

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

Complaint no. :	829 of 2025
Date of Filing of complaint:	07.03.2025
Date of Decision:	31.10.2025

1. Shalini Tyagi

2. Kunal Tyagi

Both R/o: 3486, Raja Park, New Delhi-110034

Complainants

Adhikaansh Realtors Private Limited

Address: Unit no. SB/C/2L/office/017A, M3M Urbana sector-67, Gurugram-122102

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sunil Kumar

Ms. Shriya Takkar

Advocate for the complainants

Advocate for the respondent

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 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 of the project	Smartworld Gems, Sector-89, Gurugram
2.	Unit no.	NA
3.	Unit area admeasuring	NA
4.	Allotment letter	Not issued
5.	Buyer's agreement	Not executed
6.	Possession clause	NA
7.	Due date	NA
8.	Basic sale consideration	NA
9.	Amount paid by the complainants	Rs. 10,67,250/- (As alleged by both the parties)
10.	Amount refunded by respondent to complainants	Rs. 10,67,250/- on 15.10.2024
11.	Occupation certificate	NA
12.	Offer of possession	NA

B. Facts of the complaint

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

I. That the respondent "M/s Adhikaansh Realtors Pvt. Ltd." Company incorporate under Company's Act, 2013 launched "Smart World Gems" situated at Sector-89, Gurugram. Residential project approved by DTCP Haryana, Chandigarh vide license bearing no. 32 of 2021 dated 03.07.2021 for develop and maintain residential apartment/

plots on said land.

II. That the respondent advertised a sanctioned plan, model, map, lay out, specifications and designs etc. of above project and apartments/ shops to be built for delivery to buyers through various advertising means, prospectus and modes to public at large and invited applications from public to invest and buy the apartments, shops etc. in above said project.

III. That on above statements and documents produced by respondent company the complainants impressed by glitz advertisement of the project contacted to company office to get more information about the project, its prospective, future beneficial and other terms and conditions. Company office requested the allottee to come to its office. The allottee met to a company agent / nominee at company office.

IV. During this meeting, company representatives produced, displayed and disclosed the sanctioned plan of the said project and also sanctioned layout, design, map and specifications etc.

V. The complainants impressed by the glitz advertisement booked a unit on dated 07.01.2022 for residential apartment and booking amount of Rs. 3,00,000/- was paid and a PDC cheque amount Rs. 7,67,250/- was provided as demanded by the respondent, which was remit from complainants account by 30.01.2022.

VI. Further, the complainants wrote an email to the respondent vide dated 24.01.2022. Since from the booking date the complainants kept following up with the respondent for confirmation of booking, however post multiple follow ups the same was not shared by the respondent end. After multiple follow ups and phone calls an email from customer care department of the respondent on 30.01.2023 was

shared for payment and booking confirmation.

VII. This comes under allotment through an email by the respondent in favour of the complainants.

VIII. Hence, as booking was made and payment acknowledgement share through an email by the respondent and allotment of unit no. T-19C confirmed through an email by the respondent, hence, allotment was made by and acknowledge by respondent.

IX. That the complainants wrote several emails as well tried to connect with the respondent through phone calls and requested for further documentation for competitions of documentation and booking formalities as 10% of BSP was already paid and demanded by the respondent company but allotment and other formalities was not initiated by their end.

X. Although, the complainants tried and raised objections for arbitrary revised super area and BSP increase @ 7500/- sq. ft. instead of already booked @ 6700/- sq. ft. but at last when there is no hope and no positive rays came then with broke heart the complainants agreed to pay additional amount as demanded by the respondent in month of Sep - Oct 2024.

XI. That further, on 24th October 2024 without any communication and intimation from the respondent end the original booking amount against unit T-19C of Rs. 10,67,250/- was credited back to the complainants account.

XII. In light of above facts, cancellation of said unit stands arbitrary, illegal and with malafide intention by the respondent.

XIII. That application money a sum of Rs. 10,67,250/- was taken by the respondent on dated 15.01.2022 and after chasing for allotment,

agreement execution the respondent befooled complainants by stating "Thode din main ho jayega Sir – Aap Tention kyu lete ho, Aapka pura khyal hai company ko".

C. Relief sought by the complainants:

4. In view of the facts mentioned above, the complainants prays for the following relief:
 - i. Direct the respondent to offer legal and valid possession including all the amenities as committed in the brochure of the unit.
 - ii. Instruction for registration of BBA in favour of complainants as per booked and confirmed unit.
 - iii. Direction to obey the MOU which was executed between company and the complainants. Interest for every month of delay at prevailing rate of interest.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.
 - I. That the complainants approached the respondent and expressed their interest to book a unit in the project i.e., Smartwold Gems, Sector-89, Gurugram and on their own free will paid an amount of Rs. 10,67,250/- in 2 instalments.
 - i. First, by way of online payment from Razor pay Payment Gateway for an amount of Rs. 3,00,000/- which was paid on 07.01.2022.
 - ii. Second, by way of cheque of Rs. 7,67,250/- on 31.03.2022.
 - II. The complainants were well aware of their duty to come forward to select the unit, confirm the booking, and complete all booking formalities, including but not limited to depositing 10% of sales consideration, selecting the unit, and finalizing the payment plan. The

complainants despite being well aware of their obligations, failed to come forward to complete the booking formalities.

- III. Since the complainants failed to complete the booking formalities including but to limited to depositing 10% of sales consideration and execute all requisite documents as result of which the said booking could not crystalize into allotment. Thus no unit was ever allotted to the complainants especially in a purely commercial transaction like the present one.
- IV. That the respondent company being a customer oriented company, to bring closure to the matter, refunded the entire amount deposited of Rs. 10,67,250/- vide bank transfer on 15.10.2024.
- V. Thus, the entire amount deposited by the complainants stands refunded to the complainants before filing of the present complaint and the same has been accepted by the complainants at that point of time without any protest or demur.
- VI. That as far as unit bearing no. T-19C is concerned the same stands allotted in favor of Mr. Sagar Kathuria and Mrs. Monika Makhija vide allotment letter dated 24th February, 2025. Thus the present complaint is infructuous.
- VII. The complainants does not fall under the definition of allottee as defined under Sec 2(d) of RERA Act, 2016. That merely applying for unit or showing interest in the company is nowhere a binding contract between the parties and it is merely an offer by the complainants. It is further stated that the terms and conditions for finalizing the booking and allotment of a unit was explained to the complainants and they were all aware that the booking amount with respect to the project Smartworld Gems is 10% of the total sale consideration of the unit and

that the acceptance of the booking and allotment of a unit were contingent on the applicants making the complete payment of the booking amount, i.e. 10% of the total sale consideration and that too well in time.

VIII. That the complainants have blatantly failed to make the payment of the requisite booking amount which was a condition precedent for the company to accept the offer of the complainants towards booking of a unit, thus failed to complete the booking formalities and further get the unit allotted.

IX. That the respondent cannot be held liable for the wilful default of the complainants. Since, the complainants were not coming forward to select the unit and deposit the balance booking amount amounting to 10% of sales consideration therefore the respondent was constrained to cancel the booking of the complainants on 15.10.2024 and refund the amount deposited.

X. That the respondent without prejudice to its rights, being a customer-oriented company, to bring closure to the matter refunded the entire amount deposited by the complainants to the tune of Rs. 10,67,250/- vide bank transfer on 15.10.2024, before the filing of the present complaint.

XI. That the refund of the entire amount was processed by the respondent before the filing of the present complaint and the same was duly accepted by the complainants without any protest or demur. Thus, the complainants are estopped from raising any issues at this belated stage.

XII. That it is only due to the failure on part of complainants to complete all the formalities that the company was impeded from allotting a unit in favour of the complainants and hence the company was left with no

other alternative but to cancel/ terminate the application of the complainants and refunded the amounts paid. The present complaint filed by the complainants is the glaring case of the pot calling the kettle black, wherein the complainants had just put all the burden of their defaults upon the shoulder of the respondent company. The expression of interest submitted by the complainants was merely an offer, and the acceptance of the offer by the company was contingent on the complainants completing the booking formalities. It is therefore to state that even as per the law of contract also, the acceptance must be absolute and unconditional. Thus, the company was not even under a contractual obligation towards the complainants to allot any unit in their favour.

XIII. Since, the complainants failed to complete all booking formalities including but to limited to depositing 10% of sales consideration and execute all requisite documents as a result of which the said booking could not crystalize into allotment. Thus, no unit was ever allotted to the complainants. Since no unit was ever allotted by the respondent company to the complainants thus, no question arises on part of the respondent company for violating any provisions of the RERA Act, 2016.

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. Direct the respondent to offer legal and valid possession including all the amenities as committed in the brochure of the unit.
- ii. Instruction for registration of BBA in favour of complainants as per booked and confirmed unit.

iii. Direction to obey the MOU which was executed between company and the complainants. Interest for every month of delay at prevailing rate of interest.

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 are seeking relief w.r.t the execution of builder buyer agreement and for handing over of physical possession of the unit for the alleged non allotted unit bearing no. T-19C, in the project 'Smartworld Gems, sector-89, Gurugram. The complainants further states that they have made a payment of Rs. 10,67,250/- towards the said unit.

12. The respondent has categorically denies all the allegations. The respondent's states that the complainants were never allotted any unit, including the unit in question. The complainants failed to complete the required booking formalities including selection of unit and have never came forward to execute builder buyer agreement between the parties. Therefore on 15.10.2024 the respondent cancelled the booking of the unit of complainants and refunded the entire paid up amount.

13. On consideration of the documents available on record and submissions made by the parties, the Authority observes that the complainants alleges that they had booked a unit in the respondent's project and made certain payments towards the same. However, they have failed to produce any document that would legally establish an allotment in their favour. Moreover, the complainants have stated that they made several calls to the respondent to execute the builder buyer agreement but there are no documents on record to substantiate the said fact. There is no allotment letter and no builder-buyer agreement

was ever executed between the parties. Section 2(d) of the RERA Act, 2016 defines an “allottee” as under:

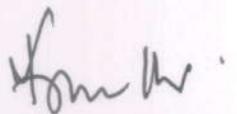
“...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent.”

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 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 possession of unit, which is a matter falling outside the scope and jurisdiction of this Authority under the RERA Act, 2016.
17. In the absence of any documentary proof of allotment or contractual relationship between the complainants and the promoter, the complainants does not fall within the definition of an ‘allottee’ under Section 2(d) of the Act. Therefore, the question of granting possession

and awarding interest does not arise and the present relief sought by the complainants is not maintainable under section 31 of the Real Estate (Regulation and Development) Act, 2016.

18. Moreover, the unit was already cancelled on 15.10.2024. The complainants have stated that they have made a payment of Rs. 10,67,250/- on booking of the unit to the respondent. The respondent has already refunded the paid up amount to the complainants on 15.10.2024.
19. Complaint as well as applications, if any, stands disposed off accordingly.
20. File be consigned to registry.




(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025

HARERA
GURUGRAM