

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

**Date of decision: 18.02.2025**

NAME OF THE BUILDER		HS Reality Private Limited
PROJECT NAME		Mahendra Meados
S. No.	Case No.	Case title
1.	CR/454/2019	B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others
2.	CR/455/2019	B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others
3.	CR/456/2019	B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others
4.	CR/457/2019	B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others

CORAM:	
Shri Arun Kumar	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
APPEARANCE:	
Shri Amit Singh Deshwal (Advocate)	Complainant
Shri Vaibhav Saini (Advocate)	Respondent no.1 and 2

**ORDER**

1. This order shall dispose of all the 4 complaints titled as above and filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017

(hereinafter referred as “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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, ‘Mahendra Meadows’ being developed by the same respondent-promoter i.e., M/s H S Reality Pvt. Ltd. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking refund of the deposited amount by the complainant along with prescribed rate of interest. The details of the complaints, reply, status, unit numbers, date of agreements, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of Allotment	Basic Sale Consideration / Total Amount paid by the complainant	Offer of possession
1.	<b>CR/454/2019</b>  B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others  <b>DOF: 29.11.2019</b>  <b>Reply: 17.09.2024</b>	3BHK (unit number not mentioned) (page 34 of complaint)  <b>Area: 1353 sq. ft.</b>	25.11.2009  BBA not executed	<b>BSP- Rs.67,50,000/-</b>  <b>AP- Rs.67,50,000/-</b>	Not offered

2.	<b>CR/455/2019</b>  B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others  <b>DOF: 29.11.2019</b>  <b>Reply:</b> 17.09.2024	3BHK (unit number not mentioned) (page 34 of complaint)  <b>Area: 1353</b> sq. ft.	25.11.2009  BBA not executed	<b>BSP- Rs.67,50,000/-</b>  <b>AP- Rs.67,50,000/-</b>	Not offered
3.	<b>CR/456/2019</b>  B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others  <b>DOF: 29.11.2019</b>  <b>Reply:</b> 17.09.2024	3BHK (unit number not mentioned) (page 34 of complaint)  <b>Area: 1353</b> sq. ft.	25.11.2009  BBA not executed	<b>BSP- Rs.67,50,000/-</b>  <b>AP- Rs.67,50,000/-</b>	Not offered
4.	<b>CR/457/2019</b>  B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others  <b>DOF: 29.11.2019</b>  <b>Reply:</b> 17.09.2024	3BHK (unit number not mentioned) (page 34 of complaint)  <b>Area: 1353</b> sq. ft.	25.11.2009  BBA not executed	<b>BSP- Rs.67,50,000/-</b>  <b>AP- Rs.67,50,000/-</b>	Not offered
<b>The complainant has sought following relief(s):</b> 1. Direct the respondent to refund the paid-up amount along with interest. 2. Direct the respondent to pay litigation cost.					

3. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
4. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of *complaint case bearing no. 454/2019 titled as B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others* is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

#### **A. Project and unit related details.**

5. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

***454/2019 titled as B K Sudharshan Through GPA Holder Pandit R C Jha V/S H S Reality Private Limited and others***

S.N.	Particulars	Details
1.	Name of the project	Mahendra Meadows, Sector-67, Gurugram-Manesar Urban Complex
2.	Nature of the project	Residential Apartment
3.	Allotment letter	25.11.2009 (page 34 of complaint)
4.	Unit type	3BHK (unit number not mentioned) (page 34 of complaint)

5.	Admeasuring area	1353 sq. ft. (page no. 34 of complaint)
6.	Date of execution of buyer's agreement	N/A
7.	Possession clause	N/A
8.	Due date of possession	N/A
9.	Basic sale consideration	Rs. 67,50,000/- (As alleged by the complainant )
10.	Paid up amount	Rs. 67,50,000/- (As alleged by the complainant but there is no receipt w.r.t. the payment attached with the complaint)
11.	Offer of possession	Not offered
12.	Occupation certificate/completion certificate	Not obtained

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

6. The complainant has made the following submissions in the complaint: -

- i. That the respondent has launched a Group Housing project namely "MAHENDRA MEADOS" Sector 67, Gurugram-Manesar Urban Complex and the complainant on the impressive projections of respondent's had agreed to purchase/book the apartments in the aforesaid group housing project.
- ii. That the complainant in November, 2009 after making the payment of total sale consideration amount of Rs.67,50,000/-, had booked a "Apartment" of 3 BHK having the super area of 1353 sq. ft. in the aforesaid group housing project of the respondents. Further, at that time complainant had booked



total four units/apartments in the aforesaid project of the respondents after making the payment of the total sale consideration amount of Rs.2.7 Crores i.e. Rs. 67,50,000/- for each unit/apartment and the respondents had allotted the same to the complainant vide two "Allotment Letters" both dated 18.11.2009."

- iii. That respondent no. 2 & 3 are well known to the complainant as they have played the role of mediators between the sale-purchase transaction of the lands of complainant's family situated in and around Village Badshahpur, Gurugram and they also purchased some land of the complainant and his family members also. Further, respondent no. 2 & 3 in November, 2009 have also purchased some land from the complainant and in the said circumstances complainant believing upon the respondents had make the payment of total sale consideration amount to the respondents without obtaining any receipt of payment or acknowledgement. The respondents at that time also assured the complainant that they will allocate the units/apartments numbers to him and also issued the receipt of the consideration amount with the number of apartment/units.
- iv. That at the time of booking the respondents told the complainant that the unit/apartment number will be allotted to him at the time of builder-buyer agreement and also assured him that they will hand over the possession within a time of period of 36 months from the date of allotment.
- v. That in the year 2013, the complainant got the information from the some relative/reliable sources after due investigation and enquiry that the respondent started the construction work at the site. So, the complainant approached the respondents and requested them to allot him the unit/apartment number and sign builder-buyer agreement but the respondents had not paid any heed towards the just and genuine request of

the complainant and delayed the matter by putting the things on one pretext or the other.

- vi. That when the respondents neither signed the builder-buyer agreement nor have assigned the flats/unit numbers to the complainant, the complainant sent a legal notice dated 29.04.2013 to the respondents through his counsel in regard that respondents assured the complainant that they would hand over the possession of the aforesaid unit/flat to the complainant upto April, 2016 and also said that there is no requirement of builder-buyer agreement as they will directly execute the conveyance deed in favour of the complainant.
- vii. That when the respondents have not handed over the possession of the aforesaid flat/unit to the complainant within the stipulated time period then complainant had again sent another legal notice dated 17.06.2016 to the respondents for handing over the possession or the unit/flat but miserably the respondents has not paid any heed towards the same.
- viii. That despite of receiving aforesaid legal notice as well as several request of the complainant, respondents have not taken any step to handover the possession of the flat/unit and then having no other option on 01.08.2016 had moved a complaint before the A.G.R.F. (Allottees Grievances Redressal Forum) Gurugram against the respondents.
- ix. That after receiving the aforesaid complaint, Deputy Commissioner-cum-Chairman, A.G.R.F., Gurugram, handed over the enquiry of the same to the District Town Planner, Gurugram vide Letter bearing Memo No. AGRF/986 Dated 08.08.2016.
- x. That after receiving the aforesaid complaint for investigation, District Town Planner, Gurugram had sent the notice (Reminder-1) to the respondent no. 2 Mr. Mahendra Singh Yadav vide Letter Memo No 1152 dated 27.09.2016 to

- resolve the matter but miserably he had not taken any step upon the same and thereafter again sent another notice (Reminder-2) to the respondent no. 2 Mr. Mahendra Singh Yadav vide Letter Memo No 1356 dated 09.11.2016.
- xi. That despite of aforesaid reminders, respondents have not taken any step to resolve the matter and thereon D.T.P. Gurugram sent his report to the Deputy Commissioner, Gurugram vide Letter bearing Endst. No. SW-471 dated 18.01.2017.
- xii. That the complainant also raised the matter before the Authority, but the complaint of the complainant has been returned by this authority vide Letter bearing Memo No. HARERA/GGM / PKL/CIN/ 2018/95/Return dated 16.03.2018 to file in prescribed format. Thereafter, complainant filed the complaint before the Hon'ble Court in the prescribed format wherein enquiry report of the matter has been conducted and submitted by Sh. Virender Chaudhary, H.C.S., Enquiry Officer, HRERA, Gurugram to the Authority.
- xiii. That after that the authority has dismissed the aforesaid complaint with liberty to file fresh complaints separately for each unit vide order dated 31.10.2018. The respondents had taken the amount of Rs.67,50,000/- from complainant on the basis of their impressive projections and false promises, and this induced complainant to deliver the respondent his hard-earned savings.
- xiv. That as the aforesaid project was based on "Pre Launch System" hence the complainant had paid an amount of Rs.67,50,000/- for the booked unit to the respondents upon their impressive projection and assurances before commencement of the construction of the project but the respondents above with dishonest and malafide intentions neither had allocated the unit number nor handed over the possession of the unit to the complainant



despite of so many repeated requests on the part of complainant and from the above contents its abundantly clear that the intensions of the respondents are dishonest very from the beginning and all of them played fraud with the complainant in the above said pre-planned manner to take undue and illegal advantage as well as monetary benefits.

- xv. That in view of the delay in giving possession to the complainant, complainant wants to seeks the relief of refund of the entire amount paid to the respondents i.e. Rs. 67,50,000/- alongwith interest from the date of deposit till the realization of the amount and towards mental harassment and agony caused by the respondents, along with litigation charges Rs. 25,00,000/-

**C. Relief sought by the complainant: -**

7. The complainant has sought following relief(s):

- I. Direct the respondent to refund the paid-up amount along with interest.
- II. Direct the respondent to pay litigation cost.

8. The complainant filed the complaint seeking the relief of a refund. During the course of the arguments, the complainant stated that he wishes to continue with the project. However, no amendment to the relief sought in the complaint has been filed by the complainant to date despite multiple opportunities on 2.7.2024, 17.09.2024 and 28.01.2025. Therefore, the authority will proceed based on the relief originally sought in the complaint.
9. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions 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 respondent has contested the complaint on the following grounds.

- i. That a collaboration agreement was entered on 31.08.2007 between respondent no.1 and the complainant and his family members namely Sh. Y.K. Sudershan, Kumar Arunodava, Amitabh Gunjan, Master Shivam (minor) S/o Sh. Amitabh Gunjan for development of their land measuring 59K-17M comprised in Khasra no 125//25/5 (0-11), 126//20/2 (7-2), 21 (7-2), 22 (7-21, 18 (8-0), 19 (8-0), 24 (6-8), 12 18-0). 23 (7-2) of Village Badshahpur, Tehsil & Distt. Gurugram into a Group Housing/Complex/Cyber Park/IT after obtaining license from the Govt. of Harvana. As per conditions of the collaboration agreement, the complainant and his family members executed a Power of Attorney on 31.08.2007 in favour of respondent no. 1 through its Director i.e. respondent no.2 (now deceased) to exercise powers in respect of the above said land for grant of all the requisite sanctions, licenses, permissions, plans and approvals from the State Govt. of any other competent authority for development of the said land.
- ii. That besides, execution of the collaboration agreement dated 30.08.2007 and Power of Attorney dated 30.08.2007, the complainant had also entered into Memorandum of Understanding on 17.08.2007 with respondent no. 1, wherein, it was provided that the complainant has acted as mediator between owners and developers for the collaboration of said land and will continue to assist the first party (respondent no. 1) for successful and complete execution of collaboration agreement and upon the complete and successful execution of the above mentioned collaboration, the second party (complainant) will charge 2% of total saleable super built up area sanctioned/permitted in the said land as his professional fees. It was also provided that the above mentioned 2% shall be situated in any part of the overall project which is developed by first party. The situation thereof being

the sole discretion of the first party Thus, 2% of the total saleable super built-up area was to be allotted to the complainant only if the complainant continued to assist the first party for successful and complete execution of the collaboration agreement till its completion.

- iii. That License No. 46 of 2008 dated 07.03.2008 was granted by the Director, Town & Country Planning, Haryana to respondent no. 1 and other land owners on the aforesaid land but only to the extent of 11.8725 acres as against 14.175 acres for setting up of a Group Housing Colony in Sector 67, Gurugram Manesar Urban Complex the reason being that some of the land owned by the family members of the complainant was held jointly and no partition thereof had been carried out, therefore, out of 59K-17M, the license application was considered only qua the land measuring 36K-19M which was owned by the petitioner, Master Shivam and Kumar Arunodya.
- iv. That after grant of the said license, the complainant violated the terms and conditions of the collaboration agreement dated 31.08 2007 as well as Memorandum of Understanding dated 17.08.2007 by selling his land measuring 14K-15M out of the total land measuring 59K-17M under collaboration to M/s PSB vide Vasika No. 6693 dated 12.06.2008, which the complainant has no right to do so. In fact, the entire land measuring 36K-19M for which License No. 46 of 2008 was granted by the Department of Town & Country Planning, Haryana was transferred to the PSB Properties Pvt. Ltd. and H.S Realty Pvt. Ltd. by the complainant and his family members.
- v. That as already stated, after grant of license, the complainant and his family members withdrew from the collaboration agreement and transferred/sold their entire land vide Vasika No. 12349 dated 19.08.2008, Vasika No. 19043 dated 28.11.2008, Vasika No. 19044 dated 28.11.2008 and 15871 dated

25.11.2009 for which Licence No. 46 of 2008 was granted to the land owners entering into collaboration agreement with respondent no. 1. Therefore, there was no reason for continuation of the Collaboration Agreement/Memorandum of Understanding executed by the complainant with respondent no. 1.

- vi. That as per details given above, the complainant and his family members had withdrawn themselves from the collaboration agreement/MOU and transferred their land to respondent no. 1 and PSB Properties after receiving the consideration money in the year 2008 except land measuring 7K-2M owned by the complainant Accordingly, the complainant insisted for allotment of two number of flats in the licensed area as per condition of the MOU dated 17.08.2007 Though, the complainant was not entitled for such flats as he has withdrawn himself from the collaboration agreement, however, as collaboration agreement still existed for the land measuring 7K-2M, therefore, tentatively, two number of flats were allotted to the complainant vide letter dated 18.11 2009 with a condition that the specific number of flat will be allotted on approval of the sanctioned plan.
- vii. That however, the complainant totally withdrew from the collaboration agreement/MOU even for the remaining land measuring 7K-2M by transferring this land in the name of respondent no 1 vide Vasika No. 15871 dated 25.11.2009 for a consideration of Rs. 2,35,18,750/-. In such circumstances, the alleged allotment of two number of flats made vide letter dated 18.11.2009 (Annexure C-3) in terms of the MOU automatically stood cancelled. It is reiterated that as per the conditions of the MOU executed by the complainant with respondent no. 1, the complainant was to get 2% of the total saleable super built up area on the condition that he will continue to assist respondent no. 1 for successful and complete execution of the



collaboration agreement. However, when the collaboration agreement itself was terminated by sale of the entire license area in favour of respondent no. 1, there was no justification for giving 2% of the total saleable super built up area to the complainant. Hence, the complainant is not entitled for any relief as claimed in the present complaint.

viii. That the complainant is also not entitled for any relief as claimed in the present complaint as he has not approached this Hon'ble Authority with clean hands. A copy of the allotment letter dated 18.11.2009 (Annexure C-3) would reveal that the said allotment letter was issued on 18.11.2009 and the number of units have been mentioned as 2 with total area of 1353 sq. ft. each. However, the complainant has tried to project in the complaint that he was allotted 4 units, i.e. 2 vide letter dated 18.11.2009 and 2 vide letter dated 25.11.2009 (Annexure C-4), whereas, the alleged letter dated 25.11.2009 is not the allotment letter, but only a date put by the notary attesting the letter dated 18.11.2009. Thus, the complainant has tried to forge the allotment letters and to play mischief by producing two copies of the same letter one dated 18.11.2009 & the other dated 25.11.2009, which in fact is nothing but the date put by the notary attesting the documents. In this way, the complainant has tried to mislead the Authority. Hence, the complaint deserves to be dismissed on this ground alone.

ix. That the fact that with the sale of entire land for which collaboration agreement was executed, the collaboration agreement was terminated and the complainant was not entitled for any commission as per condition of the MOU dated 17.08.2007 is also clear from Sale Deed No. 21613 dated 13.12.2012 (copy enclosed as Annexure R-8) executed by Sh. Y. K. Sudharshan father of the complainant for the land measuring 7K-9M (out of 59K-17M land for which collaboration agreement was executed on



31.08.2007) in favor of H.S. Realty Pvt. Ltd., it has been specifically mentioned in clause 11 of the sale deed that the vendor along with his family members entered into a collaboration agreement dated 31.08.2007 with the vendee for development for their land into a group housing complex however all family members have sold their land individually as per their need and on third party is involved for getting the deal done and both the vendor and vendee, family members are not liable to pay any commission to any person regarding the said collaborated land.

- x. The present complaint of the complainant has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while Section 11 to Section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/Developer, Section 19 provides the rights and duties of Allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the Allottees, rather the intent was to ensure that both the Allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

11. All other averments made in the complaint were denied in toto.

12. 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 submission made by the parties.

**E. Jurisdiction of the authority**

13. 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**

14. 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.**

15. 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.*

16. 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 complainant at a later stage.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant****F.I Direct the respondent to refund the paid-up amount along with interest.****F.II Direct the respondent to pay litigation cost.**

19. The above mentioned reliefs no. F.I & F.II as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
20. The present complaint is filed by the B K Sudarshan through GPA HOLDER Pandit R C Jha. It was contented by the counsel for the respondent that the complaint filed by the GPA is not maintainable. However, the Authority is of the view that a general power of attorney is a document through which one person (principal) appoints another person (GPA) to do all acts specified therein, for or on behalf of the principal. In the present case, the complainant has already issued an SPA dated 11.02.2014 in favour of Sh. Pandit R C Jha which is annexed as Annexure C-1 at page 30 of the complaint. Hence, the complaint filed by the complainant through GPA holder is maintainable in the eyes of law.
21. In all the complaints, the complainant intends to withdraw from the project and are seeking *return* of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*



22. It is important to note that in all the complaints, the complainant claims that the respondent is liable to refund an amount of Rs. 67,50,000/- for each unit, as possession of the property has not been offered. However, the complainant have failed to produce any receipts or proof of payment concerning the allotted units.
23. During proceedings dated 28.01.2025, the proxy counsel for the complainant stated that the respondent-promoter purchased some land from the complainant, who also assisted the respondent in buying the land from the third party, in exchange for compensation. As part of the compensation, the respondent-promoter allotted 4 units in favour of the complainant in year 2009. In the year 2013 and 2016, the complainant sent various legal notices dated 29.04.2013 & 17.06.2016 for allotment of unit and handing over the possession of the units but respondent-promoter did not pay any heed to the complainant.
24. On the contrary, the respondents state that the complainant have not approached the Authority with clean hands. It is further stated that a collaboration agreement was entered on 31.08.2007 between respondent no.1 and the complainant and his family members namely Sh.Y.K. Sudershan, Kumar Arunodava, Amitabh Gunjan, Master Shivam (minor) S/o Sh. Amitabh Gunjan for development of their land measuring 59K-17M in Village Badshahpur, Tehsil & Distt. Gurugram into a Group Housing/Complex/Cyber Park/IT after obtaining license from the Govt. of Harvana. As per conditions of the collaboration agreement, the complainant and his family members executed a Power of Attorney on 31.08.2007 in favour of respondent no. 1 through its Director i.e. respondent no.2 (now deceased) to exercise powers in respect of the above said land. That besides, execution of the collaboration agreement dated 30.08.2007 and Power of Attorney dated 30.08.2007, the complainant


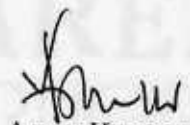


had also entered into Memorandum of Understanding on 17.08.2007 with respondent no. 1, wherein, it was provided that the complainant has acted as mediator between owners and developers for the collaboration of said land and will continue to assist the first party (respondent no. 1) for successful and complete execution of collaboration agreement and upon the complete and successful execution of the above mentioned collaboration, the second party (complainant) will charge 2% of total saleable super built up area sanctioned/permitted in the said land as his professional fees. It was also provided that the above mentioned 2% shall be situated in any part of the overall project which is developed by first party.

25. The respondents further state that the complainant reneged on their commitments and violated the terms of the Collaboration Agreement as well as MoU that no payment has been received from the complainant allottee. Accordingly, the complainant was not entitled to any commission. It is also contended the allotment letter was executed by respondent no. 3, Mr. Ram Avtar Yadav, who was neither authorized nor empowered by any Board of Directors' resolution to issue such an allotment.
26. After going through the submissions of the parties and pleadings as well as documents placed on record, the Authority observes that the documents produced by the complainant in proof of allotment of the subject units cannot be relied upon as there is a challenge to their veracity by the respondents. Further, the issue appears to be a dispute between the parties with respect to specific performance of Collaboration/MoU with respect to land parcel owned by the complainant/his family. It is the contention of the respondents that the complainant has forfeited his right to the benefits of the MoU by violating the terms of the Collaboration/MoU. This Authority has been established for regulation and promotion of the real estate sector and to ensure sale of plot,

apartment or buildings, as the case may be, or sale of real estate project in transparent manner and to protect the interest of consumers in the real estate sector. In the present matter, it is essential for the complainant to furnish documentary proof of payment made to the respondent against the allotted unit to establish the validity of the claim for refund. Further, the very basis for the allotment of the units and dispute is under challenge. In view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondents is not maintainable and hence, the same is dismissed.

27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
28. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
29. Files be consigned to registry.

  
**Ashok Sangwan**  
**Member**  
**Vijay Kumar Goyal**  
**Member**  
**Arun Kumar**  
**Chairman**

Haryana Real Estate Regulatory Authority, Gurugram  
18.02.2025