



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

Complaint no. : 4019 of 2024
Date of complaint : 12.09.2024
Date of order : 23.07.2025

1. Vikas Goel,
2. Swati Gupta,
Both R/o : - L-213, DLF Capital Greens,
Moti Nagar, New Delhi-110015.

Complainants

Versus

Nourish Developers Private Limited
Regd. Office At: 12A Floor, Tower 2, M3M
International Financial Center, Sector-66,
Gurugram, Haryana-122002.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Abhishek Jain and Dhruv Bhalla (Advocates)
Shriya Takkar (Advocate)

Complainants
Respondent

ORDER

1. The present 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 provisions of the Act or the



Rules and regulations made there under 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:

S.N.	Particulars	Details
1.	Name and location of the project	"Smart One DXP", Sector-113, Gurgaon
2.	Nature of the project	Residential colony
3.	DTCP license no.	106 of 2022 dated 05.08.2022 valid upto 04.08.2027 (area 16.1125 acre)
4.	RERA Registered/ not registered	120 of 2022 dated 13.12.2022 valid upto 31.12.2027
5.	Date of booking/payment	29.06.2023 (page 2 of reply)
6.	Unit no.	12702, Tower-I, 27 th Floor (page 30 of complaint)
7.	Unit admeasuring area	1995 sq.ft. [page no. 30 of complaint]
8.	Allotment letter	Not on record
9.	Date of builder buyer agreement	Not executed
10.	Possession clause	Not provided
11.	Due date of possession	29.06.2026 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
12.	Total sale consideration	Rs.2,54,53,200/- [page 30 of complaint]
13.	Total amount paid by the complainants	Rs.10,00,000/- [as per page 25 of complaint]
14.	Occupation certificate	Not on record
15.	Cancellation of booking vide email dated	02.08.2024 [page 37 of complaint]

16.	Amount refunded through RTGS dated 02.08.2024	Rs.7,00,000/- (page 59 of reply)
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B. Facts of the complaint

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

- I. That the builder solicited an expression of interest from the complainant and collected Rs.10,00,000/- in June 2023, a year before obtaining RERA approval. After obtaining RERA approval, the builder used various tactics to avoid allocating the unit, driven by a 40% increase in the selling price over the year.
- II. That the complainants visited the sales gallery on 05.07.2024 and signed the application form and handed over three cheques as part of the payment process. Two cheques dated 10.07.2024, totalled Rs.17,09,364/-. The third cheque dated 15.07.2024 was for Rs.18,06,244/-. Along with the initial payment of Rs.10,00,000/-, these amounts were meant to complete the 15% payment by 15.07.2024. However, the builder intentionally did not encash any of these cheques with malicious intention. The 15% of the payment was supposed to be made upfront, with the remaining 15% to be financed through a bank.
- III. That on 02.08.2024, the respondent returned Rs.7,00,000/- out of initially paid Rs.10,00,000/-. Despite the complainants' best efforts to seek a fair resolution in accordance with RERA guidelines, the builder evaded communication and engaged in practices that violated these regulations. As responsible citizens and alumni of prestigious institutions (IIT Guwahati, IIT Kharagpur), we feel compelled to bring this matter to the attention of the honourable authorities to prevent others from falling victim to similar practices in the future.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - I. Direct the respondent to handover possession and to execute builder buyer agreement in respect of the unit.
 - II. Direct the respondent to pay litigation charges and compensation.
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 has contested the complaint vide its reply dated 14.05.2025 on the following grounds: -
 - i. That the complainant no.2 after conducting her due diligence and market research approached the respondent through her broker M/s. Propeller Pvt. Ltd. and expressed her interest to book a unit in the project i.e. 'Smartworld One DXP', Phase 1, Sector 113 Gurugram and tendered a sum of Rs.10,00,000/- in two instalments of Rs.2,00,000/- on 29.06.2023 and Rs.8,00,000/- on 30.06.2023 on her free will and volition. The said amounts were duly acknowledgement by the respondent. Pursuant to the above, the respondent supplied the complainant no. 2 with a cost breakdown detailing the prices of units based on the dimensions within the project, to facilitate her in selecting a unit in the project of the respondent and to freeze the price of the same.
 - ii. That the complainant no. 2 was well aware about her duty to come forward to select the unit, confirm the booking, complete all booking formalities including but not limited to depositing 10% of sales consideration towards the booking amount to get the allotment. The



complainant no.2 despite being well aware of her obligations, failed to come forward to complete the booking formalities nor did she come forward to pay the complete booking amount being 10% of the sale consideration. It is submitted that the respondent company cannot be held liable for the wilful default of the complainant no.2. Since, the complainant no. 2 failed to complete all booking formalities including but not limited to depositing 10% of sales consideration as a result of which the said booking could not crystalize into allotment. Thus, no unit was ever allotted to the complainant no. 2 especially in a purely commercial transaction like the present one.

- iii. That the complainant no. 2 was not coming forward to select the unit and deposit the balance booking amount amounting to 10% of sales consideration therefore the respondent was constrained to cancel the booking of the complainant no. 2 on 02.08.2024 and refund the amount deposited after applicable deductions.
- iv. That the respondent without prejudice to its rights, to bring closure to the matter refunded an amount of Rs. 7,00,000/- vide RTGS on 02.08.2024 post deductions of Rs.1,00,000/- towards brokerage loss suffered by the respondent. As far as the amount of Rs.2,00,000/- is concerned, it appears that the said amount was paid by the complainant no. 2 through online mode or otherwise directly into the account of the respondent. Without connecting it with the present transaction the respondent is willing to return the remaining amount of Rs.2,00,000/- and for doing so it would require details pertaining to the transaction made by the complainant no. 2 at that point of time through online mode so that the amount can be traced and dealt with appropriately. For the refund of Rs.1,00,000/- brokerage, the complainant no.2 needs to contact and get refund from the broker i.e.



M/s. Propeller Pvt. Ltd. who has been paid this amount as per the business usances. The respondent as a gesture of goodwill was ready to refund the entire amount received towards the expression of interest shown by the complainant no 2. That on the last date of hearing i.e. 12.03.2025 to put quietus to the matter, the respondent had offered refund of Rs.3,00,000/- vide cheque no. 000501 dated 31.12.2024 to the complainant no.2 however, for reasons best known to the complainant no.2, she had refused to accept the same.

- v. That complainant no.2 Ms. Swati Gupta alone had expressed her interest towards booking of a unit in the project "Smartworld One DXP". The complainant no.1 herein never applied for the booking of the unit in the project "Smartworld One DXP" vide application form, being developed by the respondent. Thus, the complaint is liable to be dismissed for misjoinder of parties.
 - vi. That the terms and conditions stated in the application form are binding in nature and the complainant no.2 in the instant case did not come forward to select the unit and complete the booking formalities despite repeated requests. It is submitted that the complainant no.2 was very well aware that the respondent is well within its right to reject the application form in accordance with terms of Clause 6 and Clause 10 of Schedule VI of the application form.
5. 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

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



E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

9. 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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to handover possession and to execute builder buyer agreement in respect of the unit.

10. The respondent vide its reply has contended that the complainant no.2 i.e. Ms. Swati Gupta alone had expressed her interest towards booking of a unit in the project "Smartworld One DXP" and the complainant no.1



never applied for the booking of the unit in the said project vide application form, being developed by the respondent. Thus, the complaint is liable to be dismissed for misjoinder of parties. The Authority observes that although the application for provisional allotment was made by the complainant no.2, however, all the communications as well as transactions relating to the unit in question has been made by the complainant no.1. Further, it is evident from the respondent's bank statement annexed with the reply (Annexure R-2) that post cancellation of the booking, the respondent has refunded an amount of Rs.7,00,000/- in the account of complainant no.1 through RTGS on 02.08.2024. In view of the above, the said objection of the respondent is declined.

11. The complainants in the present complaint have submitted that the respondent solicited an expression of interest from the complainants and collected Rs.10,00,000/- in June 2023. Thereafter, the complainants visited the sales gallery on 05.07.2024 and signed the application form and handed over three cheques as part of the payment process. Two cheques dated 10.07.2024, totalled Rs.17,09,364/-. The third cheque dated 15.07.2024 was for Rs.18,06,244/-. Along with the initial payment of Rs.10,00,000/-, these amounts were meant to complete the 15% payment by 15.07.2024. However, the respondent intentionally did not encash any of these cheques with malicious intention. After that on 02.08.2024, the respondent returned Rs.7,00,000/- out of initially paid Rs.10,00,000/-. The respondent has submitted that complainant no.2 has approached the respondent through her broker M/s. Propeller Pvt. Ltd. and expressed her interest to book a unit in the project i.e. 'Smartworld One DXP', Phase 1, Sector 113 Gurugram and tendered a sum of Rs.10,00,000/- on her free will and volition. The complainant



no.2 was well aware about her duty to come forward to select the unit, confirm the booking, complete all booking formalities including but not limited to depositing 10% of sales consideration towards the booking amount to get the allotment. It is further submitted that the complainant no.2 was very well aware that the respondent is well within its right to reject the application form in accordance with terms of Clause 6 and Clause 10 of Schedule VI of the application form. Since, the complainant no. 2 failed to complete all booking formalities including but not limited to depositing 10% of sales consideration as a result of which the said booking could not crystalize into allotment and therefore the respondent was constrained to cancel the booking of the complainant no.2 on 02.08.2024 and refund the amount deposited after applicable deductions. Further, the respondent without prejudice to its rights, to bring closure to the matter refunded an amount of Rs.7,00,000/- vide RTGS on 02.08.2024, post deductions of Rs.1,00,000/- towards brokerage loss suffered by the respondent. As far as the amount of Rs.2,00,000/- is concerned, it appears that the said amount was paid by the complainant no.2 through online mode or otherwise directly into the account of the respondent. Without connecting it with the present transaction, the respondent is willing to return the remaining amount of Rs.2,00,000/- and for doing so it would require details pertaining to the transaction made by the complainant no. 2 at that point of time through online mode so that the amount can be traced and dealt with appropriately. For the refund of Rs.1,00,000/- brokerage, the complainant no.2 needs to contact and get refund from the broker i.e. M/s. Propeller Pvt. Ltd. who has been paid this amount as per the business usances. Moreover, the respondent on the last date of hearing i.e. 12.03.2025 to put quietus to the matter, had offered



refund of Rs.3,00,000/- vide cheque no. 000501 dated 31.12.2024 to the complainant no.2. However, for reasons best known to the complainant no.2, she had refused to accept the same. The respondent vide written submissions dated 16.07.2025, has submitted that the respondent has made a refund of entire amount of Rs.3,00,000/- through RTGS dated 14.07.2025 including the brokerage amount of Rs.1,00,000/- and the initial payment made under EOI of Rs.2,00,000/- by the complainant no.2. Therefore, the entire amount paid by the complainant no.2 stands completely transferred.

12. After, considering the documents available on record as well as submissions made by the parties, the Authority is satisfied that the complainants are at fault and the respondent has rightly terminated the booking on failure of the complainants to come forward to complete the booking formalities and finalize the allotment and has also refunded the full amount received by it i.e., Rs.10,00,000/- to the complainants. However, the complainants are unable to show any proof of payment other than Rs.10,00,000/- which has been made to the respondent. In view of the above, the cancellation is held valid. Thus, the present complaint stands dismissed being devoid of merits. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2025