

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

Complaint no. : 2742 of 2024
Date of complaint : 02.07.2024
Date of order : 17.10.2025

Mrs. Anjali Kaushik

Address:- M 48 first floor south city 1 Gurugram

Haryana at present Samridhi Apartment 2002

Management development institute Gurugram Haryana

Complainant

Versus

Suposhaa Realcon Private Limited

Address:- Unit No. SB/C/2L/Office/017A, M3M Urbana Sector-67,

Gurugram Gurgaon HR 122102

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Devender Singh

(Advocate)

Complainant

Ms. Shriya Takkar

(Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee 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 complainant, 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	'Smart World Orchard, Sector - 61, Gurugram, Haryana
2.	Nature of the project	Independent Floor Residence
3.	DTCP License No.	68 of 2021 dated 16.09.2011 Valid up to 15.09.2026
4.	RERA Registered/ Not Registered	RERA registered vide no. 74 of 2021 dated 03.11.2021 Valid up to- 31.12.2024
5.	Unit no.	G-14B, 2 nd Floor. [pg. 28 of complaint]
6.	Unit admeasuring	1630 sq. ft. (super area) 988.32 Sq. ft. (carpet area) (Page no. 28 of complaint)
7.	Date of allotment letter	01.10.2022 (Page no.26 of complaint)
8.	Date of execution of buyer's agreement	Not executed
9.	Possession clause	N/A
10.	Due date of delivery of possession	N/A

11.	Date of completion of project as per allotment letter	31.12.2024 [Page 27 of complaint]
12.	Total sale consideration	Rs.1,93,73,693/- (Page 28 of complaint)
13.	Total amount paid by the complainant	Rs.17,67,369/- [As alleged by the respondent on page 9 of reply]
14.	Legal notice by the complainant	21.10.2023 [Page 41 of reply]
15.	Pre-cancellation letter	11.11.2022 [Page 91 of reply]
16.	Cancellation letter	23.11.2022 [Page 93 of reply]
17.	Occupation certificate	N/A
18.	Offer of possession	N/A
19.	Remarks	The respondent has refunded an amount of Rs.17,67,369/- to the complainant after deduction of Rs.30,000/- towards amazon vouchers/Gold Coin/incentive given vide RTGS on 16.10.2023. [Page 10 of reply]S

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That this Authority has jurisdiction to entertain and adjudicate the present complaint as the project "Smartworld Orchard, Sector-61, Gurugram" is situated within the territorial jurisdiction of HRERA,

- Gurugram and is governed by the provisions of the Real Estate (Regulation and Development) Act, 2016.
- II. That the respondent launched an upcoming residential project namely "Smartworld Orchard", Sector-61, Gurugram, and through its officials made representations that the project would provide world-class residential units with premium lifestyle amenities, superior construction quality, and modern infrastructure, thereby inducing prospective buyers.
 - III. That relying upon the said representations, assurances, and the goodwill of the respondent company, the complainant booked a residential unit in the said project in August 2021 for her personal residential use.
 - IV. That the complainant paid a sum of ₹1,00,000/- as booking amount vide Cheque No. 000144 dated 26.08.2021 to the respondent. That subsequently, the respondent issued an Allotment Letter in favour of the complainant for Independent Floor Residence No. G-104 (4BHK) in the project "Smartworld Orchard, Sector-61, Gurugram."
 - V. That as per the allotment letter, the proposed date of completion and promised date of possession of the said project/unit was 31st December 2024. That after booking the unit, the complainant made several requests to the respondent seeking:
 - o Construction status of the project
 - o Tentative date of possession
 - o Payment schedule
 - o Receipts of payments already made

However, the respondent failed to provide the said information and adopted delaying tactics by giving vague replies and false assurances.

- VI. That the complainant has always been ready and willing to make payments strictly as per the actual and valid payment schedule, but the respondent deliberately failed to share the same and instead created unnecessary pressure upon the complainant.
- VII. That it is submitted that the respondent and its officials started forcing the complainant to accept cancellation and refund, despite the fact that the complainant never sought cancellation and had booked the unit solely for residential purposes. That being aggrieved by the arbitrary conduct of the respondent, the complainant served legal notices dated 25.08.2023, 21.10.2023, and 30.10.2023 upon the respondent, requesting restoration of allotment and compliance with contractual obligations.
- VIII. That during the pendency of the said legal notices, the respondent illegally and unilaterally refunded the deposited amount after making huge and unjustified deductions, without the consent of the complainant.
- IX. That the respondent had no authority under RERA or under the allotment terms to cancel the allotment or refund the amount unilaterally, especially when there was no default on the part of the complainant. That the respondent's conduct is arbitrary, malafide, illegal, and against the object and spirit of the RERA Act, which aims to protect the rights of allottees.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Declare the email/letter dated 08.12.2022 issued by the respondent as null, void, illegal, and non-binding upon the rights of the complainant;
- II. Direct the respondent to restore the allotment of Independent Floor Residence No. G-104 (4BHK) in the project "Smartworld Orchard, Sector-61, Gurugram" in the name of the complainant;
- III. Direct the respondent to accept the balance payment from the complainant strictly as per a valid and lawful payment schedule;
- IV. Restrain the respondent from creating any third-party interest in the said unit;

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.

6. The respondent has contested the complaint on the following grounds:

- I. The Complainant, after conducting her own due diligence and independent enquiries and only after being fully satisfied with the projects of the Respondent Company, applied for the allotment of an independent floor residence in the project "*Smartworld Orchard*", being developed by the Answering Respondent in Sector 61, Gurugram, vide an Application Form submitted through her broker, M/s Census Consultant. It is submitted that the Complainant, of her own free will and with full understanding, and

after having read and understood all the terms and conditions of the Application Form, voluntarily signed the same.

- II. Clause 23 of the Application Form categorically provides that the total consideration shall be payable by the Applicant(s) directly to the Promoter in accordance with the Payment Plan (Schedule-IV), strictly as per the agreed timelines and without any delay or demur. Timely payment of the total consideration was expressly agreed to be of the essence of the contract.
- III. It is further submitted that prior to the present booking, the Complainant had expressed interest in purchasing a ready-to-move-in unit in properties acquired by the Respondent. The Respondent is engaged in the business of real estate and, inter alia, acquires RERA-registered residential and commercial properties that have received Occupation Certificates from the competent authority, which are thereafter sold or leased in the ordinary course of business. The Respondent has, in the past, acquired and transacted several such properties under lawful business arrangements.
- IV. Upon the Complainant's request that the amount paid by her towards expression of interest be transferred to the unit in question without any deduction, the Respondent, being a customer-oriented company, acceded to the request and accordingly transferred the entire amount paid by the

Complainant towards the unit in *Smartworld Orchard*, Sector 61, Gurugram.

- V. In consideration of the Complainant's commitment to comply with the terms of booking and to make timely payments, the Respondent Company allotted Unit No. G-14B, 2nd Floor in the said project for a total consideration of Rs. 1,96,73,693/-, plus applicable charges, vide Allotment Letter dated 01.10.2022.
- VI. It is submitted that the Complainant, of her own free will and with full knowledge of its legal implications, opted for the 15:75:10 payment plan, under which 75% of the consideration amount was payable as per the construction-linked milestones. However, despite this, the Complainant failed to deposit even the complete booking amount of 10% of the sale consideration.
- VII. The relevant payment plan, clauses, and terms and conditions of the Allotment Letter, including Clauses 1.4, 1.5, 4, 6, 7, and 8, clearly stipulate the obligation of timely payment, execution and registration of the Agreement for Sale, and the consequences of default, including cancellation of allotment and forfeiture of earnest money.
- VIII. The Complainant thereafter visited the office of the Respondent Company and collected copies of the Buyer's Agreement for execution. However, for reasons best known to her, the Complainant failed to return the duly executed Buyer's Agreement

and did not come forward for registration despite repeated requests and reminders.

- IX. Subsequently, in accordance with the payment plan opted for by the Complainant, the Respondent issued a demand letter dated 03.10.2022, calling upon the Complainant to pay Rs. 1,43,38,953/- on or before 31.10.2022, including previous dues. The said demand was also communicated via email on the same date.
- X. The Complainant initially tendered a cheque dated 12.10.2022 for Rs. 3,67,369/-, which was dishonoured due to insufficient funds. This fact was duly communicated to her. Thereafter, the Complainant made payment of Rs. 3,67,369/- vide cheque dated 27.10.2022, which was acknowledged by the Respondent. Despite repeated follow-ups, the Complainant failed to clear the outstanding dues and refused to adhere to her own chosen payment plan, thereby willfully breaching the terms of the Application Form and Allotment Letter.
- XI. Consequently, the Respondent issued a pre-cancellation notice dated 11.11.2022, calling upon the Complainant to pay outstanding dues of Rs. 1,39,71,584/- within seven days. The notice was also sent via email on the same date.
- XII. Despite the opportunity afforded through the pre-cancellation notice, the Complainant failed to cure her defaults. Accordingly, the Respondent was constrained to terminate the allotment vide

cancellation letter dated 23.11.2022 and to forfeit the amount deposited, being less than 10% of the total sale consideration, strictly in terms of the Application Form and Allotment Letter.

- XIII. It is pertinent to note that the Complainant had been in default since inception, having deposited only Rs. 17,67,369/-, which was less than the required 10% of the sale consideration. The factum of cancellation was well within the knowledge of the Complainant and was reiterated through emails dated 15.02.2023, 07.03.2023, and 15.03.2023.
- XIV. The Complainant has deliberately concealed the fact of cancellation from this Authority with the sole intent of masking her own defaults. Due to the Complainant's defaults, the Respondent Company suffered losses aggregating approximately Rs. 20,68,669/-, including earnest money forfeiture, applicable taxes, and interest on delayed payments. Nevertheless, as a goodwill gesture and in order to bring quietus to the matter, the Respondent refunded Rs. 17,67,369/- to the Complainant on 16.10.2023 after deducting Rs. 30,000/- towards incentives such as Amazon vouchers/Gold Coin, despite being legally entitled to forfeit the entire amount. Surprisingly, the Complainant returned the refunded amount on 22.10.2023. Thereafter, the Respondent once again refunded Rs. 17,67,369/- on 16.12.2023, which was accepted

by the Complainant without any protest or demur, as evidenced by email dated 16.12.2023.

- XV. The present complaint has been filed after an unexplained delay of nearly 1.5 years, solely to take advantage of the Complainant's own breaches and defaults and to unjustly enrich herself. Even after cancellation and refund, the Complainant continued to send vexatious legal notices with the intent to harass and extort money from the Respondent. The present complaint is wholly infructuous. Upon cancellation of the allotment on 23.11.2022, the unit was allotted to another purchaser. There exists no privity of contract between the parties, and the Complainant has no right, title, or interest in the unit.
- XVI. Having defaulted in payments, accepted the refund without protest, and concealed material facts, the Complainant is not entitled to any relief. The Respondent has complied with all contractual and statutory obligations, whereas the Complainant's own breaches disentitle her from any relief whatsoever. Accordingly, the present complaint deserves to be dismissed at the threshold with costs.
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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. 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 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

10. 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.

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.

G. Findings on the relief sought by the complainant.

- G.I Declare the email/letter dated 08.12.2022 issued by the respondent as null, void, illegal, and non-binding upon the rights of the complainant;
 - G.II Direct the respondent to restore the allotment of Independent Floor Residence No. G-104 (4BHK) in the project "Smartworld Orchard, Sector-61, Gurugram" in the name of the complainant;
 - G.III Direct the respondent to accept the balance payment from the complainant strictly as per a valid and lawful payment schedule;
 - G.IV Restrain the respondent from creating any third-party interest in the said unit;
12. That the complainant submit that the respondent launched an upcoming residential project namely "Smartworld Orchard", Sector-61, Gurugram, and through its officials, advertisements, and marketing material represented that the project would offer world-class residential units with premium lifestyle amenities, superior construction quality, and modern infrastructure. These representations were made with the intention of inducing prospective buyers, including the complainant.
13. That relying upon the aforesaid representations, assurances, and the goodwill of the respondent company, the complainant booked a residential unit in the said project in August 2021, strictly for her personal residential use.
14. That as per the allotment letter, the proposed date of completion and promised date of possession of the said unit/project was 31.12.2024. That it is submitted that the respondent and its officials started coercing and forcing the complainant to accept cancellation and refund, despite

the fact that the complainant never sought cancellation and had booked the unit solely for residential purposes.

15. That being aggrieved by the arbitrary and high-handed conduct of the respondent, the complainant was constrained to serve legal notices dated 25.08.2023, 21.10.2023, and 30.10.2023, calling upon the respondent to restore the allotment and comply with its contractual and statutory obligations.
16. That during the pendency of the aforesaid legal notices, the respondent illegally and unilaterally refunded the deposited amount, after making huge, arbitrary, and unjustified deductions, without the consent or approval of the complainant.
17. That the respondent submits that the Respondent's reliance on Clause 23 of the Application as per the clause obligation of timely payment presupposes issuance of a valid payment demand linked to actual construction milestones, which the Respondent failed to demonstrate. No construction progress justifying the massive demand dated 03.10.2022 was ever disclosed to the Complainant.
18. The averments regarding alleged prior interest in ready-to-move-in properties are irrelevant, misleading, and intended only to prejudice this Authority. The present dispute pertains exclusively to Smartworld Orchard, Sector-61, and any other alleged transactions have no bearing on the rights of the Complainant under RERA.

19. The Complainant never "voluntarily" accepted any arbitrary payment plan. Even under the 15:75:10 plan, demands must strictly correlate with construction milestones as mandated under Section 13 and Section 19(6) of the RERA Act. The Respondent raised disproportionate demands without executing or registering the Agreement for Sale, which is impermissible in law.
20. The Respondent deliberately failed to execute and register the Buyer's Agreement, thereby disabling itself from enforcing payment obligations. A promoter cannot take advantage of its own wrong and thereafter penalize the allottee.
21. The cancellation dated 23.11.2022 is illegal, arbitrary, and void ab initio. The Complainant was never in willful default. The Respondent raised an exorbitant demand of over ₹1.43 crores within days of allotment, without proof of construction progress, which amounts to coercion and unfair trade practice. The isolated instance of cheque dishonour was immediately cured and cannot be used as a pretext for cancellation of allotment, especially when the Respondent itself was in violation of statutory obligations under RERA.
22. The alleged "goodwill refund" was made unilaterally and during the pendency of legal notices, without the Complainant's consent. Acceptance of refund under protest or compulsion does not amount to waiver of statutory rights. The Respondent had no authority to force cancellation or refund. The Complainant has consistently objected to

the illegal cancellation through legal notices. There is no delay attributable to her. The Respondent, on the other hand, has suppressed its own non-compliance with RERA provisions.

23. Subsequent allotment of the unit to a third party, if any, cannot defeat the statutory rights of the Complainant. A promoter cannot take benefit of its own illegal act to claim extinguishment of privity.
24. In view of the foregoing facts, circumstances, pleadings on record, submissions advanced by the parties, and the findings returned hereinabove, this Authority is of the considered view that the present complaint is devoid of merit and does not warrant any interference by this Authority.
25. It stands admitted that the Complainant was issued an Allotment Letter dated 01.10.2022 for Unit No. G-14B, 2nd Floor, admeasuring 1630 sq. ft. (super area) in the Respondent's project for a total sale consideration of ₹1,93,73,693/-. It is also an undisputed fact that the Builder Buyer Agreement was never executed between the parties and that the Complainant paid a total sum of ₹17,67,369/-, which constituted less than 10% of the total sale consideration.
26. The Authority further notes that Clause 23 of the Application Form categorically stipulates that payment of the total consideration in accordance with the agreed payment plan is of the essence of the contract. Despite issuance of a pre-cancellation notice dated 11.11.2022, granting an opportunity to cure the payment default, the

Complainant failed to comply with her contractual obligations. Consequently, the Respondent cancelled the allotment vide letter dated 23.11.2022. The said cancellation has been found to be valid, lawful, and in accordance with the agreed terms and cannot be termed arbitrary or illegal.

27. It is further an admitted position that the Respondent has already refunded the entire amount deposited by the Complainant, i.e., ₹17,67,369/-, after deducting ₹30,000/- towards incentives such as Amazon vouchers/Gold Coin, through RTGS on 16.10.2023. Once the deposited amount has been refunded and accepted, and in the absence of any subsisting allotment or privity of contract between the parties, the Complainant is not entitled to any further relief, including refund, interest or restoration of allotment. Hence no case of refund is made out.

28. Accordingly, the present complaint is dismissed. All pending applications, if any, stand disposed of.

Dated: 17.10.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram