

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

Complaint no. :	1728 of 2025
Date of Filing of complaint:	21.04.2025
Date of Decision:	09.01.2026

Khushi Malik Sah

R/o: H. no. 26 B Khukrain Apartment,
Sector- 13, Rohini, Prashant Vihar, North
West Delhi, Delhi-110085

Complainant

Versus

1. Aawam Residency Pvt. Ltd.
 2. M3M India Pvt. Ltd.
- Address: Unit No. SB/C2L/office/017A,
M3M Urbana Sector-67, Gurugram

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Gaurav Bhardwaj
Ms. Shriya Takkar

Advocate for the complainant
Advocate for the respondents

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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"M3M Soulitude", Sector 89, Gurugram Manesar Urban Complex, Gurugram
2.	Nature of the project	Residential floors
3.	Project area	52.275 acres
4.	DTCP License	32 of 2021 dated 03.07.2021 valid till 02.07.2026
	Name of the licensee	M/s Adhikaansh Realtors Private Limited M/s Aawam Residency Private Limited
5.	HRERA registered/ not registered	Registered Vide registration no. 69 of 2021 dated 03.07.2021
		Valid up to 30.09.2025
6.	Expression of interest	12.10.2021 (page no. 64 of complaint)
7.	Unit no.	NA
8.	Area admeasuring	NA
9.	Termination of EOI	14.10.2024 (page no. 76 of complaint)
10.	Total consideration	NA

11.	Total amount paid by the complainant	Rs. 3,00,000/- Rs. 6,05,500/-
12.	Amount refunded by respondents	Rs. 3,00,000/- on 15.02.2025 Rs. 6,05,500/- on 15.02.2025
13.	Occupation Certificate	NA
14.	Offer of possession	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That the complainant believing the false assurance and misleading representation of the respondents in their brochure and relying upon the goodwill of the respondents booked a residential unit bearing no. B.02.02.04, (Apartment 2.5 BHK) on 4th floor admeasuring super area of 1287 sq. ft. by paying an amount of Rs. 50,000/- dated 10.10.2021 and Rs. 2,50,000/- dated 12.10.2021 totaling amount to Rs. 3,00,000/-.
 - II. That the complainant made the further payment of Rs. 6,05,500/- dated 28.10.2021 in hope of getting the builder buyer agreement executed but to no avail. The complainant never received a proper information from the respondents after receiving the said payments. However, the complainant visited the office of the respondents in 2022 to enquire about the status of the execution of builder buyer agreement but to the utter shock of the complainant, the respondents informed the complainant about the alteration of unit bearing no. harmony H-37/4. Furthermore, the respondent's representative also informed the complainant unit was a frozen unit but the BBA for all other units in the project in question were being duly processed.
 - III. That somewhere around December 2023, the representative of the

respondents approached the complainant via whatsapp requesting the further 50% payment of the TCV and also informed that the last date of payment to release the amount is 15.12.2023 without executing the builder buyer agreement.

- IV. That vide letter dated 14.10.2024 titled as intimation of termination the respondents informed the complainant about the cancellation of the expression of interest as the respondents illegally raised a demand from the complainant.
- V. That the complainant left with no right, titles and interest with respect of the expression of interest of the said unit.
- VI. That after receiving the above-mentioned letter from the respondents, the complainant immediately visited the respondents office to discuss about the cancellation of unit. However, the respondents again offered the same unit to the complainant at the revised rate of Rs. 9000 per sq. ft. which was shocking as earlier the unit was booked @ of Rs. 6550 per sq. ft. Thereafter, the complainant got to know from the outside that the price of the unit is same and there is no revision of rates. Subsequently, on 19.11.2024, the complainant again visited the respondent's office where the respondents clearly refused to allot unit to the complainant.
- VII. However, the said acts of the respondents clearly indicated the malafied intention of the respondents company to sell the unit in question at higher rates. The respondents has illegally retained the hard-earned money of the complainant in order to cause a wrongful loss to the complainant and wrongful gain to themselves. The complainant kept painstakingly pursuing the respondents to execute the builder buyer agreement for the plot ad measuring 1287 sq. ft. but all in vain.
- VIII. That the complainant received the refund from the respondents in

multiple instalments without any prior intimation or consent of the complainant.

C. Relief sought by the complainant:

4. In view of the facts mentioned above, the complainant prays for the following relief:
 - i. Direct the respondents to reinstate the unit in question and provide necessary documents pertaining to its allotment etc.
 - ii. Direct the respondents to execute the builder buyer agreement as per RERA.
 - iii. Direct the respondents to raise demands as per payment plan agreed initially.

D. Reply by the respondents.

5. The respondents have contested the complaint on the following grounds.
 - I. That the present complaint has been filed with malafide intentions to wriggle out of contractual obligations as no cause of action for the relief sought has been made out in the present complaint.
 - II. That the complainant after conducting her due diligence and market research approached the respondent no. 2 through her broker M/s. Sopient Realty Solutions expressed her interest. Accordingly, the complainant submitted an expression of interest for priority in allotment of a residential apartment/ commercial unit/ commercial plots/ office space in one of the projects of respondent no. 2 M/s. M3M India Pvt. Ltd. wherein the construction has been completed and occupation certificate has already been granted by the competent authorities.

- III. That the complainant herein along with the expression of interest tendered a sum of Rs. 3,00,000/- in two instalments of Rs. 50,000/- on 10.10.2021 by one Ms. Meena Malik and Rs.2,50,000/- on 12.10.2021 by the complainant herself into the account of respondent no. 2 towards the confirmation of her EOI. The complainant thereafter paid an amount of Rs. 6,05,500/- out of her own free will and volition. The said amounts were duly acknowledged by respondent no. 2.
- IV. That the complainant despite being well aware of her obligations, failed to come forward to complete the booking formalities. The respondent no. 2 cannot be held liable for the wilful default of the complainant.
- V. Since, the complainant failed to fulfil her obligation to come forward, select a unit, confirm the booking and complete all booking formalities including selection of unit and finalizing the payment plan, the respondent no. 2 cancelled the expression of interest vide termination letter dated 14.10.2024.
- VI. Despite being entitled to forfeit the amount as per the terms of the EOI, respondent no. 2 in good faith duly refunded the entire amount of Rs. 6,05,500/- and Rs. 3,00,000/- deposited by the complainant on 15.02.2025 vide bank transfer much before the filing of the present complaint. Thus, the entire amount paid by the complainant towards EOI stands duly refunded.
- VII. The refund of the amount was duly accepted by the complainant without any protest or demur.
- VIII. The complainant has no locus standi to file and maintain the instant complaint and neither has any actionable cause to maintain the present complaint.

- IX. That no unit was ever allotted to the complainant owing to the defaults of complainant herself. Consequently, there exists no privity of contract between the complainant and the answering respondents that would confer upon the complainant any enforceable right under RERA.
- X. That due to the failure on part of complainant to complete all the formalities the company was impeded from allotting, a unit in favour of the complainant and hence the company was left with no other alternative but to cancel/ terminate the booking of the complainant and refunded the amounts paid. Therefore, it is to state herein that the complaint filed by the complainant is the glaring case of the pot calling the kettle black wherein the complainant has just put all the burden of his defaults upon the shoulder of the respondents.
- XI. That the interest shown by the complainant was merely an offer, and the acceptance of the offer by the company was contingent on the complainant 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 respondents not even under a contractual obligation towards the complainant to allot any unit in his favour.
- 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 complainant at a later stage.

F. Findings on the relief sought by complainant:

- i. Direct the respondents to reinstate the unit in question and provide necessary documents pertaining to its allotment etc.
- ii. Direct the respondents to execute the builder buyer agreement as per RERA.
- iii. Direct the respondents to raise demands as per payment plan agreed initially.

10. The above mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
11. The complainant in the present complaint is seeking relief w.r.t the execution of builder buyer agreement and reinstatement of unit for the alleged non allotted unit in the project 'M3M Soulitude, sector-89, Gurugram. The Expression of Interest was signed on 12.10.2021. The complainant further states that she has made a payment of Rs. 9,05,500/- towards the said unit.
12. The respondents have categorically denies the allotment of any unit to the complainant. The respondent's states that the complainant was never allotted any unit merely an Expression of Interest was signed on 12.10.2021. The complainant failed to complete the required booking formalities including selection of unit and has never came forward to execute builder buyer agreement between the parties. Therefore on 14.10.2024 the respondents cancelled the booking of the unit of complainant and refunded the entire paid up amount on 15.02.2025.
14. On consideration of the documents available on record and submissions made by the parties, the Authority observes that the complainant alleges that she had booked a unit in the respondent's project and made certain payments towards the same. However, she has failed to produce any document that would legally establish an allotment in her favour. Moreover, the complainant has stated that she has made several calls to the respondents to execute the builder buyer agreement but there are no documents on record to substantiate the said fact. Thus, the transaction between the parties never progressed beyond the stage of an expression of interest and did not culminate into allotment of any plot, apartment or building. However, before examining the merits of



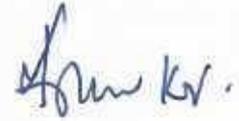
the case, it is necessary to determine whether the complainant fall within the definition of allottee or not under the Real Estate (Regulation and Development) Act, 2016. Section 2(d) of the RERA Act, 2016 defines an "allottee" as under:

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

15. 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 complainant. Mere execution of an Expression of Interest and payment of a booking amount, in the absence of an allotment letter or builder buyer agreement, does not confer the status of an allottee upon the complainant.
16. 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.
17. Since no concluded contract was formed and no allotment was made, the dispute raised by the complainant essentially relates to execution of builder buyer agreement is a matter falling outside the scope and jurisdiction of this Authority under the RERA Act, 2016.

18. In view of the above facts and circumstances, this Authority holds that the complainant do not fall within the definition of "allottee" as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Consequently, the present complaint is not maintainable under the provisions of the Act and is accordingly dismissed with liberty to the complainant to avail appropriate remedies in accordance with law before the competent forum.
13. Complaint as well as applications, if any, stands disposed off accordingly.
14. File be consigned to registry.




(Arun Kumar)
Chairman

Dated: 09.01.2026