

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

Complaint no.: 966 of 2024
Date of decision: 01.07.2025

M/s Vairekasri Healthcare Private Limited
(Formerly Known as Vairekasri Healthcare LLP)
Registered office at: -A-168, ground Floor, T/Blosson-1,
Sector-47, Gurugram Haryana- 122018

Complainant

Versus

1. M/s Experion Developer Private Limited.
Regd. office at: - 2nd floor, Plot no. 18, Institutional Area,
Sector- 32, Gurugram- 122001
2. M/s SAS Servizio Private Limited
Regd. office at: - 201, Empire Apartments, First Floor,
Sultanpur, M.G. Road, New Delhi- 110030

Respondents**CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Shri Sanjeev Sharma (Advocate)
Shri Venket Rao (Advocate)
Shri Ishaan Dang (Advocate)

Complainant
Respondent no. 1
Respondent no. 2

ORDER

1. This 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

provision of the Act or the Rules and regulations made thereunder 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. No.	Particulars	Details
1.	Name of the project	"The Westerlies", Sector-108, Gurugram
2.	Project Area	16.03125 acres
3.	DTCP license no. and validity	114 of 2019 dated 12.09.2019 valid up to 11.09.2024
4.	Name of licensee	SAS Servizio Pvt. Ltd.
5.	RERA registration and validity	79 of 2021 dated 15.11.2021 valid up to 11.09.2024
6.	Area of the plot	1.291 acres (Dispensary plot) (As per page no. 17 of the complaint)
7.	Date of execution of agreement to sell	18.01.2023 (As per page no. 16 of the complaint)
8.	Possession clause	14. That the purchaser shall be liable to get the possession of land on full and final payment of the consideration on or before April 30, 2023. In case, purchaser failed to get the possession thereof along with the transfer done for the said land in its favour before the above-mentioned timeline, then in such case, seller shall neither be responsible for maintenance of land nor for any condition or demand arose or raised on the said land. (Emphasis supplied) (As per page no. 19 of the complaint)
9.	Due date of possession	30.04.2023 (As mentioned in the possession clause)
10.	Total sale consideration	Rs.13,74,65,680/- (As per page no. 14 of the reply by respondent no. 2)
11.	Total amount paid by the complainant	Rs.2,78,00,000/- (As per ledger account on page no. 24 of the reply by respondent no. 2)

12.	Part completion certificate	30.01.2024 (As per page no. 25 of the reply by respondent no. 1)
13.	Demand cum cancellation notice	01.02.2024 (As per page no. 25 of the complaint)
14.	Notice of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. The respondent is a builder/developer who is developing number of land parcels in different sector of Gurgaon and around. As per the document which is named as agreement to sell entered into the complainant and the respondent no. 2 on 18.01.2023 at Gurgaon for sale or transfer of "Dispensary" Plot in the layout plan which is approved and reserved by the statutory authorities on 60 meter wide road in sector 108 in village Dharampur tehsil and district Gurugram.
- II. That the dispensary plot of 1.291 acres in plan Drg. No. DTCP 8031 dated 18.11.2021 bearing license no. 57 of 2013 dated 11.07.2013 and license no. 114 of 2019 dated 12.09.2019 is agreed to be sold under document agreement to sale dated 18.01.2023. The complainant on assurance given by the respondent about clear title and approvals regarding the plot for Dispensary paid Rs.1,40,000,00/- on January 2023 against the agreed consideration amount of Rs.13,74,65,680/- initially vide NEFT number 004 dated 18.01.2023 and NEFT number 005 dated 25.01.2023. Subsequently the complainant paid Rs.1,38,00,000/- through bank transfer from HDFC Bank dated 02.05.2023 to the respondent company M/s SAS Servizio Pvt. Ltd. after paying the initial amount of Rs.1,40,00,000/-. The complainant paid this amount under threat without registration of the sale agreement between complainant and respondents.

- III. The remaining amount after the payment of Rs.1,40,00,000/- was to be paid to the respondent as follows:-
- a. Token amount 10% of the consideration had been paid on 29-Dec-2022 (Token Date).
 - b. Balance Payment shall be made in the following manner:
 - 10% of the Consideration shall be payable within 45 days of Token Date;
 - 80% of the Consideration shall be payable within 90 days of Token Date i.e., on or before March 31, 2023, or at the time of transfer or handover of possession of the Land in favor of the Purchaser, whichever is earlier.
- IV. That as per section 13 of Act, 2016 the selling developer is always under obligation not to accept a sum more than ten percent of the cost as an advance payment from a person without entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force similarly under section 13(2) states that:-
- "Section 13(2): The agreement for sale referred to in subsection (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."*
- V. That the physical possession was to be handed over on the date of payment of total sale consideration which shall be demanded at the time of handing over of physical possession.
- VI. That the respondent /developers i.e. M/s SAS Servizio Pvt. Ltd. along with its assigns failed to handover the physical possession of the

dispensary plot and registering the sale deed even after receiving the 10% amount within the stipulated time period till date.

- VII. That this Authority is requested to direct the respondent to handover the physical possession of the land for Nursing home and execute the sale deed immediately along with interest as delay payment charges on the amount received by the respondent. The seller/developer did not get the sale agreement registered as required by law even after receiving a huge amount of Rs.2,78,00,000/- from complainant. He is threatening the complainant of cancellation if the demanded amount is not paid to respondent immediately, which is against the essence of Act, 2016. Moreover there is not a single document pertaining to the land allotted to complainant nor any application is made for obtaining occupation certificate from statutory Authorities Haryana. The complaint is made to seek directions from Authority to Respondent not to cancel the allotted land to him and direction for registration of agreement to sale on occupation certificate.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent not to cancel the allotted land.
 - Direct the respondent not to alienate the allotted plot to third party.
 - Physical possession of the land to be handed over after registration of agreement and payment, if any.
5. 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 respondents

D.I Reply by the respondent no. 1

6. The respondent no. 1 by way of written reply made following submissions:-
- I. That the respondent no. 1 i.e., M/s Experion Developers Pvt. Ltd. is a real estate company engaged in the business of the development and construction of real estate projects and is one of the reputed companies in the real estate sector, and the respondent no. 2 i.e., M/s SAS Servizio Pvt. Ltd. is also a real estate company engaged in the business of the development and construction of real estate projects.
 - II. That after the service of the present complaint bearing No. 966 of 2024 instituted by the complainant against the respondents, it came to the knowledge of the respondent no.1 that the complainant has purchased a "Dispensary" plot admeasuring 1.291 acres from the respondent no. 2.
 - III. That the prior to service of the complaint or issuance of notice in the present complaint, the respondent no. 1 did not have any knowledge of the alleged transaction entered into between the complainant and the respondent no. 2. That the complainant have unnecessarily dragged the respondent no.1 into false and frivolous litigation, basis the agreement which was not even in the knowledge of the respondent no.1.
 - IV. That the complainant even in the case-title of the pleadings/complaint, as served onto the respondent no.1, has implicated and made only M/s SAS Servizio Pvt. Ltd." as a party. In Para 2 i.e., particulars of the respondent(s)- only "M/s SAS Servizio Pvt. Ltd." and its details have been mentioned. Also a perusal of the complaint it is abundantly clear that "Experion Developers Pvt. Ltd" has not been made a party to the present complaint. Accordingly, the averments, allegations and the reliefs sought are only against "M/s SAS Servizio Pvt. Ltd." and not

against "Experion Developers Pvt. Ltd". Since no directions have been sought against the respondent no.1, this Authority is curtailed from passing any directions against the respondent no.1.

- V. That only in the "Proforma-B" Experion Developers Pvt. Ltd has been mentioned as respondent no.1 and basis which the notice for the present complaint has been issued to the respondent no.1 i.e., Experion Developers Pvt. Ltd. That for this reason alone, the present complaint is not maintainable against the respondent no.1.
- VI. Therefore, respondent no. 1 seeks to raise the following objections /submissions, each of which has been taken in the alternative and is without prejudice to the other. Nothing contained in the preliminary objections/and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be a direct and tacit admission of any allegation made by the complainant in the complaint.
- There is no privity of contract between the respondent no. 1 and the complainant as agreement to sell is executed between the complainant and the respondent no. 2.**
- VII. That a bare perusal of the complaint and the agreement to sell dated 18.01.2023, the Complainant being involved in the healthcare business/sector and with an intention of constructing and developing a dispensary, had allegedly entered into a commercial transaction to purchase a "Dispensary" Plot admeasuring 1.291 acres from the respondent no. 2 for a sale consideration of Rs.13,74,65,680/-. That the same can be verified from clause 1 of the agreement to sell dated 18.01.2023.
- VIII. That the entire dispute resulting in filing of the present complaint and reliefs being sought is only on the basis of the agreement to sell dated 18.01.2023 executed between the complainant and the respondent no.

2. That the said agreement is specifically executed between the complainant and the respondent no. 2 to the exclusion of respondent no.1. That the respondent no. 1 was not a party to the said agreement. The terms and conditions contained therein are absolutely alien to the respondent no.1. Also, a perusal of the said agreement it can be seen that there are no obligations or liabilities which have been bestowed upon the respondent no.1. That the complainant has unnecessarily dragged the respondent no.1 into the false and frivolous litigation, basis an agreement which was not even in the knowledge of the respondent no.1 prior to the present complaint.

IX. That as per the well-established principle of law of "**Privity of Contract**", only parties to a contract/agreement are allowed to sue each other to enforce their rights and liabilities and no stranger is allowed to confer obligations upon any person who is not a party to the contract/agreement. Furthermore, the respondent no. 1 has no role to play in what seems to be a dispute between the respondent 2 and the complainant.

X. That in the instant case, respondent no. 1 is a stranger to the agreement to sell dated 18.01.2023, having no involvement or obligations towards the complainant. Therefore, it is most humbly submitted that no action can be brought against the respondent no.1 by the complainant. That by applying the such principle in the present case, it is most humbly submitted that:

- **No agreement has been executed** between the complainant and the respondent no.1;
- There is **no privity of contract or commercial relation** between the complainant and the respondent no.1;
- **No consideration** of any kind whatsoever has been paid by the complainant to the respondent no.1;

- **No allotment has been made** by the respondent no.1 in favor of the complainant.
- There is **no builder-buyer relationship** between the complainant and the respondent no.1.

D.I Reply by the respondent no. 2

7. The respondent no. 2 by way of written reply made following submissions:-
- i. That the present complaint is not maintainable in law or in fact. It is submitted that the present complaint is not maintainable before this Authority under the provisions of the Act, 2016 and the Rules, 2017. The present complaint is liable to be dismissed on this ground alone. Moreover, this Authority does not have the jurisdiction to decide the present complaint on account of the arbitration clause (Clause 21) in the agreement to sell dated 18.01.2023 executed between the complainant and the respondent. Even otherwise, the complaint is not maintainable in law and merits dismissal.
 - ii. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of the Authority and can only be adjudicated by the Civil Court/Arbitrator. The present complaint deserves to be dismissed on this ground alone.
 - iii. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement to sell dated 18.01.2023, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of

the Authority to refer to and rely upon the terms and conditions set out in the agreement to sell dated 18.01.2023, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant thereunder. The complainant is estopped by its own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

- iv. That there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events (as described in the reply), that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- v. That the respondent is the owner of land admeasuring 1.291 acres approximately in Sector 108, "Westerlies" project, Gurugram, Haryana. The aforesaid land had been permitted to be used for the purpose of construction and operation of a dispensary. The respondent had executed a collaboration agreement with Experion Developers Private Limited for the same. Moreover, license bearing no.114 of 2019 dated 12.09.2019 had been issued by the department of Town & Country Planning, Haryana, and Chandigarh to the respondent.
- vi. That in terms of clause 16 of the agreement to sell, the complainant had acknowledged the fact that occupation certificate for the said land was yet to be applied for and received for at the time of execution of the agreement to sell. It had also been mentioned in the aforesaid clause that on receipt of the occupation certificate, the respondent would

execute all such documents as may be required by the complainant for getting the said land registered in its name. Thus, there was absolutely no connection between the receipt of occupation/completion certificate and payment of the total sale consideration amount by the complainant to the respondent. It is reiterated that the complainant was liable to make payment of the total sale consideration amount on or before 31.03.2023 which it miserably failed to do so.

- vii. That it had been duly mentioned in the aforesaid notice that the complainant was liable to make payment of Rs.10,96,65,680/- along with interest at the rate of 18% per annum within seven (7) days of receipt of the aforesaid notice failing which the agreement to sell dated 18.01.2023 would stand terminated ipso facto. The complainant duly acknowledged that the receipt of the demand cum cancellation notice but did not proceed to make payment of the outstanding amount. Thus, the agreement to sell dated 18.01.2023 stood terminated and cancelled on 08.02.2024, much before the filing of the present frivolous and misconceived complaint by the complainant. The relief sought by the complainant is infructuous as on date. It is submitted that the complainant does not have any cause of action against the respondent no. 1.
8. 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:**
9. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent not to cancel the allotted land.

F.II Direct the respondent not to alienate the allotted plot to third party.

F.III Physical possession of the land to be handed over after registration of agreement and payment, if any.

13. The present complaint was filed on 15.03.2024 and the reply on behalf of respondent no. 1 & 2 was received on 30.05.2024 and 18.06.2024 respectively.
14. On perusal of the documents available on record, it becomes clear that in the present complaint, the complainant was willing to purchase a parcel of land admeasuring 1.291 acres from the respondent no. 2 namely, M/s SAS Servizo Private Limited situated in Sector-108, Gurugram, Haryana. Subsequently, an agreement to sell was executed on 18.01.2023, between the complainant and the respondent no. 2 vide which the respondent no. 2 agreed to sell all the right, title and interest in the land admeasuring 1.291 acres in favour of the complainant.
15. Now, the complainant herein has approached this Authority seeking possession of the said land vide clause 14 of the agreement to sell dated 18.01.2023, which stipulates that the purchaser shall be liable to get the possession of land on full and final payment of the consideration on or before 31.03.2023.
16. The payment plan agreed between the parties vide agreement to sell dated 18.01.2023 is reproduced as under:
 - a. *Token amount: 10% of the Consideration had been paid on 29-December-2022 (Token Date);*
 - b. *Balance Payment shall be made in the following manner:*
 - a. *10% of the consideration shall be payable within 45 days of Token Date;*
 - b. *80% of the Consideration shall be payable within 90 days of Token Date i.e., on or before March 31, 2023, or at the time of transfer or handover of possession of the land in favor of the Purchaser, whichever is earlier.*

17. The Authority is of the opinion that the agreement to sell dated 18.01.2023 was executed between the complainant and respondent no. 2. Further, no relief is specifically sought by the complainant against respondent no. 1, no consideration is shown as paid to respondent no. 1 and no contractual obligation of respondent no. 1 toward the complainant is pleaded. Moreover, during the course of hearing on 20.03.2025, the counsel for the complainant has specifically stated that the name of the respondent no. 1 has been automatically added while generating the Proforma B since the registration certificate bearing no. 79 of 2021 dated 15.11.2021 has been issued in the name of respondent no.1. Therefore, the proceedings against Respondent no. 1 are dropped, without examination on merits, in view of absence of privity and absence of any operative prayer qua it. In view of the above, the authority decides that the name of respondent no. 1 shall be deleted from the array of the parties in the present complaint.
18. It is noteworthy to mention here that the registration certificate granted by this authority bearing no. 79 of 2021 dated 15.11.2021 valid up to 11.09.2024 is regarding a Residential plotted colony consisting of 172 plots. It is pertinent to mention here that the plot in question is not one of those 172 plots. Further, as per clause 10 of the additional terms and condition of Registration, the promoter shall execute a draft allotment letter as annexed in the detailed project information, which has not been executed in the present matter. Moreover, the promoter was obligated to enter into an agreement for sale with the allottees as prescribed in the Haryana Real Estate (Regulation & development) Rules, 2017, which is also absent in the present matter.
19. The Authority further observes that vide clause 2 of the agreement to sell dated 18.01.2023, the complainant has agreed to make payments in a time

bound manner and the said payments were not dependent on the obtaining of Part CC by the respondent no. 2. Moreover, it is a matter of record that the respondent no. 2 has obtained the part completion certificate of the subject project on 30.01.2024, from the competent authority. It is of grave importance to mention over here that the complainant has failed to fulfil its obligation of making payments in consonance with the agreed payment plan, which was agreed inter se complainant and respondent no. 2 vide clause 2 of the agreement to sell dated 18.01.2023. Thereafter, the respondent no. 2, having left with no other option has issued a demand cum cancellation notice to the complainant on 01.02.2024. The Authority is of the considered view that as per section 11(5) of the Act, the promoter may cancel the allotment in terms of the agreement for sale. Section 11(5) of the act is reproduced below:

"11. Functions and duties of promoter-

...

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause."

20. Further, it is a matter of fact that the complainant duly acknowledged the receipt of the said demand cum cancellation notice and it seems that the complainant willfully did not proceed to make payment of the outstanding amount. The authority would like to comment on the nature of the contract executed inter se complainant and respondent no. 2 in the form of agreement to sell in the present matter. It is relevant that the said agreement to sell is unlike an agreement for sale as contemplated under the Act and is a legal contract where the seller agrees to transfer the ownership of the property to the buyer at a future date or upon the fulfilment of certain conditions. It indicates a future sale and does not immediately transfer

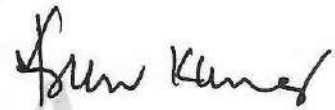
ownership. On the other hand, the agreement for sale refers to the document that outlines the terms and conditions of the sale and an agreement for sale under the RERA Act is a statutory document, mandatorily registered, which secures rights of the allottee against the promoter. The key distinction lies in the fact that an *Agreement to sell* becomes a *Sale* when the time elapses and upon performance of reciprocal obligations, which has not been done in the present matter since the complainant out of its own free will has chosen to not make payments in consonance with the terms agreed inter se parties and hence, has defaulted in fulfilling its responsibility.

21. It is observed that the document executed between the complainant and respondent no. 2 on 18.01.2023 is an "agreement to sell" and not an "agreement for sale" as contemplated under the Act, 2016. Under Section 13(1) of the Act, an allottee's rights accrue upon execution of a registered agreement for sale, which specifies particulars of development, possession timelines, payment plans, and remedies for default. In the present case, the document in question is an agreement to sell of a dispensary plot, which is essentially a commercial transaction governed by the Indian Contract Act, 1872, and not a statutory agreement for sale under the RERA framework. In the instant case, the complainant seeks relief on the basis of an agreement to sell which never fructified into a registered agreement for sale. The complainant, therefore, cannot claim statutory protection under Section 13 or Section 11 of the RERA Act.
22. It is noteworthy that in the present case, no sale has been completed, nor has the complainant acquired any enforceable right in the property owing to the cancellation of the agreement due to default in payment, which was a necessary obligation on the part of the complainant and hence, the authority

observes that it is the complainant in the present matter, who has failed to honor its obligation as agreed in agreement to sell dated 18.01.2023. Moreover, it is noteworthy that the said agreement to sell dated 18.01.2023 has to be governed by the Indian Contract Act, 1872 and hence the remedy regarding the same lies before the Ld. Civil Court of appropriate jurisdiction. Therefore, had the complainant discharged its obligations as agreed inter se vide the said agreement to sell then it had every right to seek redressal through filing a suit for specific performance of contract before the Ld. Civil Court and get the sale deed registered and conveyance done.

23. Therefore, the Authority is of the view that the relief sought by the complainant in the present complaint cannot be granted and consequently, the complainant, having failed to perform its reciprocal obligations under the agreement to sell, cannot seek enforcement of rights qua respondent no. 2. In view of the above, the complaint filed by the complainant is dismissed being not maintainable under the Act of 2016. File be consigned to registry.

Dated: 01.07.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

I respectfully disagree with the order of the Hon'ble Chairman on the following grounds:-

1. It would be beneficial to recapitulate the following provisions of the Act, 2016:

a) The purpose of enactment of the Act, 2016 as stated in the preamble is as under:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

(Emphasis Supplied)

b) The definition of real estate project as per Section 2(zn) states as under:

"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

c) The definition of Agreement for sale in terms of section 2(c) states as under:

"Agreement for sale" means an agreement entered into between the promoter and the allottee;

d) Further, in terms of Section 2(zk) the definition of promoter is stated as under:

"Promoter" means,—

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- (iii) any development authority or any other public body in respect of allottees of—
 - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
 - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
- (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or
- (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
- (vi) Such other person who constructs any building or apartment for sale to the general public.

Explanation. —For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the

functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

(Emphasis Supplied)

- e) Moreover, in terms of Section 2(d) the definition of allottee is stated as under:

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

2. The present complaint has been filed in relation to a plot of land reserved for the purpose of construction and operation of a dispensary in a duly licensed and registered project called "The Westerlies" Sector-108, Gurugram.
3. The said project was registered vide registration no. 79 of 2021 dated 15.11.2021 valid up to 11.09.2024.
4. In the registration details submitted by the promoter/developer and uploaded on the portal of the Authority, under Part-C para 4 of Form REP-1, the dispensary has been shown as part of facilities provided in the project.
5. The duly approved layout plan submitted with the project application also shows the dispensary plot as clearly demarcated site comprising 1.29 acres.
6. An agreement for sale has been entered into by the promoter who is the land owner in the project and the complainant.
7. In my humble opinion, the said complaint is maintainable as the complainant is an allottee of a promoter in real estate project and



has entered into an agreement for sale for an earmarked plot for which a clear financial transaction has taken place between the promoter and an allottee and therefore, the allottee is entitled to file a complaint against the promoter under Section 31(1) of the Act of 2016 read with Section 11(4)(a) of the Act *ibid*.

Under the provisions of Section 29(3), of the Act, *ibid*, the decision of the Hon'ble Chairman shall prevail.

Dated: 01.07.2025

(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram

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