

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

Complaint no. : 2669 of 2024
Date of complaint : 18.06.2024
Date of order : 08.08.2025

Mr. Jitendra Yadav

R/o: - H.No.5/26, Shivaji Nagar, Gurgaon, Haryana -
122001.

Complainant

Versus

Orris Infrastructure Private Limited.
Regd. Office at: J/10/5, DLF Phase-2, MG Road,
Gurugram, Haryana-122002

Respondent No. 1

Philby Real Estate
Regd. Office at: Town Square, 73J-1,
Central Corridor, Vatika India Next, Opposite Vatika,
Sector-83, Gurugram, Haryana-122004

Respondent No. 2

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Gaurav Bharadwaj(Advocate)
Charu Rustagi (Advocate)

Complainant
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. Project and unit 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:

Sr. No.	Particulars	Details
1.	Name of the project	Woodview Residencies, Sector-89 and 90
2.	Nature of the project	Plotted colony
3.	Registration No.	Registered vide no. 34 of 2020 dated 06.10.2020
4.	Unit no.	Plot no. B-III-28 (on page 32 of complaint)
5.	Area of unit	192. 48 sq. yds. (as per clause 1 of BBA at page 25 of complaint)
6.	Date of execution of buyer's agreement	15.11.2021 (A as per page 23 of complaint)
7.	Guarantee clause	9. That the First Party shall obtain license from the Director, Town and Country Planning, Haryana, Chandigarh within one year from the date of signing of the present Agreement, 10. That in the event the First Party fails to obtain licence within a period of one year from the date of signing of the present Agreement, the first party shall refund an amount of Rs. 40,95,012/- to the Second Party within 45 days from

		<i>the date of expiry of 12 months as mentioned hereinabove in paragraph no.9. In such an event the present Agreement shall stand terminated and Second Party shall have no right, title or interest in any plot and further shall have no claim in any manner whatsoever on the First Party.</i> (on page 27 of complaint)
8.	Due date of possession	15.11.2024(Fortune Infrastructure v. Trevor D'Lima)
9.	Total consideration	Rs. 96,24,000/- (as per page 25 of the complaint)
10.	Total amount paid by the complainant	Rs. 28,87,200/- (as per complaint page 26 of complaint)
11.	Undertaking of refund	20.02.2024-full refund of paid up amount (on page 33 of complaint) <i>Clause 5. We, further declare since we have received the full and final payment in respect of the said Plot, we shall not raise any claim in future over the said Plot. The Agreement dated 15.11.2021 in respect of the said Plot hereinafter stands cancelled and cannot be acted upon in any manner and for any purpose whatsoever and the same has been surrendered in the office of M/s Oms Infrastructure Pvt. Ltd.</i>
12.	Offer of possession	N/A

B. Facts of the complaint

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

- a. That the complainant, Mr. Jitendra Yadav is a respectable and law-abiding citizen residing at H.No.5/26, Shivaji Nagar, Gurgaon, Haryana - 122001.
- b. The respondent no.1 is Orris Infrastructure Pvt. Ltd, a private limited company incorporated under the companies act, 1956 and is in the business of providing real estate services. The respondent no.2 Philby Real Estate is engaged in providing residential and commercial properties in Delhi NCR.
- c. That the present complaint highlights the misconduct on part of the respondent company and the injustice met out to buyers. A stringent action against the said respondent company for defrauding the buyers and for violation of the provisions entailed in Real Estate Act, 2016 is sought.
- d. That on 03.07.2021, the complainant received an offer through text message from person named Vikas Yadav claimed himself to be the authorized representative of "Philby Real Estate" regarding availability of plot in a project by the name Residencies by "M/s Orris Infrastructure Pvt Ltd. ", located in Sector - 89 & 90, Gurugram, Haryana. It is further to note that respondent no. 2 also assured that the Philby Real Estate is a channel partner of respondent no.1 i.e. Orris Infrastructure. Subsequently, the complainant contacted the same person and inquired about the availability of the plot which was being offered at a given price through their advertisement. Furthermore, Mr. Vikas Arora was also introduced through Respondent no.2 as their representative and claimed that the respondent no.1 company will be purchasing more land for upcoming additional phase in the aforesaid project and shall establish a plotted

colony. The representative named Vikas Arora also said that the Respondent is initiating the process of purchasing adjacent land and shall also ensure expansion of licensed land and also showed renewal of license no. 59 of 2013 dated 16.07.2013 vide memo bearing no. LC-2638/Asst.(AK)/2019/21217 Dated 04.09.2019 and License no. 115 of 2019. Furthermore, Mr. Vikas Arora claimed that until now, the project has not been registered with RERA and gave assurance that it will soon be registered.

- e. That subsequently, the respondent no.1 company through its channel partner i.e. "Philby Real Estate" contacted the complainant where respondents gave false assurances and misleading representations by sharing maps of the plotted colony and their work plan on the afore-mentioned project.
- f. That the respondents also requested the complainant to book the unit by paying an amount of 5,00,000/- via cheque bearing no. 000203 dated 12.07.2021 initially and further requested to make the payment of Rs. 23,87,200/- on or before execution of agreement to Sell. Believing upon the false assurance of the respondents, the complainant has paid the said remaining amount Rs. 9,00,000/- via cheque bearing no. 000204 dated 24.08.2021, Rs. 5,00,000/- via cheque bearing no. 000205 dated 24.08.2021, Rs. 10,00,000/- via cheque bearing no. 11.11.2021 and Rs. 9,87,200/- via cheque bearing no. 000214 dated 12.11.2021 totalling to Rs. 28,87,200/-. Subsequently, a builder buyer agreement dated 15.11.2021 has been executed between the complainant and the respondent no.1.
- g. That the respondent has allotted the plot no. B-III-28 admeasuring 192.48 sq. yd. at a Basic sale consideration of Rs. 50,000/- per sq. yd.

However, no formal allotment letter has ever been sent to the complainant regarding allotment of the plot. The same fact can be substantiated through builder buyer agreement also wherein it had been agreed that formal letter of allotment shall be made only post all essentially required sanction/approvals/ permissions/ registrations, etc.

- h. That as per the clause (B) of the said agreement, the Respondent Company has been granted License No. 59 of 2013 dated 16.07.2013 for 101 Acres and License No. 115 of 2019 dated 12.09.2019 for 13.425 acres by the Director, Town and Country Planning, Haryana. Furthermore, the Respondent has also claimed that the Respondent is in process of acquiring land for upcoming additional phase of 'Woodview Residences' and shall apply and obtain licenses/registrations/sanctions and approvals etc. for development of the additional phase in the aforesaid project from the concerned competent authority. It is further to note that the agreed unit as per the site plan is situated within the alleged upcoming additional phase of 'Woodview Residences' for which the license was to be obtained from the concerned departments.
- i. That the complainant took 30% of the total sale consideration and assured that in the event the respondent fails to obtain license within a period of one year from the date of signing of the present agreement dated 15.11.2021, the respondent shall refund an amount of Rs. 40,95,012/- to the complainant within 45 days from the date of expiry of 12 months as mentioned herein above in paragraph 9 of the said builder buyer agreement. The respondent has also assured that once the respondent received License for the said project from TCP

than allotment shall be done for the unit as mentioned in the site plan and also marked the plot as agreed to allot and subsequently, the payment shall be done as per the payment plan.

- j. That after one year of making payment and execution of the aforementioned agreement, no calls/emails or any kind of communication were received by the complainant. The complainant even made several visits to the project site but to the utter shock of the complainant, no development was there in the project since its inception i.e. at the time of booking of the said project. The complainant, after seeing no development on the construction site, visited the respondent company and also met with a person named Mr Sanjay Yadav. Both assured the complainant regarding the execution of the allotment letter and the speedy completion of work at the project site. However, the respondent company failed in handing over allotment letter in accordance with the said agreement.
- k. That though the booking of the said plot and the agreement for the same was executed in 2021, the allotment letter for the plot in question was supposed to be executed within one year, but to no avail as no concrete reply was given by the said respondent company even after the lapse of two years. Thereafter, the complainant kept contacting the respondent on several occasions seeking an update on the construction status and if the allotment letter has been executed, but all in vain. The complainant after the expiry of one year from the date of execution of the builder buyer agreement visited the office of the respondents but neither the agreed unit was allotted to the complainant nor the agreed amount has been refunded to the complainant as per builder buyer agreement.

- l. That the complainant throughout this period, regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, the representatives of the respondent on every occasion made false and vague assurances that the allotment letter will be executed soon and kept on prolonging the matter unjustifiably without any convincing reason thereby inflicting great mental agony and hardship upon the complainant.
- m. That in the month of March, 2023 the complainant met with a person named Sanjay Yadav and enquired about the allotment of the Plot but to its contrary Sanjay Yadav had told to keep patience and also assured that within a period of 10 days the license of the extended project shall be obtained and RERA registration shall also be obtained within a period of three months.
- n. That the complainant called Vikas Arora via phone and text him over whatsapp on 4th September to know the status of the project and asked him to meet but Vikas Arora didn't answered the calls and even he didn't inform the complainant that the allotment letter has already been provided in August and September and he assured that the complaint will get the allotment letter.
- o. That subsequently, the complainant approached in December Mr. Vikas Yadav in regard with getting updates on the said project, whereby, Mr. Vikas Yadav told the complainant that all the allotments for the said project have already been made in the month of August/September. Upon hearing the same, the complainant got startled as earlier it has been assured by the respondents that the allotment pertaining to the said project shall be done within a period

of one year from the date of execution of the builder buyer agreement dated 15.11.2021 but to its contrary the allotment of the Plots were done without any knowledge and notice of the complainant. The complainant also approached Mr. Sanjay Yadav and narrated his ordeal and raised questions regarding leaving the complainant from issuing the allotment letter for the unit. the complainant also raised his concern regarding non receiving of any call from either of the respondents regarding allotment of the unit but to no avail.

- p. That on 20.12.2023, the respondents have clearly refused to allot plot to the complainant but after persistent demands of the complainant for the same, the respondents offered other plot bearing admeasuring 500 sq. yd. The said other plot was offered by Mr. Sanjay Yadav to which the complainant refused and requested to allot the same plot ad measuring 192.48 sq. yds. offered earlier by the respondent company. The respondent company later offered a plot bearing no. E-227 admeasuring 374 sq. yd. But the said offer was not accepted by the complainant as the abovesaid payment amounting to Rs. 28,87,200/- was made for the agreed plot bearing no B3-28 Admeasuring 192.48 sq. yd. The respondents even offered the units admeasuring 500 sq. yd. On sharing basis with other unit holders to which the complainant clearly denied. Furthermore, the respondents even increased the price of shared units from Rs. 50,000/- Per sq. yd. to Rs. 75,000/- Per sq. yd. If in case the complainants wished to purchase the shared unit from other allottee. The said acts of the respondents clearly indicated that the unit was not allotted to the complainant so that the same can be sold at higher rates. However, the respondents have illegally used the hard-earned money of the

complainant in order to cause a wrongful loss to the complainant and wrongful gain to themselves. The complainant kept painstakingly pursuing the respondent to execute the allotment letter for the plot measuring 192.48 sq. yd, but all in vain.

- q. That on 20.02.2024, the respondent company called the complainant and threatened him to forfeit the paid amount of Rs. 28,87,200/- in case the complainant refused to accept cheque of Rs. 28,87,200/-. The complainant left with no other option received the cheque bearing no. 007417 dated 23.02.2024 amounting to Rs.28,87,200/ and also signed a document titled as undertaking dated 20.02.2024 wherein it has been mentioned that no further claim shall be raised by the complainant.
- r. That the complainant left with no other option had to receive the said cheque as the respondent had also threatened the complainant to forfeit the paid amount of Rs. 28,87,200/- if in case the said cheque has not been received by the complainant. It is pertinent to note that at present the unit price of the complainant is Rs. 1,10,000/- (market price 1,25,000) Per Sq. Yrd. And due to the same reason, the respondents have forcibly returned the money received to the complainant. The same acts of the respondents has caused an immense loss to the complainant as the respondent illegally kept the hard earned money of the complainant with them and later on refrained from allotting the unit and then forced the complainant to receive the paid money by threatening the complainant to forfeit the same and the said acts of the complainant is illegal, arbitrary and with a sole motive of causing wrongful loss to the complainant.

- s. That the respondent simply duped the complainant of his hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of the respondent have resulted in financial hardship, mental distress, pain and agony to the complainant. Furthermore, the respondents had illegally advertised about the said project and also took money on account of selling the said plot to the complainant without having obtained the TCP license and RERA registration, and the same is a clear case of violation of the RERA Act.
- t. That the present complaint has been filed to seek a refund of the agreed remaining amount of Rs. 12,07,812 along with interest at the prescribed rate in accordance with RERA, 2016 and HRERA, 2017 from the date of payments till the date of actual receipt of refund.
- u. That the promoter is liable to adhere to the obligations cast upon him.
- v. That the promoter is liable to pay interest to the allottees of an apartment.

C. Relief sought by the complainants: -

- 4. The complainants have sought following relief(s):
 - i. Direct the respondent to refund Rs. 12,07,812/- along with interest as per RERA ACT.
 - ii. Direct the respondent to make the payment of Rs. 7,55,900/- on account of interest at the prescribed rate from the payment till 28.02.2024, i.e the date of refund of the paid amount of Rs. 28,87,200/-
 - iii. Direct the respondent to make the payment of Rs. 5,58,211/- on account of interest on Rs. 40,95,012/- from 15.11.2022 till 28.02.2024.
 - iv. Impose a penalty upon the respondent for selling the project without obtaining a license from the Authority.
- 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

- I. The complainant has approached this Authority with unclean hands and has tried to mislead this Authority by making incorrect and false averments and stating untrue or incomplete facts. The complainant has suppressed and misstated the facts. On this short ground alone, the complaint is liable to be dismissed.
 - II. The complaint filed by the complainant is baseless and is not tenable in the eyes of the law; therefore, the complaint deserves to be dismissed at the threshold.
 - III. The issues so raised in this complaint are not only baseless but also demonstrate an attempt to arm-twist the answering respondent into succumbing to the pressure so created by the complainants in filing this complaint before this forum and seeking the reliefs which the complainants are not entitled to as against the answering respondent.
 - IV. The complainants herein in the present complaint do not fall under the category of "ALLOTTEE".
 - V. The complainants cannot hold the respondent liable for anything as per the doctrine of privity of a contract. It is submitted that the answering respondent has neither issued any allotment letter to the complainants nor executed any agreement.
6. 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 submission made by the complainants.

E. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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 refund Rs. 12,07,812/- along with interest as per RERA ACT.

F.II Direct the respondent to make the payment of Rs. 7,55,900/- on account of interest at the prescribed rate from the payment till 28.02.2024, i.e the date of refund of the paid amount of Rs. 28,87,200/-.

F.III Direct the respondent to make the payment of Rs. 5,58,211/- on account of interest on Rs. 40,95,012/- from 15.11.2022 till 28.02.2024.

F.IV Impose a penalty upon the respondent for selling the project without obtaining a license from the Authority.

11. The above-mentioned reliefs sought by the complainant are being taken together, as the findings in one relief will necessarily affect the outcome of the others and the same being interconnected.
12. The factual matrix of the case reveals that the complainant was allotted Plot No. B-III-28 admeasuring 192.48 sq. yds. (160.94 sq. mtrs.) in the project titled "*Woodview Residencies*" situated at Sector 89-90, Gurugram, Haryana. The said project pertains to a plotted colony proposed to be developed by the respondent company. The total sale consideration as per the record is ₹96,24,000/-, out of which the complainant paid a sum of ₹28,87,200/- to the respondent. A buyer's agreement was executed between the parties on 15.11.2021, as annexed at page 23 of the complaint.
13. The Authority notes that the said agreement was executed prior to the grant of the requisite license and prior to the registration of the project under the Real Estate (Regulation and Development) Act, 2016. As per Clause 9 and 10 of the Agreement, the promoter was obligated to obtain a licence from the Director, Town and Country Planning, Haryana, within a period of one year from the date of signing of the agreement. It was further stipulated that, in the event the licence was not obtained within the said one-year period, the promoter would refund an amount of ₹40,95,012/- to the second party within forty-five days from the expiry of the one-year period, whereupon the agreement would stand terminated

automatically, and the second party would cease to have any right, title, or interest in the subject plot. The relevant clauses are reproduced hereunder:

9. *That the First Party shall obtain license from the Director, Town and Country Planning, Haryana, Chandigarh within one year from the date of signing of the present Agreement,*
10. *That in the event the First Party fails to obtain licence within a period of one year from the date of signing of the present Agreement, the first party shall refund an amount of Rs. 40,95,012/-*

14. The above clause clearly establishes that the agreement between the parties was contingent and conditional, dependent upon the future grant of license and registration of the project under the Act. The agreement did not confer upon the complainant any vested right of allotment in a "registered project" as an allottee under Section 2(d) of the Act. Consequently, the Authority observes that the said contractual arrangement, being pre-licensing and pre-registration in nature, cannot be treated as a *agreement for sale* within the meaning of Section 2(c) of the Act. The relevant section is reproduced hereunder:

2. Definitions. -

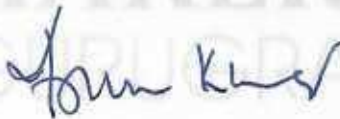
- (c) *"agreement for sale" means an agreement entered into between the promoter and the allottee;*
 - (d) *"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise 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;*
15. The record further reveals that the respondent refunded the entire paid-up amount of ₹28,87,200/- vide cheque no. 007417 dated 23.02.2024 drawn on HDFC Bank, Gurugram, Haryana, which was duly received and acknowledged by the complainant. In this regard, an *Undertaking* dated 20.02.2024 has also been placed on record wherein the complainant has

unequivocally declared that he has received the said amount as full and final settlement, and that he shall not raise any further claim over the said plot. It is also stated therein that the agreement dated 15.11.2021 "stands cancelled and cannot be acted upon in any manner or for any purpose whatsoever" and that the same has been surrendered in the office of the respondent company.

16. The Authority takes note of the said undertaking and observes that the refund has been made and accepted by the complainant voluntarily and without any coercion. Once the complainant accepted the refund and executed the undertaking, the contractual relationship between the parties stood concluded, and the complainant was left with no subsisting right or interest in the subject property. Therefore, the present complaint, which seeks refund of an additional amount of ₹12,07,812/- and interest thereon, is devoid of any legal foundation and cannot be sustained under the provisions of this Act.
17. The Authority further observes that the subject agreement was executed in contemplation of future licensing and registration of the project, and thus, it cannot be construed as a valid allotment or agreement for sale in a "registered real estate project" as required under the Act. The definition of "real estate project" under Section 2(zn) presupposes the existence of a validly registered project with requisite approvals. In the present case, the contract itself envisaged that the "Second Party's share plot shall be assigned only after grant of license and RERA registration," which condition never materialised. Accordingly, no enforceable right as an "allottee" within the meaning of Section 2(d) of the Act ever accrued to the complainant.
18. In light of the foregoing discussion, the Authority concludes that:

- (i) The agreement dated 15.11.2021 is a contingent, pre-registration contract and cannot be treated as a builder-buyer agreement under the Act;*
- (ii) The complainant ceased to be an allottee upon accepting the refund on 20.02.2024; and*
- (iii) The Authority lacks jurisdiction to entertain or adjudicate disputes arising out of such pre-registration funding arrangements.*

19. Consequently, the reliefs sought by the complainant for refund of ₹12,07,812/- and interest thereon are not maintainable before this Authority, as they emanate from a contractual arrangement not being an agreement for sale and executed prior to the registration of the project. However, the complainant shall be at liberty to seek appropriate relief, if so advised, before the competent forum having jurisdiction in accordance with law.
20. In view of the foregoing reasons, the Authority finds no merit in the present complaint and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.
21. Files be consigned to registry.

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.08.2025