

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

Complaint no.:	113 of 2025
Date of filing the complaint	21.01.2025
Date of decision:	06.01.2026

Sahil Garg Sharad Garg Both R/O: H. No. 1309/1/5, Housing Board Colony Road Near JBT Hostel, Nahan -173001, Himachal Pradesh	Complainants
Versus	
M/s Landmark Apartments Private Limited Regd. Corporate Office at: Plot No. 65, Sector 44, Gurgaon , Industrial Area, Gurugram, Haryana.	Respondent

CORAM:	
Arun Kumar	Chairman
Phool Singh Saini	Member
APPEARANCE:	
Gaurav Rawat (Advocate)	Complainants
Jatin Sharma (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 thereunder 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:

S.N.	Particulars	Details
1.	Name of the project	Landmark Avana 1 st Phase, Sector 95, Gurugram
2.	Total project area	14.209 acres
3.	Nature of the project	Independent Residential Floors
4.	DTCP license no. and validity status	14 of 2023 dated 30.01.2023 valid upto 29.01.2028
5.	Name of licensee	Anju D/o Sh. Dilbagh Singh in collaboration with Landmark Apartments Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 84 of 2023 dated 24.07.2023
7.	Unit no.	149, Floor- 1 st , 2 nd and 3 rd (Page 37 of complaint)
8.	Date of booking/payment	15.10.2023 (page 3 of complaint)
9.	Allotment letter	Not allotted
10.	Builder buyer's agreement	Not executed
11.	Due date of possession	Cannot be ascertain
12.	Total sale consideration	Rs.3,66,23,000/- (As per cost sheet at page 37 of complaint)
13.	Amount paid by the complainants	Rs.30,00,000/-

		(As admitted by both the parties in the documents available on record)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Surrender by the complainant.	17.04.2024 (Page 40 of complaint)

B. Facts of the complainants:

3. The complainants have made the following submissions: -

- I. That in 2023, the respondent issued an advertisement announcing a plotted colony Project "Landmark Avana Phase-11" was launched by respondent, under the license no. 14 of 2023 dated 30.01.2023 issued by DGTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority.
- II. That the respondent confirmed and provided the details of the project, confirming the booking of the unit dated 15.10.2023, allotting a plot/unit no. 149, having super area measuring 148 sq. Mtr. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 3,66,23,000/- other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. It is pertinent to mention here that as per the provisions of the RERA Act, 2016, no builder/promoter can take advance amount without getting the project registered with the HARERA Authority, GGM but in the present case respondent till date has failed to get the said project registered with HARERA, almost after delay of around 1.5 year after taking the booking amount from the complainants. Furthermore, respondent even did not take the said amount in the

ESCROW Account as mandatory as per the provisions of the RERA Act,2016. It is pertinent to mention here that till date respondent has failed to obtain the RERA Registration of the said plot.

III. That the respondent confirmed the booking of the unit dated 15.10.2023, but till date no allotment of the unit/plot no. 149. measuring 148 sq. Mtr. (super built-up area in the aforesaid project of the developer and total sale consideration of the unit i.e. Rs. 3,66,23,000/- which includes basic price plus edc and idc, plc and other specifications of the allotted unit has been issued in favour of complainants. Even after repeated reminders and follow ups with the respondent, respondent failed to provide terms and conditions, allotment letter and builder buyer agreement for the said unit till date. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs. 30,00,000/-, towards the said unit against total sale consideration of Rs. 3,66,23,000/-.

IV. That despite the after repeated request, emails and reminders respondent failed to get the buyers agreement executed and allotment letter with the complainants. It is pertinent to mention here that booking of the said unit was done on October, 2023. The booking of the unit was made on October,2023, after coming into force of the RERA Act,2016 and as per the Act, after coming into force of the Act the respondent is under obligation to get the buyers agreement executed as per the sample agreement provided under the Act, and HARERA Rules, 2017, made thereafter, but in the present case respondent failed to comply with the same. As the agreement has not been executed with the complainants as provided under the Act, and HARERA Rules, 2017. Hence, the respondent violated the same.

- V. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- VI. That the respondent has collected Rs. 30,00,000.00 till date without executing the builder buyer agreement. The complainant even after repeated reminders and request failed to obtain any satisfactory response from the respondent regarding RERA Registration, allotment letter and buyers agreement, having no option left on 17.04.2024, complainants sent an email dated 17.04.2024 seeking refund of the amount paid. In response to the said email respondent vide email dated 18.04.2024 replied:- With reference to the below email, we shall like to apprise you that your request for cancellation of unit and refund has been forwarded to the concerned team for immediate action. The tentative time to process the refund amount is approximately 90 working days from the date of your initial refund notification email. Thereafter, reminder email dated May 16, 2024 was also sent but all in vain.
- VII. That the respondent vide email dated 16.07.2024 admitted his liability stating that :- This is with reference to your below email and our discussion, please be informed that you will get Rs. 10,00,000/- till 30.07.2024 out of Rs. 30,00,000/- and rest amount of Rs. 20,00,000/- we will update you soon.

VIII. That on 12.09.2024, complainants visited the company office and after spending the entire day at the company office, Mr. Harsh Kapoor (Company official) assured us that a post-dated cheque for Rs. 10,00,000/- would be delivered to us, with the remaining cheques to follow within a week. The complainants received two post-dated cheques of Rs. 5,00,000/- each, due on 21.09.2024, and 28.09.2024. Believing on assurance and on the bases of the representation the first cheque when presented at PNB Nahan, got bounced on 23.09.2024 and bank charges got deducted from complainants account against bounce which are also not yet provided by company. The second cheque, after complainants requested by the company to delay deposit of cheque for additional days; it was subsequently honoured. Additionally, the company transferred Rs. 5,00,000/- through bank transfer leading to a refund of Rs. 10,00,000/- as on date with one bounced cheque.

IX. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - I. Direct the respondent to restrain them from raising any fresh demands with respect to the project.
 - II. Direct the respondent to refund the amount paid by the complainants along with interest till its realization.
 - III. Direct the respondent to not to create third party rights in the said unit till final realization of the total amount paid along with interest.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions: -

- i. That the complaint arises entirely out of the complainant's own voluntary act of cancelling the bookings of unit no. 149-A, 149-B and 149-C, rather than any alleged default or deficiency on the part of the respondent.
- ii. That the complainants had approached the respondent for booking three units in the respondent's duly licensed and registered project and had deposited an aggregate amount which, even collectively, was less than ten percent of the total sale consideration for the units. Before any agreement for sale under Section 13(2) of the Real Estate (Regulation and Development) Act, 2016 ("the Act") could be executed, the complainants voluntarily opted to withdraw from the transaction and requested cancellation. It is settled law under the Haryana Real Estate Regulatory Authority (Forfeiture of Earnest Money by the Promoter) Regulations, 2018 that a promoter may forfeit up to ten percent of the total sale consideration where a buyer withdraws prior to the execution of the agreement for sale. As the complainant's aggregate payment was less than ten percent, there is neither any statutory entitlement nor any contractual basis for refund. No relief can be claimed under the Act because no agreement for sale was ever executed, and therefore no contractual rights or statutory rights vested in the complainants.
- iii. The project Landmark Avana- I is duly licensed under No. 14 of 2023 for 14.209 acres and is duly registered before this Hon'ble Authority under RERA Registration No. 84 of 2023 dated 24.07.2023. The Respondent has complied with all statutory disclosures, quarterly filings, financial requirements and developmental obligations prescribed under the Act. Accordingly, allegations of misrepresentation, illegality or deficiency are baseless. Furthermore,

the complainants have improperly filed a consolidated complaint for three distinct units, contrary to the settled position that each unit constitutes a separate cause of action.

- iv. That the respondent respectfully submits that the present complaint is wholly misconceived, frivolous and an abuse of the process of this Hon'ble Authority. The complainants have suppressed material facts and has attempted to convert his own voluntary cancellation of the booking into a false grievance. It is admitted that the complainants deposited a total amount of Rs. 30,00,000/-, which is significantly less than 10% of the total sale consideration of 3,66,23,000/-. As per Section 13 of the Act and the Haryana Real Estate Regulatory Authority (Forfeiture of Earnest Money by the Promoter) Regulations, 2018, no agreement for sale can be executed and no statutory or contractual rights accrue unless the buyer deposits up to 10% of the sale consideration. Since the complainants deposited less than 10%, no right to execution of the agreement for sale, allotment, possession, or refund ever arose.
- v. That despite there being no legal obligation to refund any amount, the respondent, entirely as a gesture of goodwill and without admission of liability, has already refunded Rs. 10,00,000/-, which the complainants has duly received. This goodwill refund cannot be mischaracterised as an admission of liability or acknowledgment of debt, particularly when the statutory position clearly bars the complainants from claiming any refund. The balance amount is not legally payable, and even the refunded amount exceeds what the complainants are entitled to in law.
- vi. That the complainant voluntarily requested cancellation of all units and never completed the statutory documentation required for

execution of the agreement for sale. The complainants were never an allottee" under Section 2(d) of the Act and, therefore, lacks locus to file the present complaint. The Respondent is fully compliant with Licence No. 14 of 2023, Building Plan Approvals, and RERA Registration No. 84 of 2023, and there is no deficiency, unfair practice or breach on its part.

vii. Copies of all the relevant documents have been filed and placed on 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:

6. 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

7. 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

8. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee 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.

F. Maintainability of the complaint:

10. The authority observes that the present complaint is based on a cost sheet dated 11.10.2023 wherein as per the complainants they have been allotted unit no. 149 on 1st floor, second floor and third floor. The complainant in total has paid an amount of Rs.30,00,000/- as stated by the complainant in his facts.

11. The respondent to this has stated that the complainants have voluntarily requested for surrender of the unit and a part sum has been refunded to them. The complainants were never an allottee. The complainants have submitted an amount which was less than the ten percent of the total sale consideration of their units.

12. However, as per record, neither any formal allotment has been made in favour of the complainants nor any buyer's agreement has been executed between the parties till date. Thus, the transaction between the parties never progressed beyond the stage of cost sheet and did not culminate into allotment of any plot, apartment or building.

The authenticity of the alleged receipts/ is in dispute. Determination of:

- Whether the receipt is genuine,

- Whether money was paid or misappropriated,
 - Whether there was cheating or forgery,
- requires detailed evidence, cross-examination, and investigation — all outside the scope of this Authority.

13. Therefore, the Authority cannot adjudicate on issues requiring forensic or criminal assessment. In these circumstances, this Authority cannot adjudicate upon disputed questions relating to the alleged payment, denial of receipt, or the veracity of the document relied upon by the complainant. The issues of such disputes would require a detailed examination of evidence, including the assessment of allegations of misrepresentation, cheating, forgery, and criminal breach of trust. These issues fall beyond the statutory competence of the Authority and can only be adjudicated upon by the competent civil and criminal courts in accordance with law.

14. In the absence of a defined allotment, the complainant cannot be treated as an 'allottee' within the meaning of Section 2(d) of the Act. A mere cost sheet, without crystallization of rights in a specific unit, does not confer the status of an allottee. 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 complainants. A mere cost sheet and payment of an amount, in the absence of any allotment letter or agreement for sale, does not confer the status of an allottee upon the complainants.

16. Since no concluded contract was formed and no allotment was made, the dispute raised by the complainants relating to refund pursuant to a mere cost sheet, falls outside the scope and jurisdiction of this Authority under the RERA Act, 2016.

17. Moreover, Section 29 of the Indian Contract Act, 1872, provides that agreements whose meaning is not certain, or cannot be made certain, are void and therefore not legally enforceable. This Authority further observes that, for a legally enforceable contract to come into existence, there must be *consensus ad idem* on the essential terms, such as the identification of the unit, area where the unit is located, consideration, payment schedule, and the rights and obligations of the parties. These essential terms are ordinarily crystallized through an allotment letter and an agreement for sale. In the absence of such documents, no concluded contract for sale came into existence between the parties.

18. In view of the foregoing facts and circumstances, this Authority holds that the complainant does not fall within the definition of "allottee" as provided under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.

19. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint wherein seeking refund of the paid-up amount, is not maintainable *firstly*, the Authority only adjudicate the matters which are undisputed in nature and *secondly*, the complainant does not fall under the definition of Allottee.

The Act has been established to regulate real estate sector and awarding

relief in the present case would eventually open pandora box of litigation. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any justifiable cause.

20. In view of the above, the complaint is not maintainable and is hereby dismissed with liberty to the complainants to seek appropriate remedies before the appropriate forum in accordance with law.

21. Complaint as well as applications, if any, stands disposed off accordingly.

22. File be consigned to the registry.


(Phool Singh Saini)

Member


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.01.2026

HARERA
GURUGRAM