

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

Complaint no. :	3501 of 2024
Date of Filing of complaint:	23.07.2024
Date of Decision:	11.07.2025

Gaurav Singhal

Address at: Flat no. 1008, Tower 15, Pyramid
Urban Homes, Phase II, Sector-70A,
Gurugram.

Complainant

Versus

JMS Infra Build Private Limited

Regd. office: Plot no. 10, 3rd Floor, Sector-44,
Gurugram

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Gaurav Rawat

Sh. Vikrant Ahlawat

Advocate for the complainant

Advocate for the 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 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.	Name and location of the project	"Mega City", sector-05, Sohna Gurgaon
2.	Nature of the project	Affordable Residential Plotted Colony DDJAY
3.	Project area	15.06875 acres
4.	DTCP license no.	81 of 2023 dated 17.04.2023 valid up to 16.04.2028
	Name of Licensee	M/s JMS Infrabuild Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vide no. 64 of 2023 issued on 23.05.2023 up to 16.04.2028
6.	Date of booking On this date complainant made payment of Rs. 10,00,000/-	26.07.2022
7.	Unit allotted	NA
8.	Unit admeasuring area	NA
9.	Date of builder buyer agreement	NA
10.	Due date of possession	NA
11.	Total sale consideration	NA
12.	Total amount paid by the complainant	Rs. 10,00,000/-
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That relying on various representations and assurances given by the respondent, complainant booked a unit in the project of the respondent



by paying an booking amount towards the plot in Sector – 5, Sohna having super area measuring 133.09 sq. yards. to the respondent dated 25.07.2022. As per the provisions of the RERA Act, 2016 no promoter can take advance amount without getting the project registered with the HARERA Authority, GGM but in the present case respondent got the said project registered with HARERA on 23.05.2023, almost after delay of 1 year after taking the booking amount from the complainant.

- II. That respondent confirmed the booking of the unit but till date no allotment of the plot measuring 133.09 sq. yds. in the aforesaid project of the developer @ rate of Rs. 44,000/- and total sale consideration of the unit i.e. Rs. 58,55,960/- which includes basic price Plus EDC and IDC, Car parking charges, PLC, IFMS and other specifications of the allotted unit has been issued in favour of complainant.
- III. That even after repeated reminders and follow ups with the respondent, it has failed to provide terms and conditions, allotment letter and builder buyer agreement for the said unit.
- IV. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 10,00,000/- towards the said unit against total sale consideration of Rs. 58,55,960/-.
- V. That allotment of the unit was made on July, 2022 after coming into force of the RERA Act, 2016 and as per the Act, after coming into force of the Act the respondent is under obligation to get the buyers agreement executed but in the present case respondent failed to comply with the same.
- VI. That allotment of the unit was made on July 2022 after coming into force of the Act 2016 and as per the Act, the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present

case respondent has charge the complainant on the super area i.e. 133.09 sq. yds. @ Rs.44,000/- per sq. yds.

- VII. Further, the complainant having dream of its own plot in NCR signed the booking application in the hope that the unit will be delivered within three years from the date of booking. The complainant were also handed over one detailed payment plan. It is unfortunate that the dream of owning a unit of the complainant were shattered due to dishonest, unethical attitude of the respondent.
- VIII. That the respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, allotment letter and the different advertisements released from time to time. Further, such acts of the Respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- IX. That the complainant have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the relief/compensation in such cases would necessarily have to be higher.
- X. That in the present case respondent has collected approx Rs. 10,00,000/- till date without executing the builder buyer agreement.
- XI. That as per section 18 of the RERA Act. 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainant:

4. In view of the facts mentioned above, the complainant prays for the following relief:



- i. Direct the respondent to handover the possession of the unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of possession for certain unwanted reasons.
- ii. Restrain the respondent from raising any fresh demand for payment.
- iii. Direct the respondent to issue allotment letter and get the builder buyer agreement executed.
- iv. Direct the respondent to provide committed date for possession.
- v. Not to force the complainant to sign the indemnity cum undertaking indemnifying the builder from anything legal as precondition for signing the conveyance deed.
- vi. Appoint the local commissioner for inspection of the said unit.
- vii. Direct the respondent to provide the exact layout plan of the said unit.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.
 - I. That the present complaint, filed by the complainant, is bundle of lies and hence is liable to be dismissed. Further the complaint is also not maintainable as it doesn't disclose any cause of action for filing the complaint against the respondent.
 - II. That the present complaint is an abuse of the process of this Hon'ble Authority and process of law at the behest of the complainant. The complainant is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and the sole purpose of the complainant behind filing the complaint is to extract unlawful gains from the respondent.
 - III. That the present complaint is also not maintainable and is liable to be dismissed as the complainant by way of this complaint wants to get benefit of her own wrong.

- IV. That the present complaint is also liable to be dismissed as neither the complainant is allottee of the respondent nor the respondent which is a separate and distinct legal entity, has received any amount from the complainant, as alleged in the complaint.
- V. That the complainant showing his interest in the projects of JMS Buildtech Pvt. Ltd. and deposited an amount of Rs. 10,00,000/- through cheque bearing no. 000021074311 drawn on Canara Bank alongwith expression of Interest and same was encashed on 26.07.2022 in the accounts of JMS Buildtech Pvt. Ltd.
- VI. That however as the complainant never turned up to complete the allotment formalities, the expression of interest of the complainant with JMS Buildtech Pvt. Ltd. was cancelled and payment made by him was forfeited.
- VII. That however, the complainant in July, 2024 filed the present false and frivolous complaint before this Authority alleging to have made payment for booking/allotment of plot in the project "JMS Mega City" being developed by M/s JMS Infra Build Pvt. Ltd.
- VIII. That the respondent which is a separate and distinct corporate legal entity neither received any amount towards booking or allotment from the complainant nor allotment was ever made by the respondent in favour of the complainant in project "JMS Mega City" being developed by the respondent.
- IX. That the complainant is guilty of suppression and mis-representation which is clear from the documents annexed by the complainant himself with the complaint.
- X. That the account statement annexed by the complainant, itself shows that the payment of Rs. 10,00,000/- has been made to JMS Build Tech Pvt. Ltd. and not to the respondent who is developing the project "JMS

Mega City” in which the complainant has sought allotment. It is also important to mention here that JMS Build Tech Pvt. Ltd. & JMS Infra Build Pvt. Ltd. are two separate and distinct legal entities having separate accounts and cannot be made liable for the reciprocal acts done by each other, under the Law.

- XI. The complaint as such is neither maintainable nor tenable under the law and is liable to be dismissed with heavy and special costs in favour of the respondent.

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-ITCP 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 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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

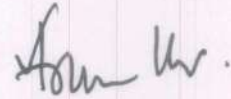
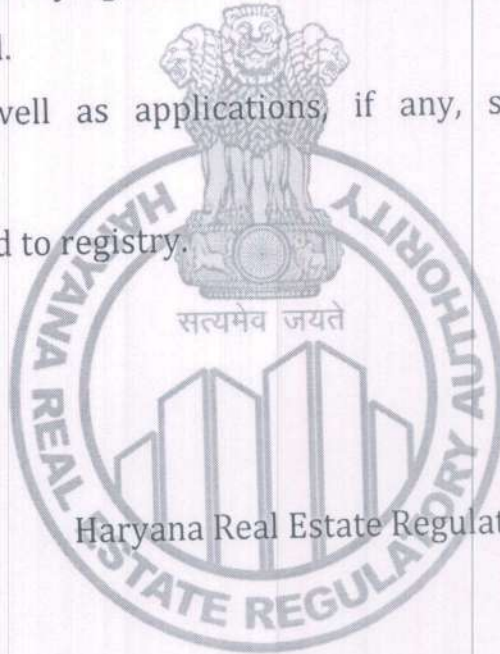
F. Findings on the relief sought by complainant:

- i. Direct the respondent to handover the possession of the unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of possession for certain unwanted reasons.
- ii. Restrain the respondent from raising any fresh demand for payment.
- iii. Direct the respondent to issue allotment letter and get the builder buyer agreement executed.
- iv. Direct the respondent to provide committed date for possession.
- v. Not to force the complainant to sign the indemnity cum undertaking indemnifying the builder from anything legal as precondition for signing the conveyance deed.
- vi. Appoint the local commissioner for inspection of the said unit.
- vii. Direct the respondent to provide the exact layout plan of the said unit.

10. The above mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

11. The complainant in the present complaint is seeking relief w.r.t the handover of possession of the unit as well as the execution of builder buyer agreement as well as allotment letter for the alleged unit in project namely, JMS Mega City, situated at sector-36, Gurugram. The complainant further states that it has made a payment of Rs. 10,00,000/- for allotment of unit in project of respondent.
12. The respondent has categorically denies all the allegations. The respondent states that the complainant never purchased any unit. That no application form, booking receipt, or allotment letter has ever been issued in favour of the complainant, nor has any builder buyer agreement been executed between the parties.
13. The complainant alleges that he had booked a unit in the respondent's project and made certain payments toward the same. However, he has failed to produce any document that would legally establish an allotment in his favour. There is no allotment letter, no receipt of payment issued by the promoter, no builder-buyer agreement, nor any formal acknowledged application form that would indicate that the promoter accepted the complainant's booking. Section 2(d) of the RERA Act, 2016 defines an "allottee" as under:
"...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent."
14. In the absence of any documentary proof of allotment or contractual relationship between the complainant and the promoter, the complainant does not fall within the definition of an 'allottee' under Section 2(d) of the Act. Therefore, the present relief sought by the complainant is not maintainable under section 31 of the Real Estate (Regulation and Development) Act, 2016.

15. Further, the complainant has submitted his bank account statement on record in which it has been shown that he has made a payment of Rs.10,00,000/- to the JMS Buildtech Pvt. Ltd. However, in the present case the respondent party is JMS Infra Build Private Limited. Hence, no directions can be issued against JMS Infra Build Private Limited in respect of said transaction. Moreover, the complainant has failed to produce any documents which could establish that payment was made on demand or on any agreed terms. Therefore, the present complaint stands dismissed.
16. Complaint as well as applications, if any, stands disposed off accordingly.
17. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.07.2025

HARERA
GURUGRAM