

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

Complaint no.	:	6126 of 2024
Date of filing:		03.01.2025
Date of order	:	12.12.2025

Mrs. Anjana Khanna

Both RR/O: H.No.H-3 / 117 Vikas Puri New Delhi:
110018**Complainant**

Versus

1. Riverday Infrastructure Pvt. Ltd.
Registered office :- 12^A Floor, Tower -2 , M-3-M ,
International Financial centre , Sector 66
Gurugram, Haryana 122002
2. Homwisor Registered office: 402& 403, ILD
Trade centre, Sector 47, Sohna Road, Gurugram
122018

Respondents**CORAM:**

Shri. Arun Kumar

Chairperson**APPEARANCE WHEN ARGUED:**

Sh. Sushil Malhotra (Advocate)

Complainant

Ms. Shriya Takkar (Advocate)

Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	Smart world, SKY ARC Sector-69
2.	Unit admeasuring	2200 sq. ft.
3.	Expression of interest dated	11.08.2024
4.	Total Price	N/A
5.	Total amount paid by the complainant	Rs. 17,50,000/- to the Respondent, out of which an amount of Rs. 10,00,000/- was paid vide cheque/transaction dated 16.08.2024, and a further amount of Rs. 7,50,000/- was paid through RTGS.
6.	Possession clause	N/A
7.	Due date of delivery of possession	N/A
8.	Cancellation dated	That on 17.10.2024, the Respondent refunded the entire amount received from the Complainant without any deduction, as the Complainant failed to come forward for execution of the Builder Buyer Agreement (BBA). Accordingly, the allotment stood cancelled due to

		non-execution of the BBA by the Complainant.
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B. Facts of the complaint

3. The complainants have submitted as under:

- a. That the project in question is known as "SMART WORD SKY ARC Sector 69. Golf course extn. Gurugram, Haryana and is the real estate project. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent 1 falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act. That as per Sec 2(zm) of the Real Estate (Regulation and Development) Act, 2016, the respondent 2 falls under the category of "Real Estate Agent" and is bound by the duties and obligations mentioned in the said act.
- b. That complainant was anxious to buy a flat and thought it was the right time to own it. Complainant got to know about SMART WORD SKY ARC Sector 69. Golf course extn. Gurugram, Haryana promoted by a reputed builder Respondent no. 1, Riverday infrastructure private limited. Respondent 2 is real estate agent who facilitate this deal between complainant and respondent 1.
- c. On 23rd June 2024, complainant was contacted by representatives of respondent 2 M/s Homwisor Realty Services, channel partner for the respondent 1 Sky Arc project of (Smart World Developers) the then Code 69 project of M3M Developers. Marketing staff of the respondent no.1& 2 shows rosy pictures of the project and allure with proposed specifications and invited for site visit. On 29th June 2024, these representatives visited complainant residence and accepted an undated cheque bearing number 611591 from SBI, K.G.

Marg, for ₹10,00,000/- made out to M3M India Pvt Ltd, as part of the EOI process. That the complainant has applied through expression of interest form for the allotment and purchase of flat of area 2200 sq. ft. at the rate ₹16,000/- per sq ft. with further discount of 7 % net rate ₹14,880/- per sq. ft. by the respondent 1 & 2 respectively in the project mention in paragraph 3.4 of this petition.

- d. That on 07th August 2024, complainant was contacted again by respondent 2 Homwisor Realty Services, who requested her to replace the original cheque with a new one payable to SHPL - Smart World. On 11th August 2024 on the advice of respondent 2, complainant visited Smart World Gallery at Sector 62, Gurugram and duly submitted her EOI, accompanied by the advance payment of ₹10,00,000/- cheque No. 611595 dated 16/08/2024 drawn on SBI, K.G. Marg, New Delhi, to Rohit Raj, Relationship Manager of respondent 1. Shri Lokender Singh and Shri Brejendra Singh of Homwisor Realty Services were also present there. That the complainant has applied through expression of interest form for the allotment and purchase of flat of area 2200 sq. ft. at the rate ₹16,000/- per sq feet with further discount of 7 % net rate ₹14,880/- per sq. ft. by the respondent 1 & 2 respectively in the project mention in paragraph 3.4 of this petition.
- e. Complainant was advised by Sh. Rohit Raj that your EOI is accepted and your priority number is within first 100 applications. The EOI receipt was duly signed and acknowledged by Mr. Rohit Raj, Relationship manager of Smart World respondent 1. The cheque for Rs.10 lakh got encashed by respondent 1 on 17.08.2024.

- f. Then again on 18.09.2024 complainant was contacted by Shri Lokender Singh who informed her to give another cheque for Rs.25 lakh. complainant requested time for urgent arrangement of funds and on 20th September 2024, complainant issued a post-dated cheque dated 25.09.2024, for ₹25,00,000/-, intended for deposit by the designated channel partner respondent 2 as previously discussed with Mr. Rohit Raj of respondent 1. However earlier Mr. Rohit RAJ of respondent 1 clarified that further payment after ten lakhs was required to be deposited after the allotment of the unit.
- g. That complainant was in regular touch with Shri Lokendra Singh of Homwisor but was unable to connect. Frustrated, she contacted Shri Brejendra Singh, the Senior Representative, who again assured her allotment and advised complainant to send RTGS and send New Account Details of Smart World in the project and informed new account details for sending RTGS of ₹7,50,000/-.
- h. That the respondent 1 return the amount of ₹10,00,000/- on 17.10.2024 without assigning any reason of refund of amount. However, complainant being the end user ready to pay the remaining milestone consideration with in schedule time as agreed on 11.08.2024.
- i. That it appears to the complainant that they are selling these units at a premium rate instead of allotting to the complainant at agreed rate. That the Complainant was regularly visiting to respondent 1 & 2 Office along with Payment for allotment of his unit but was returned only on the assurance by the respondent. Persons/Buyers Junior in booking at the same time at subsequent stage were given

allotment by the respondent with higher rates. There is failure on the part of respondent regarding mandatory advertisement of allotment through public notice as per the policy. Further there is no allotment on first come first serve basis which is universally accepted practice essentially means that respondent have sold out the units at exceptional high rate which against the provisions of RERA 2016 as the rates once agreed are escalation free. No reason has been cited why the complainant was unsuccessful in allotment process. There is complete silence on the points as to what kind of practice/allotment process was adopted by the respondent & why the complete money was not refunded to the complainant if she was unsuccessful in the allotment process. It is categorically clear that respondent has made no sincere efforts on his part to allot a flat to the complainant.

- j. That from August 2024 Respondent no. 1 has not raised any demand and the complainant is ready to pay that amount with in no time. That the Complainant is moving from Pillar to post and post to pillar for the allotment of flat. That the Respondent cannot retract at this stage from their commitments. That the Candid statement on the part of complainant essentially means that she is ready to pay the consideration amount of flat to the Respondent at agreed rate and agreed time schedule.
- k. That the Respondent was 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

timelines and that is the prime factor which a consumer would consider while purchasing his/her dream Plot/home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream Plot/home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installment of home loan like in the case of other builders in market.

- l. That in the said booking, the price of the said Plot was agreed at the rate of ₹16,000/- minus 7 % per Sq. ft. net rate agreed is ₹14,880/- mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
- m. Respondent at the time of booking assured that complainant will get the possession by march 2029. It would be relevant to submit that a payment plan of 20%:20%:60% i.e., is agreed between the parties which was explained to complainant by Sh. Rohit Raj of respondent 1 and Lokinder Singh of respondent 2. It is written by respondent 1 & 2 on paper that 20 % of total sale consideration is required to be paid within one month of allotment, second milestone of 20 % is required to paid after one year of allotment and balance 60 % of sale consideration is required to be paid at the time of receipt of O.C and possession.

- n. That it has been averred that Complainant had already paid the booking amount and she is ready to pay the balance sale consideration. Complainant shown a complete trust and belief towards the Respondent and waited for since June 2024 only on the assurance given by the Respondent, but now Complainant has reason to doubt on all the assurances given by Respondent because now Respondent already started the allotment for other allottees and till date the flat is not allocated to the Complainant.
- o. That till date the respondent no. 1 had called Rs.10,00,000/- for payment and the complainants had paid Rs.10,00,000/- and another payment of ₹7,50,000/- i.e., more than 100 % of total demanded money but respondent 1 return Rs. 10,00,000/- without assigning any reason. That the main grievance of the Complainant in the present complainant from Respondent no. 1, is that in spite of the complainant having paid the expression of interest demanded amount, she was not issued the receipt of paid amount. Further again on verbal demand she paid another payment of Rs. 7,50,000/- but respondent 1 is involved in unfair trade practice and are not issuing any receipt against the paid amount. Complainant was not informed about the mode of allotment and no further demand was issued against the agreed booking. Complainant is ready and willing to pay the remaining amount to the respondent; the respondent no. 1 has failed to deliver the allotment of flat as per date mention in expression of interest application form.
- p. That the Complainant had purchased the flat with Intention that after the purchase, her family will live in their own flat. That it was

promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along with required specifications as informed at the time of sale would be handed over to the complainants as soon as construction work is complete i.e., by March 2029. Complainant do not have any other property in India and she simply wants roof over her head. That the Complainant visited the project site and office of respondent 1 & 2 but both of them are not paying any heed to the request of complainant.

- q. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service, unfair trade practise on the part of the respondent no. 1 and as such, they are liable to be punished and compensate the complainant. The complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party i.e Respondent no. 1 is liable to be punished for aforesaid act of unfair trade practice.
- r. That there is clear unfair trade practices and breach of contract and deficiency in the services of the respondent no. 1 and respondent no. 2 and much more a smell of playing fraud with the complainant and others is prima facie clear on the part of respondent party which makes them liable to answer this Hon'ble Authority.
- s. That the cause of action accrued in favour of the Complainant and against the Respondent on 16.08.2024 when the Complainant had booked the said flat and it further arose when the Respondent failed /neglected to allocate and deliver the said flat on the proposed date. The cause of action is continuing and is still subsisting on day-to-day

basis. That second-time casus of action for the present complaint arose in 17.10.2024 when the respondent 1 returned the amount back to complainant and no reason has been cited for that refund of the amount. Further the cause of action arose after 17.10.2024 when the respondent no. 1 failed to provide the allotment as agreed mutually. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a. Pass an appropriate direction to respondent 1 to issue the allotment of flat nearing the area 2200 sq. ft. as per the application of expression of interest at the rate of Rs. 16,000/- per sq. ft. minus 7% net rate Rs. 14,880/- per sq. ft., with agreed payment plan as already settled between the parties.
 - b. Pass an appropriate order against Respondent no. 1 to provide an actual allotment letter, date of Possession and complainant is ready to sign / execute Builder buyer agreement.
 - c. Pass an appropriate order of penalty against Respondent no. 1 & 2 under section 60, 61 of RERA ACT for violating the provision of RERA Act 2016.
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 contested the complaint on the following grounds:**

- a. It is in the humble submission of the Answering Respondent that a perusal of the Complaint would show that the affidavit attached to the Complaint is neither notarized by the Notary Public nor attested by the Oath Commissioner. It is submitted that as per the settled law laid down by the Hon'ble Supreme Court, improperly verified and an unsigned affidavit without even having the notary seal or the Attestation by the Oath Commissioner is bad in law and cannot be admitted in evidence. In *AKK Nambiar v. Union of India*, reported in AIR 1970 SC 652, the Hon'ble Supreme Court has laid down that "if affidavits are not properly verified it cannot be admitted in evidence". The Supreme Court has laid down the importance of verification by "stating that the test of genuineness and authenticity of allegations and also to make the deponent responsible for allegations contained in verifications and in the absence of proper verification affidavits could not be admitted in evidence".
- b. Thus, improperly verified affidavit without the notarization by Notary Public or attestation by the Oath Commissioner makes the Complaint defective and therefore, the complaint should be dismissed at the outset.
- c. That on enquiry from M/s. Smartworld Heights Pvt. Ltd., it transpired that the Complainant along with one Mr. Aditya Khanna had earlier submitted an Expression of Interest (EOI) through their broker for priority allotment of a ready to move in unit (OC received)

with carpet Area of approx. 2200 sq. ft. in one of the properties acquired by the M/s. Smartworld Heights Pvt. Ltd. That M/s. Smartworld Heights Pvt. Ltd is in the business of Real Estate and one of its business activities is to acquire RERA registered built-up properties, both residential and commercial, which have received Occupation Certificate from the Competent Authority and then sell/lease the same at an appropriate time. The Respondent Company has in the past acquired properties/units under various business arrangements in RERA registered and OC received projects which it is selling by way of usual business transactions and in the ordinary course of business.

- d. That on 11.08.2024, the Complainant signed the Expression of Interest (EOI) through her broker and also issued a cheque of Rs. 10,00,000/- to M/s. Smartworld Heights Pvt. Ltd. on her own free will and volition after duly understanding all the clauses stipulated under the EOI. The expression of interest clearly states that it only constitutes an offer/registration of EOI and is not an acknowledgment or promise of any allotment or any agreement.
- e. Thus, from the perusal of the aforementioned clause of the EOI it is clear that the EOI did not constitute allotment of any specific unit. Copy of the EOI is appended at page 29 of the complaint. The Complainant was very well aware about her obligation to come forward, select the unit and complete all the booking formalities. Since, the Complainant failed to fulfil her duty to come forward to select a unit, confirm the booking, complete all booking formalities including but not limited to selection of unit, depositing 10% of sales

consideration, finalizing the payment plan, and M/s. Smartworld Heights Pvt. Ltd. cancelled the EOI and duly refunded the entire amount deposited by the Complainant on 17.10.2024 without any deductions vide bank transfer. The receipt of the refund of Rs.10,00,000/- has been admitted by the Complainant in her complaint.

- f. In summary, the Complainant submitted an EOI but did not comply with its obligations afterwards, therefore resulting in cancellation of EOI by M/s. Smartworld Heights Pvt. Ltd. and refund of amount Rs. 10,00,000/- deposited by the Complainant. The amount was refunded to the Complainant on 17.10.2024 vide bank transfer and the said fact has duly been admitted by the Complainant in the present complaint.
- g. The Complainant has failed to implead Mr. Aditya Khanna, the co-applicant in the Expression of Interest, as a party to the present complaint. Additionally, the Complainant has also not arrayed M/s. Smartworld Heights Pvt. Ltd., the entity to whom the said Expression of Interest was submitted, as a Respondent in the present proceedings. The absence of these necessary parties renders the complaint defective for non-joinder of necessary parties. Consequently, the present complaint is liable to be dismissed on this ground alone. That the Complainant after conducting her own due diligence and market research approached the Respondent No. 1 and expressed interest in booking an apartment in the project "Smartworld Sky Arc" being developed by Respondent No. 1. The

Complainant, of her own free will and volition tendered a sum of Rs.7,50,000/- on 12.10.2024 vide RTGS to the Respondent No. 1.

- h. That the Complainant was very well aware about her duty to come forward to select the unit, confirm the booking, complete all booking formalities including but not limited to depositing 10% of sales consideration, zeroing down the payment plan etc to get the allotment. It is submitted that the Answering Respondent cannot be held liable for the wilful default of the Complainant. The approximate cost of the apartment in the project varies from Rs 4 crores to Rs. 5 crores.
- i. Since, the Complainant failed to complete all booking formalities including but not limited to depositing 10% of the sales consideration, zeroing down the payment plan etc. as a result of which the said booking could not crystalize into allotment hence, the Respondent No. 1 cancelled the booking and duly refunded the amount deposited by the Complainant on 07.12.2024 without any deductions. However, subsequent to making the entire refund to the Complainant, the Complainant repeatedly made reversal of payments in the account of Respondent No.2 which were refunded back to the Complainant's account by the Respondent No.2. As on date the entire amount paid stands refunded to the Complainant vide RTGS dated 02.09.2025 having UTR No. KKBKR52025090200861371. Thus, no unit was ever allotted to the Complainant especially in a purely commercial transaction like the present one. It is submitted that the entire amount paid by the

Complainant stands refunded, the Complainant has no actionable cause to maintain this present complaint.

- j. From the facts stated hereinabove, it is absolutely clear that no unit was ever allotted to the Complainant and the Complainant has no privity of contract with the Answering Respondent. The Complainant does not fall under the definition of allottee as defined under Sec 2(d) of RERA Act, 2016.
- k. On the basis of the above discussion of facts and law, it is abundantly clear that the Complainant is neither an 'allottee', nor, an 'aggrieved person', falling within the purview of the provisions of Act 2016. The complaint of the Complainant, therefore, is not maintainable under Act 2016. It is submitted that the Complainant has duly been refunded the entire amount deposited by her towards two separate transactions; therefore, nothing survives in the present matter.
- l. That the present complaint is liable to be dismissed on account of non-joinder of necessary parties. the Complainant along with one Mr. Aditya Khanna had earlier submitted an Expression of Interest (EOI) through their broker for priority allotment of a ready to move in unit (OC received) with carpet Area of approx. 2200 sq. ft. in one of the properties acquired by the M/s. Smartworld Heights Pvt. Ltd. Furthermore, it is an undisputed fact that the payment (vide cheque) was made in favour of M/s. Smartworld Heights Pvt. Ltd., and not in the name of Respondent No. 1. Despite this, the Complainant has failed to implead either Mr. Aditya Khanna or M/s. Smartworld Heights Pvt. Ltd. as parties to the present proceedings, thereby rendering the present complaint defective and legally unsustainable.

- m. It is further submitted that the Complainant has erroneously instituted the present complaint against Respondent No. 1, whereas M/s. Smartworld Heights Pvt. Ltd. is the necessary party that ought to have been impleaded in the array of Respondents. Additionally, Mr. Aditya Khanna, having jointly expressed interest and being involved in the transaction, is also a necessary party to these proceedings. In the absence of these parties, the adjudication of the present dispute cannot be undertaken effectively or conclusively. Accordingly, the complaint deserves to be dismissed for non-joinder of necessary parties.
- n. It is apposite to mention herein that it was solely due to the failure on the part of the Complainant to complete the necessary formalities that the Respondent No. 1 was impeded from allotting a unit in favor of the Complainant. The Respondent No. 1 was left with no other alternative and was thus, constrained to cancel/terminate the expression of interest/booking of the Complainant and refund the entire amount deposited by the Complainant. Therefore, it is imperative to state herein that the complaint filed by the Complainant is a glaring case of the pot calling the kettle black, wherein the Complainant has just cast all the burden of her defaults upon the shoulders of the Respondent No. 1.
- o. It is further pertinent to state herein 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 stated that as per the law of contracts, the acceptance must be absolute and unconditional. Thus,

the Company was not even under a contractual obligation towards the Complainant to allot any unit in her favour until the obligations of the Complainant including but not limited to the completion of booking formalities were duly adhered to.

- p. In view of the submissions made hereinabove, it is submitted that it was only due to the failure on the part of the Complainant to complete all the formalities that the Respondent No. 1 was impeded from allotting a unit in favour of the Complainant. Consequently, the Respondent No. 1 was left with no other alternative but to cancel/terminate the EOI of the Complainant and refund the complete amounts paid by the Complainant. The present Complaint filed by the Complainant is a glaring case of the pot calling the kettle black, wherein the Complainant had just put all the burden of their defaults upon the shoulders of the Respondent No. 1.
- q. It is further pertinent to state herein that the EOI submitted 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 Company was not even under a contractual obligation towards the Complainant to allot any unit in their favour until the obligations of the Complainant including but not limited to the completion of booking formalities, were duly adhered to.
- r. Since, the Complainant failed to complete all booking formalities including but to limited to depositing 10% of sales consideration and did not execute all requisite documents as a result could not

- crystalize into allotment. Thus, no unit was ever allotted to the Complainant. Since no unit was ever allotted by the Respondent Company to the Complainants thus, no question arises on part of the Respondent Company for violating any provisions of the RERA Act, 2016.
- s. That the present Complaint lacks any cause of action to approach this Hon'ble Authority and as such the same deserves to be dismissed at the very threshold. The present complaint is filed with oblique motives without any merits. The allegations raised and averments made in the Complaint are false and frivolous and hence it is submitted that there arose no cause of action in favor of the Complainant and against the Answering Respondent in the captioned complaint which has been filed with the oblique motive to take advantage of her own breaches and defaults. It is submitted that the Complainants failed to pay complete the booking formalities i.e., deposit 10% of the sales consideration, select the unit, zero down the payment plan nor she came as a consequence of which the booking could not crystalize into allotment.
- t. That the Complainant has not approached the Hon'ble Authority with clean hands and has suppressed and concealed material and vital facts which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts, the question of entertaining the purported Complaint would not have arisen.
- u. The Complainant has deliberately suppressed several material and relevant facts which are critical for the fair and just adjudication of

the present dispute. This suppression is not inadvertent but appears to be a calculated act, reflecting mala fide intent and an attempt to mislead the Hon'ble Authority. Such suppression of facts amounts to a fraud upon the Hon'ble Authority. It is a settled position in law that a party approaching a judicial or quasi-judicial forum must come with clean hands. The Complainant, having failed to do so, is disentitled from claiming any relief, and the present complaint is liable to be dismissed on this ground alone.

- v. In view of the submissions made hereinabove, it is submitted that it is only due to the failure on part of Complainant to complete all the formalities that the Respondent No. 1 was impeded from allotting a unit in favour of the complainant and hence the Answering Respondent was left with no other alternative but to cancel/terminate the EOI of the Complainant and refund the amounts deposited. Therefore, it is to state herein that the present complaint is the glaring case of the pot calling the kettle black, wherein the complainant has just put all the burden of her defaults upon the shoulder of the Respondent No. 1. It is further pertinent to state herein that the EOI/booking was merely an offer made by the Complainant, and the acceptance of the offer by the Respondent No. 1 was contingent on the completing the booking formalities by her. It is submitted that even as per the law of contract also, the acceptance must be absolute and unconditional. Thus, the Answering Respondent was not even under a contractual obligation towards the complainant to allot any unit in her favour.

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 those undisputed documents and submissions 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, 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

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) (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) 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Pass an appropriate direction to respondent 1 to issue the allotment of flat nearing the area 2200 sq. ft. as per the application of expression of interest at the rate of Rs. 16,000/- per sq. ft. minus 7% net rate Rs. 14,880/- per sq. ft., with agreed payment plan as already settled between the parties.

F.II. Pass an appropriate order against Respondent no. 1 to provide an actual allotment letter, date of Possession and complainant is ready to sign / execute Builder buyer agreement.

F.III. Pass an appropriate order of penalty against Respondent no. 1 & 2 under section 60, 61 of RERA ACT for violating the provision of RERA Act 2016.

12. The above-mentioned reliefs are interrelated and interconnected with each other. Accordingly, the same are being taken up together for the purpose of adjudication.
13. The Complainant in the present complaint seeks relief with respect to the allotment of a unit, execution of the Builder Buyer Agreement, and handing over of physical possession of the unit in the project "Smart World Sky Arc situated at Sector 69, Gurugram". The Complainant further submits that she has paid a sum of ₹17,50,000/- towards the booking of the said unit.
14. The Respondents have categorically denied the allegations made in the complaint. It is the case of the Respondents that the Complainant was never allotted any unit, including the unit in question. The Respondents

submit that the Complainant had merely submitted an Expression of Interest (EOI), which only constituted an offer subject to completion of further formalities and did not amount to an allotment of any unit. It is further stated that the Complainant failed to complete the requisite booking formalities, including the selection of a specific unit, and never came forward to execute the Builder Buyer Agreement between the parties. Consequently, the Respondents cancelled the booking of the Complainant on 17.10.2024.

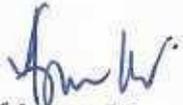
15. Upon consideration of the documents available on record and the submissions made by the parties, this Authority observes that the Complainant has alleged that she had booked a unit in the Respondents' project and had made certain payments towards the same. However, the Complainant has failed to place on record any document that would legally establish the allotment of a unit in her favour. Further, although the Complainant has stated that she made several requests and telephonic communications with the Respondents for execution of the Builder Buyer Agreement, no documentary evidence has been produced on record to substantiate the said assertions.
16. It is observed that no Allotment Letter was ever issued in favour of the Complainant and no Builder Buyer Agreement was executed between the parties. Section 2(d) of the RERA Act, 2016 defines an "allottee" as under:

"...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent."
17. In the absence of any documentary proof of allotment or contractual relationship between the complainant and the promoter, the complainant does not fall within the definition of an 'allottee' under Section 2(d) of the

Act. Therefore, the question of granting possession and awarding interest does not arise and the present relief sought by the complainant is not maintainable under section 31 of the Real Estate (Regulation and Development) Act, 2016 and the present complaint is liable to be dismissed.

18. Complaint as well as applications, if any, stands disposed off accordingly.
19. File be consigned to registry.




(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025

HARERA
GURUGRAM