of Rs.30,000/- each. (Page 29 of dismissal application).
21.	Third party right created in favour of Rahul Chaddha and Vandana Chadha on	07.03.2023 (welcome letter, page 84 of reply and allotment letter dated 07.03.2023 page 86 of reply)
22.	Occupation certificate	Not obtained
23.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the respondent no. 1 & 2 had approached the complainants for purchasing unit in the project named SMART WORLD ORCHARD which was about to receive sanction under DEEN DAYAL SCHEME with the payment plan of 10:90.

II. That the brother of the complainant no. 1 had purchased the adjoining unit in the said project and the payment for the same was released as per the demands of the respondent no. 1 as his loan was sanctioned earlier by HDFC bank subject to the condition that the interest would be borne/paid by the builder till the date of handing over of physical possession of that unit.

III. That the subject unit in question i.e., the unit bearing no. E-16 D, 4th floor admeasuring 1549 sq. ft., in the project of the respondent was booked by the complainants under plan 10:90 and payment made vide cheque no. 497453 dated 22.2.22 drawn of SBI amounting to Rs.5.00 lacs.

IV. That on 31.03.2022 an amount of Rs. 14,11,079/- was deposited with the builder. As demanded by the builder total sum of Rs.19,11,079/- was deposited

upto 31.03.2022 but the builder did not issue allotment letter at that time as the said project was not approved under the Deen Dayal Scheme and the defendant no. 1 has kept Rs.19,11,079/- till 30.09.2022 without any interest.

- V. That allotment letter was provided to complainants on 30.09.2022 wherein they got to know that the booking has been done under the hidden payment plan i.e. 10:75:15 whereas at the time of booking it was 10:90 plan.
- VI. Thereafter, demand letter dated 03.10.2022 was issued by the respondent to the complainants under the hidden payment plan, for the payment of next instalment amounting to Rs. 1,02,87,867/- by 31.10.2022 being an exorbitant amount to be paid within a stipulated period of one month. As booking was done in the initial in the project and booking of the adjoining unit by the brother of the complainant, the complainants agreed to go with the hidden payment plan, but the respondent did not provide any proof that the level of construction against which demand was made. The complainants have requested several times for site visits, but the respondent no. 1 has reluctantly not allowed the site visit inspite of repeated requests.
- VII. That the complainants got the builder buyer agreement registered in sub-registrar office at Badshahpur on dated 14.11.2022 from the respondent no. 1 as a necessary document required while applying for loan but the same was not provided by the respondent no. 1 and kept forcefully. The execution charges of BBA amounting to Rs.20,000/- were paid by the complainants at the time of execution of agreement but the respondent no. 1 had collected the agreement duly executed and has not provided the registered BBA to the plaintiff inspite of various whatsapp messages, personal visit to his office as well as telephonic calls. Subsequent thereto, the complainants herein, received termination letter.
- VIII. That, the complainants have requested respondent on 06.01.2023 that Bank of Maharashtra has sanctioned loan amounting to Rs.91.72 lacs and BBA is

required for release of loan. Sanction letter of loan was sent to respondent no. 1 on email care@smartworlddevelopers.com but they had not responded. From 06.01.2023 to till 03.02.2023 various emails were sent but no response received from the respondents.

IX. That the complainants aggrieved with the conduct of the respondent, had filed a suit in the Hon'ble Court of Sh. Anil Kr. Yadav, Civil Judge (Jr. Div.), Gurugram, whereby the complainants got to know that the respondent no. 1 has already sold the said unit to some other person.

X. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in the complaint. The respondent has resorted to misrepresentation. Hence, the present complaint is filed by the complainants before the Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent not to terminate the allotted unit.
 - ii. Dis-continuation of penalty amount applied over demands raised by the respondent and further raised.
 - iii. Direct the respondent to pay a sum of Rs.1,00,000/- towards litigation costs as mandated vide the provision u/s 11(g) of the Act.
5. Vide proceeding dated 28.11.2023, the complainant no.1 present in person states that the civil suit filed before the Hon'ble Court of Civil Judge (Jr.Division) Gurugram has been withdrawn and thereafter the present complaint has been filed before the Authority.
6. 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 respondent no.1

7. The respondent by way of written reply dated 19.09.2023 made following submissions: -
- I. That the complainants after conducting his own due diligence and independent enquiries and only after being fully satisfied about the projects of the respondent, applied for allotment of an independent floor residence in the project "Smart world Orchard" being developed by the respondent in Sector 61, Gurugram vide application form through his broker Oakfield Realty Private Limited. The complainants on his own free will and understanding and after having read and understood all the terms of the application form, signed the application form. The respondents had signed the application form dated 22.02.2022 after duly understanding all the clauses stipulated under the application form and being completely satisfied with the particulars/details of the project.
 - II. That the complainants pursuant to the applying for booking of a unit in the project of the answering respondent, the complainants herein approached the answering respondent and started asking for discounts. The respondent being a customer oriented company agreed to give the complainants a discount. The terms and the payment plan was mutually settled between the parties after which the respondent issued allotment letter dated 30.09.2022 wherein the desired unit i.e., E-16D, in the said project was allotted to the complainants for a total consideration value of Rs. 1,87,67,607/- plus other charges. The complainants opted for the specific payment plan being 10:75:15. However, the 75% of the total sale consideration would be demanded altogether in terms of construction linked payment plan. The said allotment letter was duly accepted by the complainants and they are estopped from raising any issues qua the same at this belated stage. Further, the complainants were again asked to give their approval to the terms stated in the allotment and to be incorporated in the agreement for sale vide email

dated 20.10.2022. An allotment letter dated 30.09.2022 wherein the desired unit i.e., E-16D, in the said project was allotted to the complainants for a total consideration value of Rs. 1,87,67,607 /- plus other charges. The complainants opted for the specific payment plan i.e., 10:75:15 and on their own free will and understanding made the payments towards the unit the question.

- III. That the complainants had duly collected the copies of agreement for buyer's agreement for execution at their end. After constant follow ups the agreement for sale was executed on 14.11.2022 and the same was duly registered. The agreement for sale lays down rights and liabilities of both the parties.
- IV. That the complainants collected the copies of the buyer's agreement for execution at his end. After constant follow ups with the complainants, the said agreement was duly executed on 10.11.2022 and the same was duly registered.
- V. That as per the allotment letter dated 26.09.2022, the due date of handing over possession of the independent floor residence is 31.12.2024. However, same was subject to force majeure conditions and any extension granted by the Authority on or before 31.12.2024.
- VI. Thereafter, the respondent, as per the payment plan opted by the complainants. Vide demand letter dated 03.10.2022 the complainants were called upon to remit a sum of Rs. 1,21,98,946/- which was due on part of the complainants in lieu of the purchase of the unit which was payable on or before 31.10.2022 after duly completing the formalities of execution and registration of agreement for sale. In respect of the aforementioned demand letter only an amount of Rs. 19,11,079 /- was received by the respondents and countless requests pertaining to the clearance of the outstanding due amount were made which fell on a deaf ears and the respondent was

constrained to issue a pre-cancellation letter dated 11.11.2022 wherein the complainants were directed to clear the remaining dues along with interest and GST within 7 days.

- VII. That even after issuance of pre-cancellation letter dated 11.11.2022 the complainants failed to clear the arrears owing to which a cancellation letter dated 02.12.2022 was issued thus cancelling the allotment of the unit in question.
- VIII. Thereafter, the complainants requested the respondent for grant of extension of time in making payments. The respondent being a customer oriented company acceded to the request of the complainants and accordingly halted the operation of the cancellation letter dated 02.12.2022 and vide email dated 02.12.2022 gave an opportunity to the complainants to clear their dues. The complainants failed to share the copy of the loan sanction letter. Since, the complainants with a mala fide intent again defaulted in the disbursement of the outstanding amounts, therefore the respondent was constrained to cancel the allotment of the complainants vide email dated 23.12.2022.
- IX. That as per the records of the respondent the amount paid by the complainants were Rs.19,11,079/-. The respondent to close the matter refunded an amount of Rs.18,51,079/- after deducting an amount of Rs. 60,000 which were towards 2 vouchers given to the complainants (Rs. 30,000 each), vide RTGS (**UTR No. KKBKR52023050600619398 on 06/05/2023**), though as per the terms of the agreement for sale, the respondent was 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. In furtherance of the cancellation of the subject independent floor the same has been re-allotted to one Mr. Rahul Chadha

vide allotment letter dated 07.03.2023. Thus, the present complaint is infructuous.

- X. That as per the allotment letter, the due date of handing over possession of the independent floor is 31.12.2024, however the same is subject to force majeure conditions and any extension granted by the HRERA on or before 31.12.2024.
- XI. That the agreement for sale was executed by the complainants and as such they are bound by the terms and conditions mentioned in the said agreement for sale dated 14.11.2022. The said agreement for sale was duly signed by the complainants after properly understanding each and every clause contained in them. The complainants were neither forced nor influenced by the answering respondent to sign the said application form/ allotment letter & agreement for sale. It were the complainants who after understanding the clauses signed the said application in their complete senses.
- XII. That as per the clauses of the booking application which is binding between the complainants and the respondent, both 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 complainants defaulted in making payment on time contrary to the agreed terms. Various reminders were issued to and follow ups were made with the complainants for complying with their obligations to sign, execute and register buyers agreement to make further payments. Even after

repeated demands complainants were not ready to come forward and comply with their obligations to make payments. Hence, complainants are not entitled to get any reliefs from the Authority.

8. That despite being given the sufficient opportunities respondent no.2 failed to put in appearance before the Authority and has also failed to file reply. In view of the same the matter is proceeded ex-parte against the respondent no.2 vide order dated 28.11.2023.
9. 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:

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial Jurisdiction:

10. 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:

11. 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.

12. 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 complainants.

F.I Direct the respondent not to terminate the allotted unit.

F.II Dis-continuation of penalty amount applied over demands raised by the respondent.

F.III Direct the respondent to pay a sum of Rs.1,00,000/- towards litigation costs as mandated vide the provision u/s 11(g) of the Act.

13. 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.

14. In the present complaint the complainants are seeking relief w.r.t setting aside the cancellation letter dated 02.12.2022. The complainants were allotted unit no. E-16D, 4th floor in Independent floor admeasuring 1549 sq. ft. super area in the project "Smart World Orchard", Sector -61, Gurugram Manesar Complex, Gurugram by the respondent for a total consideration of Rs.1,87,67,607/- against which he paid a sum of Rs.19,11,079/-.

15. The respondent has sent demand letter dated 03.10.2022 asking the complainants to pay a sum of Rs.1,02,87,867/- towards "On Completion of stilt Roof Slab of Plot", payable on or before 31.10.2022. A pre-cancellation notice dated 11.11.2022 was also issued by the respondent asking the complainants to make the requisite payment of Rs.1,02,87,867/- within a period of 7 days of the receipt of the said notice, failing which it shall be presumed by the respondent that the complainants are not interested in the subject unit and the respondent would be constrained to cancel the unit in question, thereby refunding the amount paid by the complainants after forfeiting the booking amount and other

charges as per the terms agreed. Thereafter, an opportunity given by the respondent to the complainants for making payment of the outstanding dues vide email dated 02.12.2022.

16. The complainants took a plea that they have requested the respondent on 06.01.2023 that Bank of Maharashtra has sanctioned loan amount to Rs. 91.72 lacs and BBA is required for release of loan. Sanction letter of loan was sent to the respondent no.1 but they had not responded. From 06.01.2023 to till 03.02.2023 various emails were sent but no response received from the respondent.
17. On the contrary, the respondent submitted that the subject unit has been cancelled on 02.12.2022 and thereafter, third party rights were created against the said unit on 07.03.2023 by selling the unit in question to Mr. Rahul Chaddha and Mrs. Vandana Chadha. Consequently, the respondent refunded an amount of Rs.18,51,079/- to the complainants vide RTGS dated 06.05.2023. However, subject to deduction of earnest money in terms of buyer's agreement executed between the parties. Now, the question before the authority is whether the cancellation is valid or not?
18. It is pertinent to mention here that initially, the complainants applied for the unit vide application form dated 22.02.2022 under the payment plan 10:90. This payment plan is neither mentioned in allotment letter nor in the buyer's agreement. As per payment plan annexed with allotment letter and buyer's agreement the ratio is 10:75:15. The complainants are duty bound to pay the instalments as agreed payment plan by both the parties.
19. The Authority has gone through the payment plan (Annexure A) of the agreement executed between the parties, same is extracted below for ready reference: -

Name of Instalment	%	BSP	CGST	SGST	Total Amount
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Booking Amount	10.0 0	17,87,391	44,685	44,685	18,76,761
On start of construction-Excavation of the Project Site (On signing of Agreement For Sale)	25.0 0	44,68,478	1,11,712	1,11,712	46,91,902
On completion of bulk excavation of the project site	20.0 0	35,74,782	89,370	89,370	37,53,521
On completion of stilt roof slab of plot	10.0 0	17,87,391	44,685	44,685	18,76,761
On completion of 2 nd floor roof slab of plot	10.0 0	17,87,391	44,685	44,685	18,76,761
On Completion of Top Roof Slab of Plot	5.00	8,93,696	22,342	22,342	9,38,381
On start of flooring of unit	5.00	8,93,696	22,342	22,342	9,38,381
On Application of Occupation Certificate of the Plot	5.00	8,93,696	22,342	22,342	9,38,381
On offer of possession	10.0 0	17,87,391	44,685	44,685	18,76,760
Total		1,78,73,911	4,46,848	4,46,848	1,87,67,607

20. After, considering the documents available on record as well as submissions made by the parties, it can be ascertained that the complainants have paid only Rs.19,11,079/- towards the unit in question. Therefore, the Authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties, i.e., towards the stage "On Completion of Stilt Roof Slab of Plot".
21. The respondent sent demand letter dated 03.10.2022, pre-cancellation notice dated 11.11.2022 to make payment of the outstanding amount. However, the complainants continued with his default and failed to make payment even after receipt of final reminder vide email dated 02.12.2022 leading to cancellation of unit vide letter dated 02.12.2022.
22. As per clause 9 of the agreement to sell, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainants to make timely payments as per the agreed

payment plan. Clause 9 of the buyer's agreement is reproduced under for ready reference:

9.3

- (i) *In case the Allottee fails to make payments for demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;*
- (ii) *In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Unit for Residential usage along with parking in favor of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment, taxes paid by the Allottee and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.*


23. Further, Section 19(6) and Section 19(7) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. The respondent has given sufficient opportunities to the complainants and finally cancelled the allotted unit of the complainants vide letter dated 02.12.2022. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement is held to be valid.
24. It is important to note that in the present case, the respondent-builder had already refunded an amount of Rs. 18,51,079/- after deducting Rs. 60,000/- (for two vouchers provided to the complainants) vide RTGS on 06.05.2023. However, the complainants denied receiving any vouchers from the respondent, and the respondent failed to provide any proof regarding the same. Therefore, the respondent is directed to refund the remaining balance amount which was deducted on account of the vouchers.
25. In the present case, the Authority (Shri. Arun Kumar, Chairman, Shri Vijay Kumar Goyal, Member & Shri. Sanjeev Kumar Arora, Member) heard the complaint and reserved the order on 14.05.2024, the same was fixed for pronouncement of

order on 27.08.2024. On 27.08.2024 the matter was adjourned due to lack of coram to 22.10.2024 for the purpose already fixed. On 16.08.2024, one of the member Shri. Sanjeev Kumar Arora retired and has been discharged from his duties from the Authority. Hence, rest of the presiding officers of the Authority have pronounced the said order.

26. Hence, in view of the above findings, no case is made w.r.t non termination of the unit on fault of the complainants to make timely payments as per the buyer's agreement. In view of the factual as well as legal positions detailed above, the complaint filed by the complainants is not admissible being devoid of merits.
27. Complaint stands disposed of.
28. File be consigned to the registry.

(Demitted office)

(Sanjeev Kumar Arora)
Member

v.l - 
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
22.10.2024