

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

Complaint no.	:	4358 of 2024
Date of Filing:		09.09.2024
Date of decision	:	11.07.2024

Jyoti Yadav Address: - House no. 812, Sector-6, Part 1, Dharuhera, Rewari	Complainant
Versus	
M/s Adhikaansh Realtors Pvt. Ltd. Office at: - Smartworld, 12 th floor, CRM Office, International inancial Centre, Sector-66, Gurgaon- 122018	Respondent

CORAM:	
Shri Arun Kumar	Chairman

APPEARANCE:	
Sh. Sushil Yadav	Advocate for the complainant
Ms. Shriya Takkar	Advocate for the respondent

ORDER

1. The present complaint dated 09.09.2024 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 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.	Name of the project	"Smartworld Gems", Sector- 89, Gurgaon
2.	Nature of project	Affordable Plotted Colony (DDJAY) Residential Floors
3.	RERA registered/not registered	Registered vide no. 70 of 2021 dated 25.10.2021 valid upto 30.09.2025
4.	DTPC License no.	32 of 2021 dated 03.07.2021
	Validity status	02.07.2026
	Name of licensee	Adhikansh Realtors & other
	Licensed area	52.275 acres
5.	Independent Floor Residence/ Unit no.	J-118D, 4 th Floor, Type-3.5 BHK+3T [pg. 23 of complaint]
6.	Unit area admeasuring	1423 sq. ft. [pg. 23 of complaint]
7.	Allotment letter	12.02.2024 [pg. 23 of complaint]
8.	Date of builder buyer agreement	26.04.2024 [pg. 20 of complaint]

9.	Tripartite agreement	29.05.2024 [pg. 129 of complaint]
10.	Possession clause	7. Possession of the Floor Residence: 7.1 Schedule for possession of the floor residence- i. ii. The Promoter assures to offer possession of the Independent Floor Residence along with right to use the undivided demarcated proportionate right to use terrace and basement area along with one car parking space as per agreed terms and conditions herein on or before the Completion Time Period i.e., 30.09.2025 or as may be further extended by the H-Rera unless there is delay due to Force Majeure Event, reasons beyond the control of the Promoter.....
11.	Due date of possession	30.09.2025 [as per possession clause]
12.	Total sale consideration	₹ 91,23,280/- [as per payment plan on pg. 56 of complaint] ₹ 93,32,359/- [as per account statement dated 06.06.2024 at pg. 57 of complaint]
13.	Amount paid by the complainant	₹ 36,49,312/- [as per account statement at pg. 57 of complaint]
14.	Demand letter	01.04.2024
15.	Reminder Letter	17.04.2024, 25.04.2024, 03.06.2024, 04.06.2024, 17.06.2024, 26.06.2024, 27.06.2024, 29.06.2024 [pg. 133-138 of complaint]
16.	Cancellation Letter	01.07.2024

		[pg. no. 139 and 140 of complaint]
17.	Amount refunded by the respondent	11.09.2024 Through RTGS [pg. 87 of reply]
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. That the complainant booked a residential unit in the project namely "Smart World Gems" situated at Sector 89, Gurgaon against a payment of Rs. 2,00,000/- via online payment. Accordingly on 13.10.2021, complainant was allotted a unit bearing no J-89 D measuring 1423 sq. ft.
5. That when the complainant visited the office of the respondent a week later, the complainant was shocked to hear from Mr. Dhruv Suri (sales head) that unit no. J-89 had been allotted to another buyer and told me that unit was booked based on the EOI and the builder has the right to allot either a "freeze" or "unfreeze" unit.
6. That instead of clarifying the situation respondent arbitrarily allotted freeze unit no. J- 21 D, which was never discussed with the complainant at the time of payment.
7. That after multiple requests and much stress, respondent staff's eventually changed my allotment to normal unit no. J-118 D. Thereafter, the complainant understood that respondent has taken multiple EOIs from customers, despite having a limited number of units to sell which itself shows that respondent is under pressure to decide who gets the units/to whom they allot the unit, and they tried to pressure customers

like complainant by delaying the builder-buyer agreement, even after receiving the advance booking payment.

8. That on 7th February 2024, complainant made the payment as demanded by respondent via RTGS, and a total of 40% of the amount was paid by the complainant. The payment was made under duress, as respondent staffs threatened to forfeit the previous payments and cancel the allotted unit. Despite making the payment, the BBA was still not registered.
9. That when the complainant refused to pay without the BBA, respondent blackmailed the complainant with the threat of forfeiture and cancellation of the unit. The respondent demanded an additional sum of Rs. 47,89,721/- by 16th April without any registered builder-buyer agreement.
10. That after much struggle builder buyer agreement was finally registered on 26.04.2024. After several visits and mental harassment, received a copy via WhatsApp only on 13th May 2024.
11. That the complainant provided the copy of buyer's agreement to Punjab National Bank for a loan, and the tripartite agreement (TPA) was executed by the bank on 29th May 2024 as per their norms. However, respondent refused to accept the format, causing further delays and unnecessary harassment.
12. That on 29.05.2024 respondent emailed the complainant stating that the unit would be cancelled by 30.05.2024 if payment was not made. As 30th June being sunday, it was very difficult for complainant to arranged that huge amount in a day. On 1st July 2024, complainant received an email confirming the cancellation of the unit. That no official demand letter was sent to complainant after the execution of buyer's agreement, and the old

demand was made before the agreement was registered which is illegal and violation of section of RERA.

13. That after receiving the copy of the buyer's agreement complainant applied for a loan based on assurance of respondent that the delay in providing the buyer's agreement and completing other formalities was from the respondent's side.

14. Furthermore, complainant have not yet received any occupancy certificate/application related to occupancy certificate, which is also violation of rights of complainant as a buyer. Complainant was forced to pay 40% amount without execution of buyer's agreement it is also the violation of section 13 of Real Estate of Regular Authority. Being an allottee complainant has the right to obtain information related to sanctioned plans, layout etc.

C. Relief sought by the complainant:

15. The complainant has sought following relief(s)

- I. Direct the respondent not to create any third party rights in the said unit.

16. On the date of hearing, the authority explained to the respondent /promoter on 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 the respondent

17. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

18. That the complainant had expressed her interest to book a unit in the project of the respondent i.e. 'Smartworld Gems', Sector 89 Gurugram

After conducting requisite market research and tendered a sum of Rs. 2,00,000/- towards her expression of interest, which was duly acknowledged by the respondent. Thereafter the complainant paid an amount of Rs. 6,50,000/- on her own free will towards the expression of interest.

19. That the respondent supplied the complainant with a cost breakdown detailing the prices of units based on their dimensions within the project, to facilitate the complainant in selecting a unit in the project of the respondent and to freeze the price of the selected unit.
20. The complainant being well aware about her duty to come forward to select the unit, confirm booking, complete all booking formalities including but not limited to depositing 10% of sales consideration and execute all requisite documents did not come forward to select the unit. The respondent acknowledged the payment of Rs. 6,50,000/- vide email dated 03.06.2022 and had requested the complainant to come forward and complete the booking formalities.
21. The complainant thereafter applied for allotment of unit bearing no. J-118D vide application form. The respondent in order to issue an allotment letter to the complainant, requested the complainant to make good the payment of 10% of booking amount. However, the complainant on her own free will deposited an amount of Rs. 27,99,312/- through RTGS.
22. The respondent accepted the application form and accordingly allotted unit bearing no. J-118D vide allotment letter dated 12.02.2024. The cost of the unit was Rs. 91,23,280/- plus other charges. The complainant on her own free will opted for the specific payment plan of 40:60. Further, the respondent vide email dated 13.02.2024 also shared the booking

information for validation so that the same could be incorporated in the buyers agreement. That no objection was ever raised by the complainant qua the information shared. Thereafter the complainant visited the office of the respondent company and collected the copy of the buyers agreement for due execution at her end.

23. Thereafter, the respondent as per the payment plan opted by the complainant, raised a demand vide letter dated 01.04.2024 of Rs. 47,89,721/- which was due on applying for the OC. The said demand was payable on or before 16.04.2024. All the demands were raised by the respondent as per payment plan opted by the complainant on the achievement of relevant construction milestone.
24. Since the complainant failed to remit any dues communicated vide the aforesaid demand letter, the respondent company sent a reminder vide letter dated 17.04.2024 requesting the complainant to remit the outstanding dues within the stipulated time period.
25. That as the complainant failed to make the complete payment of the outstanding dues against the demand raised, the respondent left with no other alternative issued pre-cancellation letter dated 25.04.2024 to the complainant calling upon the complainant to make payment of Rs. 47,89,721/- along with interest within 7 days of receipt of the said letter, failing which the allotment/booking shall be cancelled/terminated.
26. That belatedly and after constant follow ups with the complainant, the complainant executed the buyer's agreement on 25.04.2024. The copy of the buyers agreement was shared with the complainant vide email dated 14.05.2024. Since, the complainant wished to obtain home loan from PNB Housing Finance Limited, the respondent requested her to share the

copy of the sanction letter for the same. The respondent vide email dated 23.05.2024 shared the format of the TPA for PNB Bank.

27. The respondent company vide various emails dated 03.06.2024, 17.06.2024, 26.06.2024, 29.06.2024 requested the complainant to come forward and clear her pending dues and to provide the copy of tripartite agreement as per the specified format failing which the allotment/booking will be cancelled, but to no avail. Thus, the complainant was in default of her obligations under the buyer's agreement as well as under the RERA Act, 2016, despite several reminders and even issuance of pre-cancellation notices.
28. That the complainant even after the issuance of the abovementioned pre-cancellation letter and various reminders failed to take advantage of this opportunity and continued to breach the terms of the buyers agreement. As a consequence, of the same the respondent was constrained to terminate the allotment of the complainant vide cancellation letter dated 01.07.2024 and forfeit the amount as per terms of the buyers agreement.
29. That the complainant had deposited an amount of Rs. 36,49,312/- against the total consideration of Rs. 91,23,280/- plus other charges. That without prejudice to its rights, being a customer-oriented company, to bring closure to the matter the respondent refunded the entire amount paid by the complainant without any deductions i.e. Rs. 36,49,312/- as full and final settlement of all the dues of the complainant vide RTGS on 11.09.2024. Thus, nothing survives in the present matter, the complaint is infructuous and is liable to be dismissed.
30. 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

31. 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

32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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

33. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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.

I. Direct the respondent not to create any third party rights in the said unit.

34. In the present complaint, the complainant seeks relief in relation to the prevention of the creation of third-party rights over the unit allotted to them. The complainant was allotted unit bearing no. J-118D, situated on

the 4th floor of the project titled "Smartworld Gems", located at Sector-89, Gurugram, pursuant to an allotment letter dated 12.02.2024. Subsequently, a buyer's agreement was executed between the parties on dated 26.04.2024 followed by the execution of a tripartite agreement among the complainant, the respondent and the bank on dated 29.05.2024. As per the agreed payment plan the total sale consideration for the said unit was ₹91,23,280/- against which the complainant has paid a total sum of ₹36,49,312/-.

35. The complainant contends that the respondent arbitrarily cancelled the allotment of the unit on 01.07.2024 on the ground of non-payment of outstanding dues. The complainant further submits that under the terms of the payment plan the obligation to make further payments arises only upon the application for the occupation certificate (OC) for the unit. However, the respondent has failed to furnish a copy application for the occupation certificate.
36. The respondent on the other hand, submits that payment demands were raised in accordance with the payment plan and the respondent has issued demand letter dated 01.04.2024 and thereafter several reminders were also issued. Due to continued non-payment the respondent proceeded to cancel the allotment of the unit vide letter dated 01.07.2024. Now the question before the authority is whether the cancellation issued vide letter dated 01.07.2024 is valid or not.
37. Upon consideration of the documents placed on record and the submissions made by both the parties, the Authority is of the view that an examination of the payment plan is essential in order to determine the respective obligations of the parties and to assess the validity of the



cancellation of the unit. The payment plan is reproduced below for ready reference:

Name of Installment	%	BSP	CGST	SGST	Total amount
Booking Amount	10.00	8,68,884/-	21,722/-	21,722/-	9,12,328/-
On start of construction-Excavation of Project Site (On signing of Agreement to sale)	30.00	26,06,651/-	65,166/-	65,166/-	27,36,984/-
On Application of Occupation Certificate of Unit	52.50	45,61,640/-	1,14,041/-	1,14,041/-	47,89,722/-
On Offer of Possession	7.50	6,51,663/-	16,292/-	16,292/-	6,84,246/-
Total:		86,88,838/-	2,17,221/-	2,17,221/-	91,23,280/-

38. As per the payment plan the complainant has to make first instalment i.e., 10% at the booking of the unit, second instalment i.e., 30 % at the time of signing of agreement for sale. These payments were duly made by the complainant. Thereafter the third instalment i.e., 52.50% has to be paid at the time of application of occupation certificate. The copy of application of occupation certificate was not on records so the Authority vide proceeding dated 14.02.2025 directed the respondent to file the copy of application of occupation certificate. The respondent on 04.04.2025 has filed a copy of application of occupation certificate dated 28.03.2024 which is prior to the demand raised by the respondent. Therefore, the Authority observes that the demand raised by the respondent vide letter dated 01.04.2024 is valid. The respondent further

for the payment of outstanding dues issued various reminders dated 17.04.2024, 25.04.2024, 03.06.2024, 04.06.2024, 17.06.2024, 26.06.2024, 27.06.2024, 29.06.2024 but the complainant failed to honour its obligation to pay the amount on time. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit despite issuance of aforesaid numerous reminders, the complainant has failed to take possession and clearing the outstanding dues. Therefore, the respondent cancelled the unit on 01.07.2024.

39. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee have violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law. In the present matter the respondent has already refunded the total paid up amount Rs. 36,49,312/- through RTGS on 11.09.2024.

40. Complaint stands disposed of.

41. File be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.07.2025