

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

Complaint no. :	450 of 2023
Date of Filing of complaint:	03.02.2023
Order Reserve On:	09.05.2025
Date of Decision:	11.07.2025

1. Sita Nayak
2. Krishan Nayak

Address at: Block A1/62, Sharma Colony,
Phase 2, Budh Vihar, North West Delhi -
110086

Complainants

Versus

KSD Buildtech Private Limited
Office: SCO 35, 1st Floor, Sector-15-II, Huda
Market, Gurugram - 122001

Respondent

CORAM:
Shri Arun Kumar

Chairman**APPEARANCE:**

Ms. Sita Nayak and Sh. Krishan Nayak
Sh. Anuj Chauhan

Complainants in Person
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/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 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	"Yash Vihar" at sector 5, Pataudi, Haryana
2.	Nature of the project	DDJAY Plotted Colony
3.	Project area	7.7 acres
4.	Rera registered or not	Registered Vide no. 36 of 2020 issued on 16.10.2020 upto 05.11.2022
5.	Plot No.	01 (page no. 12 of complaint)
6.	Unit area admeasuring	146.38 sq. yds. (page no. 12 of complaint)
7.	Welcome Letter	12.01.2022 (page no. 12 of complaint)
8.	Legal notice by respondent for payment	26.07.2022 (page no. 16 of complaint)
9.	Date of builder buyer agreement	Not executed
10.	Possession clause	Clause 15 of application form:

		15. The Company shall endeavor to give possession of the Plot to the Applicant, based upon its present plans and estimates and subject to all exceptions and Force Majeure, proposes to handover possession of the Plot within a period of 36 months from the date of execution of buyers agreement subject to force Majeure circumstance and reasons beyond the control of the Company with a reasonable extension of time for possession subject to making or timely payment of instalments to the Company by him/her.
11.	Due date of possession	12.01.2025 (calculated from the date of welcome letter as BBA is not executed)
12.	Total sale consideration	Rs. 37,75,261/- (as alleged by complainants on page no. 10 of complaint)
13.	Amount paid by the complainants	Rs. 7,86,522/- (as per additional document filed by complainants)
14.	Completion certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. That believing the assurances and representations of the respondent in their advertisements and relying upon the goodwill of the respondent

company on 12.01.2022 the complainants booked a plot bearing no- 01 having area of 146.38 sq. yds. in Yash Vihar situated at Sector-5, Pataudi, Gurugram, Haryana. Thereafter the complainants received a welcome cum allotment letter dated 12.01.2022 for the plot in question.

- II. That the complainants made first payment via cheque of Rs. 2,00,000/- on 08.01.2022 and second payment of Rs.1,43,261/- on 08.01.2022 and 17.01.2022 respectively. The complainants have paid a total amount of Rs.3, 43,261/- against the total sale consideration of the unit in question.
- III. That the complainants after making the above said payment of Rs. 3,43,261/- against the total sale consideration of Rs. 37,75,872/- requested the respondent to execute the builder buyer agreement but the respondent instead of executing the same kept on requesting the complainants to make further payment of Rs.10,00,000/- on account of further demand. The complainants requested the respondent not to raise further demand till the time of execution of builder buyer agreement but the respondent clearly refused to execute the builder buyer agreement and kept on demanding Rs. 10,00,000/- from the complainants.
- IV. That the respondent time and again approached the respondent to execute a builder buyer agreement as per RERA Act but to no avail. On 05.08.2022 the complainants received a legal notice from the counsel of the respondent wherein an illegal demand had been raised for the payment of Rs.10,29,783/-.
- V. That the complainants after receiving the above said legal notice approached the respondent office in order to enquire about the same and further to request the respondent to withdraw the said legal notice as the same is a clear contravention of the RERA Act read with DDJAY Scheme. But instead of withdrawing the said legal demand notice, the respondent

threatened the complainants to cancel the unit and further to forfeit the paid amount in case the payment of Rs. 10,29,783/- not made by the complainants.

- VI. That the complainants are having clear apprehension that the unit of the complainants would be cancelled by the respondent if the said illegal demand of the respondent has not fulfilled by the complainants.
- VII. That the present complaint has been filed in order to restrain the respondent from cancelling the unit and if in case cancelled, than to re-intestate/re-allot the unit in the name of the complainants and further to raise demands as per payment plan and in accordance with RERA, 2016 and HRERA, 2017.

C. Relief sought by the complainants:

4. In view of the facts mentioned above, the complainants prays for the following relief:
- Restrain the respondent from cancelling the unit of the complainants and if cancelled than to reinstate/re allot the same.
 - Direct the respondent to raise demands from the complainants as per payment plan.
 - Direct the respondent to handover the possession of the unit.
 - Direct the respondent to charge delay payment charges as per Rera Act.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.
- I. That the respondent denies each and every statement, averment, submission and contention set forth in the complaint to the extent the same are contrary to or are inconsistent with the true and complete

facts of the case or the submissions made on behalf of the respondent in the present reply.

- II. That the complainants have approached the Authority with malafide intentions and has suppressed and concealed material and vital facts which have a direct bearing on the very mentality of the purported complaint and if there had been a disclosure of these material facts, the question of entertaining the purported complaint would not have arisen. It is settled law as held by the Hon'ble Supreme Court in S. P. Chengalvaraya Naidu Vs. Jagannath that non-disclosure of material facts and documents amounts to fraud not only against the opposite parties but also against the court. Reference may also be made to the decisions of the Hon'ble Supreme Court in Dilip Singh versus State of U.P. and Amar Singh versus Union of India, which is also being followed by the Hon'ble National Consumer Dispute Redressal Commission in the case of Tata motors versus Baba Huzoor Maharaj.
- III. That the said booking has been brought by Sathiya Homez to the respondent, and the respondent was in the belief that all the documents, including the plot buyer agreement have duly been executed and signed by the alleged company. Various reminders have already been given to the complainants that the alleged company has executed agreements and issued allotment letters and agreements without knowledge of respondent's company and the respondent also waited for their response in order to continue the booking after executing and signing fresh documents but the complainants did not respond to any of the reminder and not even tried to contact the respondent company despite sending all these reminders. The respondent is only having the

application form signed by the complainants and no other document is there with him.

- IV. That the respondent tried his level best to approach the complainants after getting to know the fraud done by Sathiya Homez and in good gesture, also did not cancel the booking and asked the complainants to constitute and establish a contractual relationship between the respondent and the complainants but the complainants paid no heed towards it and even after several reminders from the respondent, the complainants did not respond to any of them.
- V. The respondent waited for approximately 6 months for complainant's reply and continued the booking and thus send all the demand letters but the complainants neither replied nor raised any query regarding any of them and did not even inform anything to the company about the plot buyer agreement.
- VI. That legal demand notice was sent to the complainants on 26.07.2022 but the respondent neither paid any amount nor raised any query regarding it and in fact stayed silent for about 4 Months and has now deliberately filed this complaint when the booking has been cancelled by the respondent upon seeing the price hike in the project of the respondent in order to harass.

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 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 complainants at a later stage.

F. Findings on the relief sought by complainants:

- i. Restrain the respondent from cancelling the unit of the complainants and if cancelled than to reinstate/re allot the same.
- ii. Direct the respondent to raise demands from the complainants as per payment plan.
- iii. Direct the respondent to handover the possession of the unit.

- iv. Direct the respondent to charge delay payment charges as per Rera Act.
10. The above mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
11. The complainants in the present complaint have submitted that they have booked a plot bearing no. 01 measuring 146.38 sq. yds. in the project of the respondent namely, 'Yash Vihar' situated at sector-5, Pataudi, Gurugram, Haryana. The respondent on 12.01.2022 issued a welcome letter to the complainants. The complainants have paid an amount of Rs. 7,86,522/- out of the total sale consideration of Rs. 37,75,261/-. The complainants further stated that the respondent despite receiving more than 10% of the total sale consideration, have failed to execute the builder buyer agreement which is in contravention of section 13(1) of the Real Estate (Regulation & Development) Act, 2016. That upon refusal to pay the amount without execution of builder buyer agreement respondent sent a legal notice dated 26.07.2022 and threatened the complainants regarding cancellation of the unit. Through present complaint, complainant seeks restraint from cancellation of the unit and if already cancelled seeks reinstatement of allotment.
12. The reply of the respondent is otherwise and has stated that the booking of the complainants was facilitated through a third party, sathiya homes, which allegedly executed the booking documents without the knowledge of the respondent. Further states that they waited for the complainants to come forward for execution of formal documents but the complainants did not cooperate. Despite this, the respondent issued demand letter on 17.04.2022, legal demand notice

on 26.07.2022 as well as public notice to which no response was received.

13. After considering the documents available on record as well as submissions made by the parties, the Authority observes that Section 13(1) of the Real Estate (Regulation & Development) Act, 2016 is relevant and reproduced hereunder for ready reference:

13. No deposit or advance to be taken by promoter without first entering into agreement for sale:-

(1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first 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.

14. In the present case, the complainants have made a payment of Rs. 7,86,522/- which is more than 10% of the total sale consideration. Despite this respondent has failed to execute builder buyer agreement. The respondent also never issued any letter for issuance of builder buyer agreement. It is the obligation of the builder/respondent to prepare, present and execute the builder buyer agreement but the respondent has failed to do so. Further, it is an admitted fact that the builder buyer agreement (BBA) was never executed by the respondent. The respondent however, contends that it raised demand upon the complainants. The Authority finds this submission to be untenable and devoid of merit. In the absence of a duly executed agreement, the complainants were not made aware of the agreed payment schedule, milestones, or due dates for payment. The BBA is the foundational document that governs the contractual obligations between the promoter and the allottee, and without its execution, the complainants cannot be deemed to be under any enforceable obligation to make payments beyond the booking amount.

15. Moreover, the respondent has attempted to shift the responsibility of non-execution of the builder buyer agreement onto a third-party namely Sathiya Homez, alleging that the said booking and related documentation were facilitated by them without the respondent's full knowledge or consent. However, this assertion is found to be inconsistent with the documents on record. The welcome letter dated 12.01.2022 was issued by the respondent itself directly in the name of the complainants thereby acknowledging and confirming the booking. The respondent cannot now claim ignorance of the transaction or disown its obligation. The respondent has also accepted payments from the complainants which proves that the legal relationship between the parties stands established. Any internal arrangement or communication gap between the promoter and its third-party representatives cannot be allowed to prejudice the rights of the allottees. Accordingly, the Authority finds no merit on the respondent's claim upon the involvement of Sathiya Homez and holds that such justification does not absolve the respondent of its statutory and contractual obligations under the RERA Act.
16. In view of the above stated facts, the respondent cannot cancel the unit of the allottees/complainants and if already cancelled respondent shall be liable to reinstate the unit in favour of the complainants. In case the originally allotted unit is no longer available the respondent shall offer an alternate unit of the same size, in similar location, and at the same price as earlier allotted within a period of 60 days from the date of this order.
17. The respondent-promoter is directed to enter into a registered agreement for sale w.r.t. the plot in question with the complainants

within a period of one month. The respondent is directed to issue revised statement of account after adjustment of delay possession charges, within the period of 30 days from the date of this order. Upon receipt of the revised statement of account, the complainants are directed to remit the outstanding dues, after adjustment of the delay possession charges, within a period of 30 days from the date of such receipt.


G. Directions of the authority

12. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed not to cancel the unit of the complainants/allottee and if already cancelled respondent shall be liable to reinstate the unit in favour of the complainants. In case the originally allotted unit is no longer available the respondent shall offer an alternate unit of the same size, in similar location, and at the same price as earlier allotted within a period of 60 days from the date of this order.
 - ii. The respondent-promoter is directed to enter into a registered agreement for sale w.r.t. the plot in question with the complainants within a period of one month.
 - iii. The respondent is directed to issue revised statement of account after adjustment of delay possession charges, within the period of 30 days from the date of this order. Upon receipt of the revised statement of account, the complainants are directed to remit the

outstanding dues, after adjustment of the delay possession charges, within a period of 30 days from the date of such receipt.

- iv. The respondent shall not charge anything from the complainants which is not provided under builder buyer agreement.
 - v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
18. Complaint as well as applications, if any, stands disposed off accordingly.
19. File be consigned to registry.




(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.07.2025

HARERA
GURUGRAM