

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

Complaint no.	:	4329 of 2024
Date of complaint	:	26.09.2024
Date of order	:	12.12.2025

1. Anchal Verma
2. Gaurav Verma
R/o: - 95, Parmarth Apartment,
D Block, Vikaspuri, Delhi - 110018

Complainants

Versus

1. M/s 4S Developers Pvt. Ltd.
Office at: ILD Trade Centre, Sohna Road, Gurugram
2. Chahat Homes
Office at: - 6th Floor, M3M Teepoint,
South Block, Sector-65, Gurugram

Respondents

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Himanshu Gautam (Advocate)
Sh. Dhruv Rohtagi (Advocate)

Complainants
Respondent no.
1

ORDER

1. The present complaint has been filed by the complainants/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 thereunder 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	"Aradhya Homes-4S", Sector 67A, Gurugram
2.	Nature of Project	Residential
3.	DTCP license no. and validity status	Not available
4.	Rera registered/ not registered and validity status	Lapsed project 27 of 2020 dated 22.06.2020 valid upto 30.09.2021
5.	Unit No.	4138, Top Floor [Page 19 of complaint]
6.	Expression of interest	19.09.2023 [Page 19 of complaint]
7.	Date of buyer agreement	Not executed
8.	Possession clause	N/A
9.	Due date of possession	Cannot be ascertained
10.	Amount paid by complainants	Rs. 5,00,000/- [As per payment receipts on page 21 and 23, 24 of complaint]

11.	Occupancy Certificate	11.04.2022 (page 18 of reply)
12.	Offer of possession	Not Offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -
 - I. That the respondent no.1 namely, 4S Developers Private Limited, launched and advertised its project named as "Aradhya Homes" situated at Sector 67A, Gurugram and invited applications from the prospective buyers and also approached prospective buyers through its channel partners.
 - II. That in August 2023, the respondent no. 1 approached the complainants through its channel partner i.e. Mr. Sukhbir Kaushik of respondent no. 2, namely 'Chaahat Homes Infratech Private Limited' and lured the complainants to invest in their project by making huge presentations and tall claims about the said project and had shown a rosy picture of the dream home to the complainants.
 - III. That the respondents demanded Rs. 5,00,000/- to reserve a unit of the choice of the complainants in the above said project. Subsequently, on 04.08.2023, the complainants Ms. Anchal Verma and Mr. Gaurav Verma filled and signed an "Expression of Interest" form provided by the respondents and submitted a cheque of Rs. 4,00,000/- dated 05.08.2023 to book a unit bearing unit no. 4138 - Top Floor in the above said project namely "Aradhya Homes" situated in Sector 67 A, Gurugram. Later respondents created pressure to pay the balance

amount of Rs. 1,00,000/- immediately and therefore the complainants online transferred amounts of Rs. 50,000/- on 05.08.2023 and again Rs. 50,000/- on 06.08.2023 and thus paid Rs. 5 Lacs in total to the respondent no. 1. But surprisingly even after receiving payments from the complainants respondent no. 1 never issued any payment receipt to the complainants, which clearly shows malafide intention of the respondents from the very beginning.

- IV. That at the time of booking, it was agreed between the complainants and the respondents that the cheque would not be credited without complainant's prior permission and complainants can withdraw the "Expression of Interest" at any time before allotment or execution of agreement and full booking amount would be refunded to them without any deduction if they cancel/withdraw their "Expression of Interest" before allotment or execution of agreement.
- V. That in expression of interest, it was also clearly mentioned that the respondent no. 1 will execute agreement by 19.09.2023, but even after that respondent no. 1 didn't fulfil its legal obligations to allot the said unit bearing no. 4138-Top Floor to the complainants till the present day and furthermore agreement is also not executed even till today.
- VI. That complainants were in urgent need of money to bear expenses of their father's heart surgery but even after that respondent not paid any attention to the complainant's request of refund.
- VII. That after receiving Rs. 5 Lacs from the complainants both the respondents maintained complete silence and not even bothered to issue payment receipts. Moreover, respondents didn't give any other information regarding the unit under question like total sales consideration, area of the unit and possession date etc. and despite

multiple email requests, respondent no. 1 has neither refunded amount paid by them nor allotted the unit booked by the complainants.

- VIII. That the complainants came to know that the respondent no. 1 had already committed such acts with other buyers too and is an habitual defaulter. Also a number of complaints had already been filed before this Hon'ble Authority, in which this Hon'ble Authority ordered the respondent no. 1 to refund the entire amount paid by the complainants alongwith interest.
- IX. That under these circumstances, the complainants no longer have faith in the respondents and do not want to continue with their "Expression of Interest" and further want refund of the entire booking amount of Rs. 5,00,000/- paid by them to the respondent no. 1 alongwith interest at the rate prescribed as per provisions of Section 12 and Section 18 of RERA Act, 2016 and Rule 15 and 16 of RERA Rules, 2017.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. Direct the respondents to refund the entire amount of Rs. 5,00,000/- along with interest at the prescribed rate calculated from the date of payment till the realisation of amount.
5. On the date of hearing, the authority explained to the respondents/promoters 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 no. 1.

6. The respondent no. 1 contested the complaint by filing reply on the following grounds: -
- I. That the complainants have got no locus standi or cause of action to file the present complaint and therefore the present complaint ought to be dismissed. The complainants had approached the respondents to book a residential unit in the project Aradhya Homes-4S, developed by the respondent no.1.
 - II. That the complainants have defaulted in their obligation of executing the buyer's agreement as per the duly signed expression of interest dated 05.08.2023 between the parties i.e., complainants and respondent no.1 and are now seeking refund of the entire earnest money paid to the respondents. The complainants have failed to adhere to the terms and conditions of expression of interest without there being any default on the parts of the respondents.
 - III. The present complaint is based on an erroneous interpretation of the provisions of the Acts as well as an incorrect understanding and assertion of the terms and conditions of the Expression of Interest, executed between the parties out of their own free will and is liable to be dismissed on this ground alone. The expression of Interest is a binding contract executed between the parties with open eyes, it was the term of the said contract wherein the complainants were allotted a specific unit with a categorical understanding and condition in clause 7 therein, which stipulated forfeiture of booking amount as earnest money in event of default as determined by the respondents.

- IV. That the complainants are estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants himself had agreed and accepted the terms and conditions of the booking, by virtue of the terms of expression of interest dated 05.08.2023. The complainants never objected to the said condition and therefore, is now estopped from raising any grievance against the said condition of expression of interest. The reliefs sought in the present false and frivolous complaint are barred by estoppel.
- V. That the complainants are not an "Allottee" but an Investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. Without prejudice, it is submitted that it is the own case of the complainants that neither there is any allotment letter nor any buyer's agreement was executed and hence it is submitted that the complainants are not 'allottee' as defined in the RERA Act, 2016. Thus, it is most respectfully submitted that this Hon'ble Regulatory Authority has no jurisdiction to adjudicate the present complaint which is in the nature of contractual dispute.
- VI. That the complainants had approached the respondents and expressed an interest in booking an apartment, in the project developed by the respondent no.1, "Aradhya Homes-4S" at Sector 67A, Ansal Versalia, Gurgaon, Haryana, 122102. The complainants paid Rs 4,00,000/- on 05.08.2023 vide cheque bearing no. 00004 and Rs 50,000/- through electronic payment and further paid Rs 50,000/-. That pursuant to the payment of the said booking the complainants, an expression of interest dated 05.08.2023 was

signed between the parties. The expression of interest specifically contains the proposed date of execution of buyer's agreement with the respect to the unit booked by the complainants i.e., unit no. 4138-Top floor as well as terms and conditions agreed between the parties.

- VII. That the complainants prior to approaching the respondents, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, that the complainants took an independent and informed decision to purchase the said unit, uninfluenced in any manner by the respondents. The complainants consciously and willfully opted to execute the buyer's agreement and to abide by the terms and conditions of expression of interest dated 05.08.2023. The complainants as per the terms and conditions of Expression of Interest dated 05.08.2023, also agreed to pay the sale consideration as agreed between the parties and specifically agreed to bound by the terms of the buyer's agreement to be executed after the allotment. That the respondents had no reason to suspect bonafide of the complainants.
- VIII. That the complainants are seeking refund and are trying to wriggle out of the legally binding terms of contract as agreed between parties in the expression of interest dated 05.08.2023. It is submitted that the complainants are seeking refund by cancelling the said unit booked by the complainants allegedly on "unavoidable reasons" as mentioned in the complaint. The complainants has agreed to the specific terms of the expression of interest foreseeing

all past, present and future circumstances and therefore cannot wriggle out of a binding contract.

- IX. The respondents have diligently performed his obligations and there is no default or lapse on the part of the respondents. The occupation certificate of the said project had already been received on 11.04.2022, prior to the booking in the said project by the complainants. Therefore, the project was complete and the respondents were ready and willing to perform his part of obligations as per the terms and conditions of expression of interest dated 05.08.2023. Thus, no fault or lapse can be attributed on the respondents.
- X. That the respondent is entitled to forfeit the entire booking amount as earnest money because the complainants have unilaterally withdrawn from the booking of the said unit and have refused to abide by the terms and conditions of the expression of interest duly signed between the parties. The respondent is entitled to forfeit the booking amount as per clause 7 of the expression of interest dated 05.08.2023.
- XI. That as per Haryana Real Estate Regulatory Authority, Gurugram, (Forfeiture of Earnest Money by the builder 11(5) of 2018, the builder is entitled for deduction of 10% of sale consideration as the earnest money.
- XII. That the respondent has acted strictly in accordance with the terms and conditions of the expression of interest dated 05.08.2023 between the parties. There is no default or lapse on the part of the respondent. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

XIII. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.

7. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 allottees 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory

authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

- I. Direct the respondents to refund the entire amount of Rs. 5,00,000/- along with interest at the prescribed rate calculated from the date of payment till the realisation of amount.

14. The complainants booked a unit in the project of the respondent no. 1 namely, Aradhya Homes 4S, situated at Sector-67 A, Gurugram. The complainants signed ^{an} expression of interest on 19.09.2023 and paid an amount of Rs. 5,00,000/- to the respondent no. 1.
15. It is also an undisputed fact that no allotment letter was issued by the respondent no. 1 in favour of the complainants and no builder buyer agreement was executed between the parties. Thus, the transaction between the parties never progressed beyond the stage of an expression of interest and did not culminate into allotment of any plot, apartment or building.

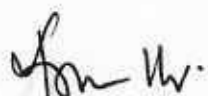
16. The respondent no. 1 has contended that the complainants failed to approach the respondent no. 1 for execution of the allotment letter and builder buyer agreement and therefore, the booking was cancelled and the amount paid was forfeited. The complainants, on the other hand, have sought refund of the amount paid along with interest. However, before examining the merits of the case, it is necessary to determine whether the complainants fall within the definition of allottee or not under the Real Estate (Regulation and Development) Act, 2016. Section 2(d) of the RERA Act, 2016 defines an "allottee" as under:

"...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent."

14. As per Section 2(d) of the RERA Act, 2016, an "allottee" means a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. In the present case, admittedly no allotment of any unit was ever made in favour of the complainants. Mere execution of an Expression of Interest and payment of a booking amount, in the absence of an allotment letter or builder buyer agreement, does not confer the status of an allottee upon the complainants.
15. This Authority further observes that for a legally enforceable contract to come into existence, there must be consensus ad idem on essential terms such as identification of the unit, consideration, payment schedule, rights and obligations of the parties which are ordinarily crystallized through an allotment letter and a builder buyer

agreement. In the absence of such documents, no concluded contract for sale came into existence between the parties.

16. Since no concluded contract was formed and no allotment was made, the dispute raised by the complainants essentially relates to refund of money paid pursuant to an Expression of Interest, which is a matter falling outside the scope and jurisdiction of this Authority under the RERA Act, 2016.
17. In view of the above facts and circumstances, this Authority holds that the complainants do not fall within the definition of "allottee" as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Consequently, the present complaint is not maintainable under the provisions of the Act and is accordingly dismissed with liberty to the complainants to avail appropriate remedies in accordance with law before the competent forum.
18. Complaint as well as applications, if any, stands disposed off accordingly.
19. File be consigned to the registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.12.2025