

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

Complaint no. : 5148 of 2024
Date of filing : 24.10.2024
Date of decision : 16.12.2025

1. Alok Varma
2. Anita Varma

R/o: House no. 29, Sector 15 Part-I, Gurugram, Haryana-122001.

Complainants

Versus

M/s Sana Realtors Pvt. Ltd.

Office address: H-69, Upper Ground Floor, Outer Circle, Connaught Place, New Delhi-110001

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

Chairman
Member

APPEARANCE:

Mr. Abhijeet Gupta
Mr. Gaurav Raghav

Counsel for the complainants
Counsel 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 as provided 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. Project and unit related details

2. The particulars of the project, the amount of 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. No.	Particulars	Details
1.	Name of the project	Precision Soho Tower, Sector-67, Gurugram, Haryana.
2.	Nature of the project	Commercial complex
3.	DTCP License No.	No.- 72 of 2009 dated 26.11.2009. Valid/renewed up to- 25.11.2019. Licensee- Sh. Hari Singh Licensed area- 2.456 acres
4.	Building plans approved on	25.07.2011
5.	RERA Registered/ Not	Not registered
6.	Unit no.	B-411, 4 th floor, tower B (Page no. 21 of complaint)
7.	Unit admeasuring	525 sq. ft. (super area) (Page no. 21 of complaint)
8.	Date of execution of builder buyer agreement	12.10.2013 (Page no. 19 of complaint)
9.	Possession clause as per builder buyer agreement	<i>15. That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within Three years from the date of this Agreement. If the completion of the said building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electricity power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due</i>

		<p><i>to delay in action of building/zoning plan/grant of completion/occupation certificate by any competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the term and conditions of this agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the scheme for such period as it might consider expedient."</i></p> <p>(Emphasis supplied). (Page no. 29 of complaint)</p>
10.	Due date of delivery of possession	12.10.2016 (Note: - 3 years calculated from the date of buyer's agreement)
11.	MoU executed on	07.11.2013 (Page no. 50 of complaint)
12.	Total sale consideration as per clause 1 of builder buyer agreement dated 12.10.2013	Rs. 25,88,250/- (Page no. 21 of complaint)
13.	Total amount paid by the complainant as per clause 3 of MoU dated 07.11.2013	Rs. 23,62,500/- (Page 51 of complainant)
14.	Occupation Certificate	<ul style="list-style-type: none"> • 18.07.2017 [Tower A and C] • 10.10.2019 [Tower B] <p>[As per DTCP, Haryana website]</p>
15.	Offer of possession	24.07.2017 [Page no. 53 of reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
 - a. That pursuant to the elaborate advertisement, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true the

complainants book a unit bearing no. B-411 on 4th floor, Tower- B in the respondent project "Precision Soho Tower" in Sector- 67 Gurugram for total sale consideration of Rs.23,62,500/- By signing an application form on dated 29.08.2013 the complainants paid an amount of Rs.5,00,000/-.

- b. That after that the respondent and the complainants executed a builder-buyer agreement on 12.10.2013 and Memorandum of understanding on dated 07.11.2013. As per the Memorandum of Understanding the complainants have paid total sale consideration of Rs.23,62,500/- via cheques numbered 094492 on dated 29.08.2013, 904490 on dated 12.10.2013 and Rs.1,00,000/- of cash payment. As per the Memorandum of Understanding dated 07.11.2013 the respondents had to pay Rs.30,975/- every month as assured investment return, on or before 15th of every month from the date of the agreement till the completion of two years from the date of offering of possession to the buyer.
- c. That the respondent initially started with paying the agreed upon assured return, however the respondent only paid the assured return for a period of 29 months i.e., until April 2016. However, the post said 29 Month i.e., April 2016, the respondent abruptly abstained from providing the complainant with the required and stipulated assured return.
- d. That even after the receipt of the total price consideration, the respondent has failed to handing over the actual possession as per the conditions of the builder buyer agreement. and conditions of the Memorandum of Understanding, thereby standing in breach of trust and the Memorandum of Understanding. It is stated by the complainants that the unit of the complainants has not be constructed by the respondent till date and the unit does not exist as per the layout given to the complainants. It is further

stated that that the area on which the unit of the complainants was to be made/constructed is lying vacant. The complainants had visited the project site on multiple occasions and every-time the status was same.

- e. That it was at this stage also complainants again contacted the representative of the respondents to find out the status of office space which are to be handed over but no assurance has been coming forward from the respondent and still the project has not been completed.
- f. That it is abundantly clear by the act and conduct of the respondent that it has not only defrauded the complainants but also have violated the terms of Memorandum of Understanding by not handing over the actual possession to the complainants. The respondent has provided deficient services and are guilty of unfair trade practices, and have planned to fleece of complainants of their hard-earned money in a well and planned manner. On the other hand, the complainants are suffering additional loss because of blocked capital of very heavy amount for no fault of their own.
- g. That the action of the respondent is violative of principle of natural justice and services rendered are grossly deficient, mala-fide, unfair, unjust and illegal as have been shown in the proceeding paragraphs. The said practices are against the tenants of ethical business and are liable to be severally deprecated by this Authority.
- h. That the respondent has caused monetary losses to the complainants and has denied them the right to enjoy the property for which they have already paid the entire price consideration. Furthermore, the respondent has caused immense mental agony, confusion, insecurity and pain to the complainants. They have also further incurred costs towards the legal/documentation and other expenses due to no fault of their own.

- i. That the respondent paying assured return to the complainants preferred a complainant with the Authority, in which the Authority decided in favour of the complainants. The complainant has preferred an execution of the same vide execution number RERA-GRG-1207/2024 and the same is pending before the Adjudicating Officer 10.01.2025.
- j. That the act and conduct of the respondents amounts to grave deficiency in services and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainants. The complainants have paid such a huge amount after collecting their life savings with the hope to earn in the old age. As per section 12 of the Act 2016, the promoter is liable for giving any incorrect, false statement etc.
- k. That as per section 11(4) of the Act 2016, the promoter is liable to abide by the terms and agreement of the sale and as per section 18 of the Act 2016, the promoter is liable to Refund the Amount and pay interest at the Prescribed rate of interest and compensation to the allottee of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale. In addition to the provisions of the act, 2016, the respondent is also bound by the Haryana Real Estate Regulation Rules, 2017 which lists the interest to be computed while calculating compensation to be given by a promoter to an allottee in case of a default.
- l. That the complainants after losing all the hope from the respondent company, after being mentally tortured and also losing considerable amount, is constrained to approach this Authority for redressal of his grievance. That, the complainant further declares that the matter

regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a. Direct the respondent to handover the actual possession of the unit Bearing No. B-411 on 4th floor, Tower- B along with all the rights, title and interests without any delay or default in terms with regarding to the acknowledgement.
 - b. To appoint an investigation officer to inquire into the status of construction of the complainants.
 - c. Direct the respondents to pay the delay penalty charges with the interest as per the Act, 2016.
 - d. Direct the respondent to pay an amount of Rs.1,00,000/- as the litigation cost.
5. On the date of hearing, the authority explained to the respondent/ 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.

6. The respondent has filed the reply and made the following submissions:
 - a. That at the outset the present complaint is not maintainable as the complainant has initially filed a complaint vide CR/340/2019 titled as "*Alok Verma & Anita Verma Vs. M/s. Sana Realtors Private limited*", seeking various relief under the provisions of Act, 2016 including relief of possession of the unit.
 - b. That during the pendency of the first complaint i.e., CR/340/2019 titled as "*Alok Verma & Anita Verma Vs. M/s. Sana Realtors Private Limited*",

the complainant filed a second complaint vide complaint no. CR/265/2022 and seeking relief of assured return as per the Memorandum of Understanding executed between the complainant and the respondent/developer. In the second complaint consciously, the complainant didn't sought relief of possession of the unit as the complainant never intended to comply with the terms of the agreement.

- c. That the first complaint preferred by the complainant filed vide CR/340/2019, was withdrawn by the complainant on 06.07.2023. Withdrawing the first complaint and seeking no relief of possession in the second complaint clearly indicates that the complainant consciously relinquished the said relief and with a sole intent not to fulfill its obligations. The second complaint filed vide complaint no. CR/265/2022, seeking relief of assured return was allowed by this Authority vide Order dated 09.01.2024, where the Authority granted the relief sought by the complainants.
- d. Thereafter, the complainant on the strength of the order dated 09.01.2024 passed in CR/265/2022 filed an execution petition vide execution no. 1207/2024 and the next date of hearing before the executing court is 17.03.2025.
- e. That for the same cause of action there cannot be two separate complaints and every complaint must include the whole claim that a party is entitled to and when a part of a claim is relinquished, the same cannot be sued for thereafter, hence the present complaint is liable to be dismissed. Cross Reference is also drawn to the provisions of Order 2 Rule 2 of CPC in support of the contentions made herein above.

- f. That the present complaint of the complainant is barred by the law of Res Judicata and the present complaint of the complainant is liable to be dismissed with heavy cost. A subsequent complaint based on the same cause of action is prohibited under the principle of res judicata, as enshrined in Section 11 of the Code of Civil Procedure, 1908. For reference, Section 11 CPC is reproduced as follows: *"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."*
- g. That the present complaint filed by the complainant is liable to be dismissed as per the provisions of the Contract Act as the agreement executed between the parties, which expressly stipulates that only the courts at Delhi shall have jurisdiction over disputes arising from the agreement and the dispute resolution mechanism agreed upon by the parties is as per Arbitration and Conciliation Act.
- h. That the present complaint is liable to be dismissed as the complainant has instituted a false claim, which warrants dismissal at the threshold. The complainant has failed to comply with the terms and conditions stipulated in the flat buyer agreement dated 12.10.2013. The complaint is barred by limitation and is, therefore, liable to be dismissed. In accordance with the provisions of the Limitation Act, 1963, the maximum period prescribed under Article 113 is three years, which has already lapsed.

- i. That after the execution of the flat buyer agreement, the complainant preferred to reach the respondent and offered to pay the entire amount of the basic sale price i.e., Rs.23,62,000/- and sought a minimum assured return of Rs.30,975/- per month, so that the investment starts generating returns.
- j. That the construction of the project started and as there were high tension wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised and since the work was involving risk of life, even the respondent could not take any risk and waited for the cables to be removed by the electricity department.
- k. That the diligence of the Respondent to timely complete the project and live up to its reputation can be seen from the fact that the Respondent had applied for the removal of high-tension wires in the year 2008 i.e., a year even before the license was granted to the Respondent so that the time can be saved and project can be started on time.
- l. That initially there was a 66 KV electricity Line which was located in the land wherein the project was to be raised. Subsequently an application was moved with the HVPNL for shifting of the said Electricity Line. HVPNL subsequently demanded a sum of Rs.46,21,000/- for shifting the said Electricity Line and lastly even after the deposit of the said amount HVPNL took about one and half years for shifting the said Electricity Line. That until the Electricity Line was shifted the construction on the Plots was not possible and hence the construction was delayed for about two years. Further, the contractor M/s Acme Techcon Private Limited

was appointed on 08.07.2011 for development of the project and it started development of the project.

- m. That in the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water and the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the Respondent, which further was duly noted by various media agencies and documented in the government department. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year, due to the said problems and delay in the work, the contractor working at the site of the Respondent also refused to work in December, 2012 and the dispute was settled by the Respondent by paying more to the earlier contractor and thereafter appointing a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January, 2013 immediately to resume the work at the site without delay.
- n. That the project was completed in the year 2015 and as the construction of the project was complete in all respect, Hence the builder applied for the Fire No Objection Certificate in 2015 and the same was received in 2015 from the Fire Department. The respondent has applied for the occupancy certificate in May 2015. Lastly on 24.07.2017 occupancy certificate was issued for Tower A & C by DTCP, Haryana.
- o. That the delay is construed is duly covered under the clause 15 of the buyer agreement, wherein specific stipulation is respect of delay and

causes of the delay to be exempted is stated. The respondent expecting the occupancy certificate for Tower B, issued a final demand letter at the time of offer of possession to the complainant asking the complainant to make the payment of the balance amount.

- p. That the issuance of the occupation certificate was delayed by the DTCP in respect of the Tower B and the same was lastly issued on 10.10.2019. That the complainant was never willing to take the possession and despite the receipt of the occupation certificate dated 10.10.2019 issued for Tower B, the complainant didn't take possession. Section 19(10) of the Act, 2016 makes it obligatory for the allottee to take possession within two months after the issuance of the occupation certificate. Meaning thereby that it was obligatory on the part of the complainant to take the possession on or before 10.12.2019.
- q. That as the complainant neither took the physical possession of the unit till 10.10.2019, thereafter, the complainant restricted the respondent to act any further. The ownership of the Unit could not be transferred in the name of the complainant as the complainant is not ready to get the sale deed executed.
- r. That since 2020, the respondent is maintaining the building including the unit of the complainant through a maintenance agency namely Vortex Facilities Management Pvt Ltd, hence as on date as per clause 33 of the builder buyer agreement, the complainant is liable to pay the following amount towards the cost of maintenance. It may be appreciated that no building/commercial complex can run or can be in good state without maintenance.

s. That the issue of the outstanding monthly assured return is settled vide order dated 06.07.2023 passed in CR/340/2019, whereby the respondent is directed to pay the minimum assured return of Rs.30,975/- from April 2016 till 10.12.2021, along with interest @8.85% per annum and the respondent is willing to handover the possession of the unit and also to execute the sale deed but the complainant is not coming forward to get the same registered. As on date the amount payable by the complainant is Rs.4,17,561/- + maintenance charges of Rs.1,53,636/- and the same can be also adjusted in the amount awarded in favour of the complainant. The respondent vide letter dated 24.07.2017 had asked the complainant to take the possession of the Unit and to get the sale deed executed. Even on 21.02.2025, an email was sent to the respondent asking him to take possession of the unit and to get the sale deed registered.

7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

8. The plea of the respondents 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. 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 complainant at a later stage.

F. Maintainability of complaint:

12. The respondent has filed the reply on 03.04.2025, and raised a preliminary objection that the present complaint is not maintainable as the complainant has filed two previous complaints regarding the unit in question firstly, the complaint bearing no. 340/2019, the said complaint is dismissed as withdrawn. Second complaint bearing no. 265 of 2022, the complainants

were seeking the relief Assured return as per MoU only not for possession of the unit and the same was disposed of vide order dated 09.01.2024.

Now, the complainant has filed the present complaint seeking the relief of possession along with delay possession charges.

13. The Authority is of the view that the present complaint is not maintainable and is barred under the provisions of Order II Rule 2 of the Civil Procedure Code, 1908 as firstly, in the previous complaint bearing no. 265 of 2022, no liberty was granted to the complainants to approach this Authority for seeking the relief of possession along with DPC separately. Secondly, the complainants while filing the complaint bearing no. 265 of 2022 ought to have included their whole claim in the said complaint for which they are entitled at that point of time. Therefore, the subsequent complaint for seeking any portion of claim which the complainants have omitted shall not be sued/claimed afterwards and is not maintainable under order 2 rule II of the CPC. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Further, the intent of the legislature is that no one should be vexed twice for the same offence and the adjudication of the present complaint would result into double jeopardy and will not be in the interest of justice.
14. Therefore, subsequent complaint on same cause of action is barred by Order 2 Rule II of the Civil Procedure Code, 1908 (CPC). Order 2 rule II CPC is reproduced as under for ready reference: -

“ORDER II Frame of suit

1. ***Frame of suit.*** —*Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.*

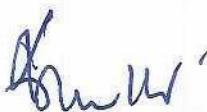
2. Suit to include the whole claim. — (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. — Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

15. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable.
16. File be consigned to registry.


(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Arun Kumar)
Chairman

Dated: 16.12.2025