

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

Complaint no. : 2627 of 2023
Complaint filed on : 12.06.2023
Date of decision : 14.10.2025

Santosh Kumar & Vivek Kumar
R/o: - B6/74, Sadarjung Enclave, Delhi

Complainants

Versus

Army Welfare Housing Organisation
Registered Office at: J-25 & J-29, Jor Bagh Lane, New Delhi-110003
Pareena Infrastructures Pvt. Ltd.
Registered Office at: C-7A, 2nd floor, Omaxe City Centre, Sector-49, Sohna Road, Gurugram

Respondents

CORAM:
Shri Ashok Sangwan
Shri P.S. Saini

Member
Member

APPEARANCE:
Shri Vijender Parmar (Advocate)
Shri Somveer Tyagi (Advocate)
Shri Prashant Sheoran (Advocate)

Complainants
Respondent no. 1
Respondent no. 2

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation & Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation & 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 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. 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	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered Vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Booking application form	24.10.2017 (page no. 30 of complaint)
7.	Date of Builder Buyer Agreement * Signed by complainant but not by respondent	08.12.2017 (Page no. 52 of complaint)
8.	Unit no. 2 nd unit	3204, 32 nd Floor, Tower T1 (page 59 of complaint) 3203, 32 nd floor, tower T1 As alleged by the complainant in its complaint.

9.	Unit area admeasuring (super area)	1999 sq. ft. (super area) (page 59 of complaint)
10.	Possession clause	13. Completion of Project <i>That subject to force majeure, the possession of the said unit is proposed to be delivered by the Company to the Allottee (s) within 48 months from the date of signing of Apartment Buyers Agreement or commencement of construction whichever is later subject to timely payment by the Applicant(s) of sale price, stamp duty, and other charges due and payable according to the Payment Plan applicable to him/her/them or as demanded by the Company and subject to the Force Majeure clause.</i>
11.	Date of start of construction	08.06.2016 (Date of start of excavation)
12.	Due date of possession	24.10.2021 + 6 months grace period due to covid = 24.04.2022 (48 months from the date of booking as the BBA is not executed)
13.	Total sale consideration	Rs.1,16,42,461/- (as per payment schedule on page 82 of complaint)
14.	Amount paid by the complainants	Rs. 21,00,000/- As alleged by respondent
15.	Occupation certificate	NA
16.	Offer of possession	NA

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. That the respondent no. 1 is an organization, working in the field of providing real estate infrastructure and housing to the serving and retired armed / defense forces and para military personnel as well as their families. Respondent no. 1 is currently engaged in providing and

supplying residential units to its members. That respondent no. 2 is a company, working in field of construction and development of residential as well as commercial projects across the country in the name of Pareena Infrastructure Private Limited and has a tie up with respondent no.1 wherein the respondent no. 1 takes booking of the units to be developed by the respondent no. 2 therefore, both respondent no. 1 and 2 jointly and severally acted and liable as the builder, developer and promoter qua the complainant.

- b. That the real estate project named "Mi Casa", which is the subject matter of present complaint, is situated at Sector 68, District Gurugram, therefore, the Hon'ble Authority do have the jurisdiction to try and decide the present complaint.
- c. That the respondent no.2 is the developer/builder of the aforesaid residential project and the aforesaid residential project is managed by respondent no. 1 and have sold and marketed the aforesaid residential project and respondent no.2 has a tie up with respondent no. 1 wherein the respondent no. 1 takes booking of the units to be developed by the respondent no.2 therefore, both respondent no. 1 and 2 jointly and severally acted and liable as the builder, developer and promoter qua the complainant.
- d. That the facility of availing housing units from respondent no.1 is primarily meant for serving/retired defence, as well as para military personnel and their families. That the complainant is eligible for purchasing the residential apartments under the schemes of respondent no. 1 as the Husband of complainant no. 1 and father of complainant no. 2 namely Vinod K Kumar was an employee of the Central government. Hence, the complainants are eligible and have jointly applied to

purchase the residential apartments in the aforementioned project of the respondents.

- e. That the respondents have always advertised themselves as a very ethical business groups those live onto their commitments in delivering their housing projects as per promised quality standards and agreed timelines. That the respondents while launching and advertising any new housing project always commit and promise to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
- f. That the respondent were very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised time lines and that is the prime factor which a consumer would consider while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in their marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the instalments of home loan like in the case of other builders in market.
- g. That somewhere in 2017, the respondent through their marketing

executives and advertisement done through various medium and means approached the complainant with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "Mi Casa", which is situated at Sector-68, District Gurugram. The respondent had represented to the complainant that the respondent is very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the flat buyer's agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondent to book the residential flat in the project of respondent.

- h. That relying upon those assurances and believing them to be true, the complainant booked two residential flats bearing unit no.3204, Tower no. T-1 located on 32nd Floor, having super area of 1999 sq. ft. at the rate of Rs.4950/- per sq. ft. and for basic sale consideration of Rs.98,95,050/- and unit no. 3203, Tower no. T-1 for Rs. 1,20,70,761/- at the proposed

project to be developed by respondent. That the respondent no. 1 only supplied the copy of booking application form with respect to one unit only i.e., T1-3204 and never supplied the copy of booking application form of the other unit purchased by the complainant i.e., T1-3203.

- i. That the complainant paid a sum of Rs. 10,00,000/- i.e., 10% of the total sale consideration as booking amount for unit no. T1-3203. That the complainant also paid a sum of Rs. 10,00,000/- i.e., 10% of the total sale consideration as booking amount for unit no. T1-3204. The booking amount for both the units was duly acknowledged and received by the respondent.
- j. That further respondent no.2 executed an undated application for allotment with the complainant for unit no.3204 in Tower-T1 in which respondent no.2 has clearly acknowledged the payments made by the complainant towards the booking amount.
- k. That the respondent no.2 assured the complainant that it would execute the flat buyer agreement at the earliest. However, the respondent no.2 did not fulfil its promise and have not executed the agreement as agreed by it even after numerous requests made by the complainant. Thereafter, respondent no.2 sent two copies of flat buyer's agreement dated 08.12.2017 for the unit T1-3204 which was duly signed by the complainant and sent back to the respondents for signing the same on their part but the respondent no.2 never sent a signed copy of the complainant of the same. However, respondent no.2 sent a single copy of the BBA qua the unit no.3203 which was duly signed by the complainant and sent back to the respondents for signing the same and sharing the copy of the same with the complainants which was never done by the respondents and after continuous follow ups the

respondents just shared the two pages of the said agreement and till today the complete copy has not been shared.

- l. That as per the clause-13 of the undated application for allotment, respondent no.2 had agreed and promised to complete the construction of the said apartments and deliver its possession within a period of 48 months thereon from the date of the execution of flat buyers' agreement or commencement of construction whichever is later, and the relevant portion of clause-13 of the undated application for allotment.
- m. That the construction of the said flat was not done by respondent no.2 as per promise and the construction was inordinately delayed and as the construction was delayed and the project was not completed the respondent no.2 never raised any demand upon the complainant for further instalments towards the total sale consideration for the said flats. That the complainant never received any communication from respondent no.2 asking for payment for the said flats and the complainant requested numerous times for the payment schedule of the said flats but all the requests of the complainant fell on deaf ears as the payment schedule was never provided.
- n. That the complainant no.1 through her husband sent a letter dated 02.02.2023 to respondent no.1 requesting for demand notes for the subject flats in the aforementioned project, further the complainants again sent a letter dated 15.02.2023 pleading to the respondent no.1 that a demand note may be issued soon, as the complainants had to shift there as soon as possible. But respondent no. 1 never paid any heed to the abovementioned letters and never replied to or even acknowledged the same. Thereafter, complainant through her husband sent a letter to respondent no.1 dated 20.02.2023 requesting and asking respondent

no.1 to provide the details of payment to be made by the complainant for their flats and a final reminder was sent to respondent no. 1 vide email dated 01.03.202. However, respondent no. 1 never informed the complainant about any such demands or payments and kept assuring the complainant that they will be intimated as and when the payment will become due. Thereafter, complainants again sent an email dated 03.03.2023 to the respondent no.1 enquiring about the status of construction and payment plan for the same, however, the respondent chose not to reply to this email also.

- o. It is to be noted here that the respondents neither demanded any payment towards the sale consideration of the aforesaid flats from the complainants nor updated and informed the complainants about the status of construction despite regular and continuous follow ups done by the complainants for the same and it was made to understand to the complainants that as the construction of the said project is still not complete therefore, they were not required to make any payment before receiving any communication for the same from the respondents and therefore the complainants did not make any further payments for the said units after the initial booking amount. It is important to highlight here that however, respondent did receive an email in 2020 that no EMI will be paid till the possession for the project of AFOWO, which again reassured the complainants about the said facts.
- p. That after the aforesaid continuous communications and repeated emails sent by the complainants to enquire about the status of construction and payment schedule the respondent no. 1 now has, just to avoid its liability, an email dated 11.05.2023 to the complainant stating that respondent no.1 has transferred all the amount paid by the

complainant to respondent no.2 and asked the complainant to talk to respondent no.2 regarding the demand notes. It is to be noted that the respondent no. 1 who has accepted the payment from the complainants on behalf of respondent no.2 has no legal right to avoid its responsibility and cannot wash away its liability by sending such false and frivolous email.

- q. That the present complaint is filed by the co-allottee Mr. Vivek Kumar through his duly constituted attorney Mr. Vinod Kumar vide registered general power of attorney bearing vasika no.74 dated 21.04.2015. That the respondent has not delivered the said real estate project till now and the complainant have not been provided with the possession of the said unit despite all promises done and representation made by the respondent.
- r. That as per the undated application for allotment, the delivery of the possession of said flat was promised to be delivered by the respondent within 48 months i.e. by 08.12.2021. By committing delay in delivering the possession of the aforesaid flat respondent have violated the terms and conditions of the undated application for allotment and promises made at the time of booking of said flat.
- s. That the respondent has committed grave deficiency in services by not executing the builder buyer agreement for the aforesaid units in favour of the complainants as promised by them at the time of the booking and further the respondents are still acting illegally by not furnishing any information about the construction status and delivery date of the aforesaid units to the complainants, which amounts to unfair trade practice, which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale

consideration of said flat by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.

- t. It is important to highlight here that considering the aforesaid facts and circumstances, it can be assumed that the respondents now have no intention to provide the executed copy of the builder buyer agreement with the complainants and also do not want to deliver the promised units to the complainants despite duly acknowledging the receipt of booking amount.
- u. That the cause of action accrued in favour of the complainant and against the respondent on 18.10.2017, when the complainant had booked the said flat and it further arose when respondent failed /neglected to deliver the said flat on the agreed date i.e., 08.12.2021. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent have still not provided the executed copy of the builder buyer agreement to the complainants and also have not handed over the possession of the said flats and still have not raised any demands.

C. Relief sought by the complainants: -

- 4. The complainants have sought following relief(s)
 - a. Direct the respondent to supply the executed copy of BBA w.r.t. 2 units in the project Mi Casa, sector 68, Gurugram.
 - b. Direct the respondents to provide the schedule of payment towards the sale consideration of both the units to the complainants and raise demand for the payment of instalments of the sale consideration.

- c. Direct the respondent to handover the physical possession of both the units in the project Mi Casa, sector 68, Gurugram.
- 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 no. 1:

- 6. The respondent has contested the complaint on the following grounds:
- a. That the respondent no. 1 is a social service organization, registered under the Societies Registration Act 1860 and is headed and managed by retired officers of Indian Defence Services, assisted by professionals from various fields. That working on the motto "NO PROFIT NO LOSS" basis, Respondent No. 1 aims in promoting and facilitating the welfare of Serving and Retired Armed / Defence Forces and Paramilitary personnel as well as their families. That although Respondent No. 1, aims to work in many segments including Education, Skill Development, Employment, Careers, Housing, Investments, Retirement Assistance etc, however, it is currently engrossed in proffering high-quality and cost-effective residential units to its members.
- b. That the Respondent No. 2 is a private limited company incorporated under the provisions of the companies act, of 1956 and engaged in the field of construction and development of residential as well as commercial projects across the country, having its registered address at C-7A, 2ND Floor, Omaxe City Centre, Sector - 49, Sohna Road, Gurugram - 122018, Haryana.
- c. That the present reply has been signed and replied by Sh. Harpreet Singh Virdi, Secretary of AFOWO who is duly authorized to represent, act for and on behalf of Respondent No. 1 and to do all such other acts

as are necessary, authorized vide Board resolution dated 25.06.2024. It is submitted that the authorized representative is duly conversant with the facts and circumstances of the present case, hence, competent to file the present reply before this Hon'ble Authority.

- d. It is submitted that Respondent No. 1 is neither a builder nor a constructor/developer. That the Respondent No. 1 acts as a merely facilitator, who acts as an intermediary between genuine homebuyers and builders/developers. It is pertinent to highlight herein that Respondent No. 1 is neither a promoter nor a developer of the project "Mi Casa" situated at Sector 68, District Gurugram (hereinafter referred to as "said project"). It is submitted that Respondent No. 1 works relentlessly, by acting as a facilitator between the developer and Retired Armed / Defence Forces and Paramilitary personnel as well as their families, in order to provide residential units at good locations, built with high-quality materials of the latest specifications, and having high appreciation prospects.
- e. It is submitted that the present complaint is nothing, but a ruse attempts on the part of Complainant in order to sabotage the reputation and goodwill of Respondent No. 1 in the market. It is submitted that Complainant has approached this Hon'ble Authority with dirty hands, by materially suppressing and concealing the vital facts pertaining to the present case. It is material to mention herein that no cause of action has arisen in favor of the Complainant or against the respondents. It is submitted that the Complainants have filed the present complaint without any basis and justified legal grounds and hence, the complaint is liable to be dismissed.

- f. It is submitted that "Mi Casa", the said project of Respondent No. 2 on being extensively advertised and promoted, was approached by multiple buyers. That accordingly, Complainants approached the Respondent No. 1 showing their inclination in purchasing the flats/units in the said project. That upon being satisfied with each aspect of the said project more particularly location, construction, qualitative facet, Complainant no.1 Mrs. Santosh Kumar had applied for a flat bearing no. T1-3203, along with co-applicant Vivek Kumar. Whereas, the Complainant no.2 Vinod Kumar had applied for a flat bearing no. T1-3204 along with co-applicants Santosh Kumar and Vivek Kumar, in the said project developed by Respondent no.2. The Complainant no.2 Vivek Kumar and his sister Vimal Kumar have also filed a separate complaint with respect to the flat bearing unit no. T-3-1802 and have concealed the booking of flat bearing unit no. T3-1902 and T1-3002 from this Hon'ble Authority.
- g. That thereafter, the booking application form for the aforesaid flat bearing no. T1-3203 was executed by the Complainant Mrs. Santosh Kumar on 28th November 2017. The Complainant no.2 Vivek Kumar had also executed a booking application form for the abovesaid flats bearing no.T1-3204, T3-1902 and T3-1802. It was also agreed that at the time of executing the booking application form 10% value of the basic sale price of the flats were to be paid by the Complainants. The said booking application forms also contained material terms and conditions which were understood and agreed by the Complainants.
- h. It is pertinent to mention here that upon receipt of 10% of the advance amount, Respondent No. 1 transferred all the amounts into account of Respondent No. 2 and accordingly, Respondent No. 2 shared a Blank

Apartment Buyer Agreement with Complainants on 08.12.2017 for the purpose of execution. It is submitted that Complainants required some time for execution as they were based out of India. It is submitted that despite multiple oral reminders and recaps, the Complainants miserably failed to handover the duly signed Apartment Buyer Agreement within a reasonable time. It is stated that pursuant thereto neither executed Apartment Buyer Agreement was shared nor rest of the price money was tendered by the Complainants.

- i. That the Respondents diligently issued multiple/oral reminders urging the complainants to expeditiously sign and send Apartment Buyer Agreement and to pay the outstanding payments of 15% of the Basic Sale Price of the Units. That the Respondents engaged in several telecommunication efforts to request payment for the aforementioned flat, but no response was received from the Complainants. The Complainants are not liable to claim the flats as the Complainant themselves failed to sign and send the Apartment Buyer Agreement within a reasonable time to the Respondent No.1 therefore the Complainant cannot now claim proprietary rights in the Flat bearing no. T1- 3203 and T1-3204. In the above said account, the Complaint filed by the Complainants deserves to be dismissed with cost.
- j. It is submitted that only 10% amount was tendered by the Complainants till date, no single penny except the aforementioned amount has been paid with regards to unit bearing no. T1-3204 and T1-3203. It is submitted that as per Para (iii) of "Terms and Conditions" appended with the Booking Application form, it was explicitly agreeing that mere signing of Present Application form will not constitute an Agreement to

sell and execution of requisite Apartment Buyer Agreement is necessary.

- k. It is pertinent to mention herein that executed Apartment Buyer Agreement was handed over by Complainants on 31.01.2023 after lapse of five years. It is submitted that Complainants cannot claim that they have been allotted the flat in their favor, when they are themselves sleeping over their rights. It is submitted that the maxim "Vigilantibus Non Dormientius Aequitas Subventil", which means equity aids the vigilant and not the one who sleeps over their rights, is squarely applicable to the present case. It is submitted that bare perusal of letter dated 15.02.2023 issued by husband of Complainant no.1, explicitly evinces that Buyer Agreement was handed over by Complainants on 31.01.2023.
- l. It is submitted that after a lapse of five years, Complainants awoke out of blue, thereby claiming their alleged right to the aforementioned flat (Flat no. T1-3204). It is submitted that these flats are constructed for the welfare of Retired Armed Defence Forces and Paramilitary personnel as well as their families and in such arrangements, time is essence as also encompassed in Clause 7 of Apartment Buyer Agreement. It is important to mention that the indicative terms and Conditions, more particularly Clause 42 of the Apartment Buyer Agreement, governing the registration, booking and allotment of the mentioned project explicitly provides that no binding obligation is created upon the Developer i.e. Respondent No. 2 in the present case, until the Flat Allottee (Complainants) sign and deliver the Apartment Buyer Agreement within time frame of 15 days from date of dispatch by the Developer. It is pertinent to mention herein that as per clause 42(b) of Apartment

Buyer Agreement, in case of failure, Respondent No. 2 reserves the right to cancel the allotment and forfeit the earnest money. It is pertinent to mention that due to the lack of communication from the complainants, the booking for the flat mentioned had been cancelled.

- m. That in addition and without derogation to aforementioned submissions, it is pertinent to mention herein Respondent No. 1 has no role to play. It is submitted that Respondent No. 1 is neither a builder nor a constructor/developer. The Answering Respondent had transferred the advance money into the account of the Respondent No.2. It is submitted that Respondent No. 1 was never a beneficiary in the aforementioned transaction. That the Respondent No. 1 acted merely as a facilitator/intermediary between genuine homebuyers and builders/developers. Thus, no obligation or liability can be attributed upon Respondent No. 1. That bare perusal of email dated 11.05.2023 sent by respondent no. 1 to husband of complainant explicitly evinces the extent of liability of respondent no. 1.
- n. It is submitted that in light of the aforementioned facts, instant frivolous complaint is not maintainable and ought to be dismissed outrightly against the Respondent No. 1. That the whole complaint is misconceived and no cause of action to file the present complaint accrues in favour of the Complainant against the Respondent. Thus, the present complaint filed by the Complainant is liable to be dismissed with cost.

E. Reply by the respondent no. 2:

- 7. The respondent has contested the complaint on the following grounds:
 - a. That the Hon'ble authority has no jurisdiction to entertain present complaint as respondent no. 1 is neither an agent nor promoter or builder and complainants are not allottees of respondent no. 1 and there

is absolutely no privity of contract between complainant and respondent no. 2. It is submitted that complainants never approached respondent no. 2 for any purpose. That complainants have absolutely no concern with respondent no. 2 either directly or indirectly. It is further submitted that not even a single document was ever executed between complainant and respondent no 2. There is no apartment buyer agreement executed between the complainants and the answering respondent. There is no allotment letter, no communication, no e-mail, no money transaction, no acknowledgement and thus the present complaint is not maintainable. That even respondent no 2 has never received any money from complainants or from respondent no. 1 with regard to the complainant. It is submitted that the ledger of respondent no. 2 qua the time period wherein complainants have alleged to have paid money; is attached herein as Annexure R1. That as per said ledger it is crystal clear that no amount in the name of Santosh or Vivek was ever received by respondent no. 2.

- b. It is submitted that complainants have alleged to be members of respondent no. 1 and whatsoever transactions and communications happened between them, have absolutely no concern with respondent no 2 and the said fact is clear from the fact that none of the documents annexed by complainants bear either stamp or signature of any official of respondent no. 2. That the present complaint has been filed by complainant just to forcibly get allotment in project respondent no 2.
- c. It is submitted that Armed Forces Welfare Organization (AFWO), a social service agency, working to advance and facilitate the welfare of active-duty, reserve and paramilitary soldiers, as well as the welfare of their families. Although AFWO intends to work in a variety of areas,

including education, skill development, employment, careers, housing, investments, retirement assistance, etc. and Organization is led and managed by retired Indian Defence Services personnel, with assistance from experts from other sectors, and operates on a NO PROFIT NO LOSS premise. That said organisation cannot be termed as agent or broker in any manner, thus same is out of purview of RERA.

- d. That the complainant is estopped from filing the present suit against the respondent by their own acts, conduct, omission, admission, commission, acquiescence and laches. That the complainants have no locus standi to file the present suit.
- e. That the respondent no 2 is neither necessary nor proper party in present complaint and the present complaint is bad for mis joinder of parties. That complainant legally cannot claim any relief form keeping in view of present facts and circumstances.

8. 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 submissions made by the parties.

F. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

F.1 Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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.

F. II Subject matter jurisdiction

11. 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."

12. 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.

G. Findings on the relief sought by the complainants:

G.I. Direct the respondent to supply the executed copy of BBA w.r.t. 2 units in the project Mi Casa, sector 68, Gurugram.

G.II. Direct the respondents to provide the schedule of payment towards the sale consideration of both the units to the complainants and raise demand for the payment of instalments of the sale consideration.

G.III. Direct the respondent to handover the physical possession of both the units in the project Mi Casa, sector 68, Gurugram.

13. In the present complaint, the complainants have stated that they booked two units in the said project and paid a total sum of ₹21 lakhs towards these

units. However, no documentary evidence has been placed on record to establish the allotment of two units; only an application for allotment of one unit is available in the case file. Respondent No. 1, in its amended reply, has acknowledged that the complainants paid an amount of ₹21 lakhs to Respondent No. 1 through multiple cheques pertaining to the two alleged flats. Respondent No. 2, in its reply, states that there is no transaction between Respondent No. 2 and the complainants, nor is there any transaction between Respondent No. 1 and Respondent No. 2. Respondent No. 2 further submits that, since there is no privity of contract with the complainants, its name is liable to be deleted from the array of parties.

14. The Authority observes that the complainants applied for the booking of a unit in the project "Micasa," being developed by Respondent No. 2, through an application form. However, the said application form was not received by Respondent No. 2 but only by Respondent No. 1. Respondent No. 2, in its reply, has denied receiving any payment related to the said transaction. Furthermore, no unit has been allotted in favour of the complainants. Accordingly, the complainants are not entitled to possession of the unit, as no allotment was ever made in their favour.
15. In view of the above, the respondent no. 1 is directed to refund the amount of ₹21,00,000/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.

H. Directions of the Authority

16. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

a. The respondent/promoter no. 1 is directed to refund the amount of ₹21,00,000/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount. The amount of assured return already paid by the respondent shall be adjusted from the amount refundable.

b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

17. Complaint stands disposed of.

18. File be consigned to registry.



(P.S. Saini)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.10.2025