

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

Complaint no. : 819 of 2024  
Date of complaint : 15.03.2024  
Date of order : 09.07.2025

Naari Akhilesh Arya,  
Through SPA Holder Shurti Deep Arya,  
**R/o: - 275, Pink Apartments, Sector-18B,**  
Rohini, New Delhi-110075.

**Complainant**

**Versus**

Ministry of External Affairs Employees Welfare Society.  
**Having Regd. Office at:** G-110, GF, Sushant Shopping Arcade,  
Sushant Lok-1, Gurugram, Haryana-122022.

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Naari Satyanarayana Arya (AR)  
Shankar Wig (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 provisions 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Project name and location	"Antriksh Heights", Sector 84, Gurugram
2.	Project area	23.10 acres
3.	Nature of project	Residential group housing colony
4.	RERA registered/not registered	Not registered
5.	DTPC License no.	123 of 2008 dated 14.06.2008
	Validity status	13.06.2018
	Name of licensee	Reliable Realtech Pvt. Ltd.
6.	Occupation Certificate details	<p><b>OC received dated 19.05.2016 for tower/block-</b></p> <ul style="list-style-type: none"> <li>➤ AF (ground floor to 17<sup>th</sup> floor)</li> <li>➤ AG (ground floor to 9<sup>th</sup> floor)</li> <li>➤ AH (ground floor to 7<sup>th</sup> floor)</li> <li>➤ AI (ground floor to 9<sup>th</sup> floor)</li> <li>➤ AJ (ground floor to 9<sup>th</sup> floor)</li> <li>➤ AL (ground floor to 18<sup>th</sup> floor)</li> <li>➤ EWS (ground floor to 10<sup>th</sup> floor)</li> </ul> <p><b>OC received dated 14.10.2016 for tower/block-</b></p> <ul style="list-style-type: none"> <li>➤ AE (ground + 1<sup>ST</sup> floor to 19<sup>th</sup> floor)</li> <li>➤ AG (10<sup>th</sup> floor to 19<sup>th</sup> floor)</li> <li>➤ AH (8<sup>TH</sup> floor to 19<sup>th</sup> floor)</li> <li>➤ AI (10<sup>th</sup> floor to 19<sup>th</sup> floor)</li> <li>➤ AJ (10<sup>th</sup> floor to 19<sup>th</sup> floor)</li> </ul> <p><b>OC received dated 07.02.2020 for tower/block-</b></p> <p>Primary School (Ground floor to 3<sup>rd</sup> floor)</p>



7.	Occupation details ✓	Certificate	<b>OC received dated 21.09.2020 for tower/block-</b> <ul style="list-style-type: none"> <li>➤ AA (ground floor to 19<sup>th</sup> floor)</li> <li>➤ AB (ground floor to 19<sup>th</sup> floor)</li> <li>➤ AC (ground floor to 18<sup>th</sup> floor)</li> <li>➤ AD (ground floor to 19<sup>th</sup> floor)</li> <li>➤ AE (ground floor to 19<sup>th</sup> floor)</li> <li>➤ AK (ground floor to 18<sup>th</sup> floor)</li> <li>➤ AM (ground floor to 19<sup>th</sup> floor)</li> <li>➤ EWS block (ground floor to 10<sup>th</sup> floor)</li> <li>➤ 2 no's Convenient Shopping Type- 1 (ground only)</li> </ul> Community Building (ground floor to 1 <sup>st</sup> floor)
8.	Unit no.		Palatial, Tower/block- AM, Unit measuring 2595 sq. ft. (Page 22 of the complaint)
9.	Date of execution of agreement		10.01.2009 (Page 20 of the complaint)
10.	Date of allotment letter		Not on record
11.	Possession clause		<b><u>10. COMPLETION OF THE PROJECT</u></b> <i>The owner shall construct the apartment as early as possible and <b>within 3 years, from the start of construction work unless due to unavoidable circumstances, it is not possible to do so</b>, however, time is not the essence of this Agreement to sell in this regard. If the construction is completed earlier, the possession thereof can be delivered even earlier. The objections of the Allot(s) in this regard are not tenable/entertain able.</i> (Page 27 of the complaint).
12.	Due date of possession		<b>10.01.2012</b> <b>Note:</b> Date of commencement of construction is not given by either of the parties. Thus, the due date of handing over the possession is calculated from the date of execution of the said agreement i.e., 10.01.2009

13.	Total sale consideration	Rs.58,38,750 /- (As per page 14 of complaint)
14.	Total amount paid by the complainant	Rs.15,60,500/- (As per page 19 of the complaint)
15.	Cancellation email	11.05.2011 (Page 39 of complaint)

## B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant is law abiding citizen of India and was a member of the Ministry of external affairs welfare Society and in the year of 2008 the complainant.
- II. That the respondent had floated a housing scheme named as "Antriksh Heights" in Gurugram and the complainant after depositing membership fee amounting to Rs.10,500/- vide membership no. 413 had registered himself for a flat/unit "Palatial" Block no. AM having approx. area of 2595 sq. ft. super built area for a value of Rs.2250/- per sq.ft. in the said housing scheme and the complainant paid Rs.15,60,000/- including membership fee to the respondent and the booking amount towards 1<sup>st</sup> and 2<sup>nd</sup> instalment for the aforesaid proposed dwelling unit.
- III. That as per condition no.10 of the agreement to sell/builder buyer agreement dated 10.01.2009, the said project was to be completed by the end of 2011 and the total cost of the aforesaid flat was Rs.58,38,750/-. That plan which was adopted by the complainant was construction liked plan, but the respondent failed to complete the project within time, the respondent had not registered its project with RERA also till date.
- IV. That on 02.11.2010, the respondent had written an email stating to the complainant that if the remaining payment/due is not sent by the



complainant, then a penal interest would be charged @18% per annum from 01.11.2010 on the late payment by the complainant as the builder is very adamant this time and interest was started on due amount and the complainant sought approximately two and half months' time from the respondent for payment of remaining dues on 24.02.2011, however, without serving any notice/warning, the respondent vide letter for cancellation of membership arbitrarily cancelled the membership of the complainant on 11.05.2011. That the mother of the complainant tendered a cheque amounting to Rs.6,00,000/- on 04.01.2011 before the cancellation of the membership pertaining to 3<sup>rd</sup> Installment of the flat in question, however, the respondent neither encased the said cheque nor returned the same to the complainant and did not give any acknowledgment of the said tendered cheque and the respondent builder did not construct the aforesaid project as per the construction linked plain and not provided any status of progress of construction of the said project and illegally demanded next instalment by writing an e-mail to the complainant.

- V. That till date an amount of Rs.15,60,000/- has been paid by the complainant to the respondent against the total cost of Rs.58,38,750/- of the aforesaid flat in question.
- VI. That the facts and circumstances of the present case clearly makes out a case where the respondent has blatantly failed to perform its obligation to give possession in terms of the flat buyer's agreement/ agreement for sale and hence in the present scenario Section 18(1)(a) read with Section 19(4) of the Haryana Real Estate Regulation and Development Act, 2016 is attracted. The complainant reserves his

right to file appropriate remedy for compensation subject to outcome of present complaint.

- VII. That the complainant approached the District Consumer Dispute Redressal Forum, Delhi and the Hon'ble Forum directed the builder to refund the payment along with interest to the complainant, the builder neither paid the aforesaid amount nor offer the possession of the said flat till date and the complainant is liable to entitled to get possession of the afore said flat in question.

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

4. The complainant has sought following relief(s):
- I. Direct the respondent to revive the membership of the complainant and to give possession of the unit.
5. 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.**

6. The respondent vide reply, application u/s 151 CPC and written submissions dated 27.05.2025 has contested the complaint on the following grounds:
- i. That the present complaint is nothing but pressure tactics to accrete money as the allotted unit stands cancelled due to intentional default in making payments despite of repeated reminders/demands.
- ii. That the respondent is a society registered under the Societies Registration Act, 1860 consisting of the members/employees of Ministry of External Affairs.
- iii. That the complaint was an allottee of the unit "Palatial" block No. AM in the project "Antriksh Heights" Sector 84, Gurugram, Haryana and



was also a member of the Minsitry of External Affairs Welfare Society when the complainant was allotted the said flat in 2008. The subsequent builder buyer agreement/agreement to sell was entered into by the parties on 10.01.2009.

- iv. That the membership of the complainant was terminated in the year 2011 and the same was intimated to the complainant vide emails, which are acknowledged by the complainant and the same have been attached with the complaint itself.
- v. That the present complaint is barred by limitation and the same is liable to be dismissed as, it is amply clear from the complaint and its annexures that the fact that the membership of the complainant was known to the complainant sine 2011 itself, and the cause of action against the respondent started in the year 2011 itself. However, the cause of action cannot be a continuing one, and the same is a stale one and is liable to be dismissed.
- vi. That the total sale consideration of the allotted unit to the complainant stands at Rs.58,38,750/-, however, the amount paid by the complainant is only 26% of the sale amount that is Rs.15,60,000/-. Moreover, the complainant was well aware of the consequences of such non-payment and yet acted in a negligent manner and did not adhere to the payment schedule.
- vii. That the complainant has made the last payment in 2008 and his registration with the society was cancelled in 2011 thus the complainant has ample time to make subsequent payments and make good of his account, but he continuously failed to do so. Moreover, various reminders were given to the complainant to surrender the original documents and provide their account details for the refund which was blatantly ignored by the complainant.



- viii. That the complainant initially filed the present complainant against three respondents, however deleted respondent no. 1 i.e. M/s Reliable Realtech Pvt. Ltd. And respondent no. 2 i.e. M/s Decent Realtech Private Limited from the array of parties of the present complaint even before hearing of the complaint before the authority.
- ix. That the present complaint is liable to be dismissed in limine as it is barred by the principle of res-judicata. The complainant had previously filed a complaint before the Hon'ble Consumer Forum at Delhi in the year 2013 bearing no. CC/303/2013 titled as 'Narri Akhilesh Arya Vs. M/s MEAEWS', involving the same cause of action, the same subject matter, and between the same parties. The said matter was duly adjudicated, and an ex-parte decree vide dated 23.11.2015 was passed in favour of the complainant by the Hon'ble District Commission, Delhi. The Hon'ble District Consumer Redressal Forum ordered the refund of the amount paid by the complainant to the respondent.
- x. That it is a settled principle of law that once a matter has been decided between the same parties by a court/tribunal of competent jurisdiction, the same cannot be re-agitated before any other forum. Filing of the present complaint amounts to an abuse of the process of law and forum shopping, which ought not to be entertained by this Hon'ble Authority.
- xi. That this Authority lacks jurisdiction to entertain the present complaint, as the reliefs sought by the complainant pertain to revision/reinstatement of membership in a cooperative society, which does not fall within the ambit of the Real Estate (Regulation and Development) Act, 2016.





7. 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. Maintainability of complaint:**

8. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit in question as per the Act, 2016. The complainant has submitted that respondent had floated a housing scheme named as "Antriksh Heights" in Gurugram and the complainant after depositing membership fee amounting to Rs.10,500/- vide membership no. 413 had registered himself for a flat/unit "Palatial" Block no. AM having approx. area of 2595 sq. ft. super built area for a value of Rs.2250/- per sq.ft. in the said housing scheme and has paid Rs.15,60,000/- including membership fee to the respondent. As per condition no.10 of the agreement to sell/builder buyer agreement executed between the parties dated 10.01.2009, the said project was to be completed by the end of 2011 and the total cost of the aforesaid flat was Rs.58,38,750/-. On 02.11.2010, the respondent had written an email stating that if the remaining payment/due is not sent by the complainant, then a penal interest would be charged @18% per annum from 01.11.2010 on the late payment by the complainant. The complainant sought approximately two and half months' time from the respondent for payment of remaining dues on 24.02.2011, however, without serving any notice/warning, the respondent vide letter for cancellation of membership arbitrarily cancelled the membership of the complainant on 11.05.2011. The complainant approached the District Consumer Dispute Redressal Forum, Delhi and the Hon'ble Forum directed the builder to refund the payment along with interest to the



complainant, the builder neither paid the aforesaid amount nor offer the possession of the said flat till date. The respondent has submitted that the total sale consideration of the allotted unit to the complainant stands at Rs.58,38,750/-, however, the amount paid by the complainant is only 26% of the sale amount that is Rs.15,60,000/-. Moreover, the complainant was well aware of the consequences of such non-payment and yet acted in a negligent manner and did not adhere to the payment schedule. The complainant has made the last payment in 2008 and his registration with the society was cancelled in 2011 thus the complainant has ample time to make subsequent payments and make good of his account, but he continuously failed to do so. Moreover, various reminders were given to the complainant to surrender the original documents and provide their account details for the refund which was blatantly ignored by the complainant. The respondent has further submitted that the present complaint is not maintainable and is liable to be dismissed in limine as it is barred by the principle of res-judicata. The complainant had previously filed a complaint before the Hon'ble Consumer Forum at Delhi in the year 2013 bearing no. CC/303/2013 titled as '*Narri Akhilesh Arya Vs. M/s MEAEWS*', involving the same cause of action, the same subject matter, and between the same parties. The said matter was duly adjudicated, and an ex-parte decree vide dated 23.11.2015 was passed in favour of the complainant by the Hon'ble District Commission, Delhi. The Hon'ble District Consumer Redressal Forum ordered the refund of the amount paid by the complainant to the respondent.

9. The Authority observes that the complainant has previously filed a complaint bearing no. CC/303/2013 titled as "*Naari Akhilesh Arya Vs M/s MEAEWS*" before the Consumer Dispute Redressal Forum VI, New Delhi



seeking refund of the amount paid against the unit in question and the said relief was allowed in favour of the complainant vide order dated 23.11.2015. The said fact has also been admitted by the complainant in his pleadings and is not in dispute. Thereafter, on failure of the respondent to comply with the directions given in the order dated 23.11.2015, the complainant filed an execution petition bearing no. 147/2023, before the DCDRC-VI, New Delhi and vide order dated 04.04.2024, a recovery certificate u/s 25(3) of the Consumer Protection Act, 1986 was also issued by then President, DCDRC-VI, New Delhi to the SDM, Gurugram to get comply with the said order from the respondent and to submit the compliance report before the Commission on or before 31.05.2024. Copies of the same have been placed on record.

10. After considering the documents available on record as well as submissions made by the parties, it is determined that the present complaint is not maintainable before the Authority as is barred by the principle of res-judicata as the matter in issue between the same parties has already been heard and decided by the competent authority in the former complaint bearing no. CC/303/2013. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

*"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has*





been subsequently raised, and has been heard and finally decided by such Court.

**Explanation I.**—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

**Explanation II.**—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

**Explanation III.**—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

**Explanation IV.**—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

**Explanation V.**—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

**Explanation VI.**—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

**1[Explanation VII.**—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

**Explanation VIII.** —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

11. The authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in



applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2025