

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

Complaint no. : 721 of 2024
Date of Decision: 20.01.2026

Prashant Yadav
R/o: H.no. 129, Village Samaspur,
Sector-45, Gurugram, Haryana.

Complainants

M/s Adhikansh Realtors Private
Limited.

Office At: Unit no.
SB/C/2L/Office/017A, M3M Urbana,
Sector-67, Gurugram Manesar Complex,
Gurugram-122102.

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sh. Mohit Kumar (Advocate)
Ms. Shreya Takkar (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the 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.	Particulars	Details
1.	Name and location of the project	"Smartworld Gems", Sector-89, Gurgaon
2.	Nature of the project	Independent Floor Residence
3.	Project area	52.275 acres
4.	DTCP license no.	32 of 2021 dated 03.07.2021 valid upto 02.07.2026
5.	RERA Registered/ not registered	Registered Vide registration no. 70 of 2021 dated 25.10.2021 Valid upto 30.09.2025
6.	Date of booking	21.09.2022 (As on page no. 31 of complaint)
7.	Unit No.	O-157 A, 1st Floor, Block-O-157 (As on page no. 71 of complaint)
7.	Area of unit	583.10sq.ft. [Carpet Area] 1103 sq.ft [Super Area] 141.11sq.ft. [Balcony Area]

		(As on page no. 71 of complaint)
8.	Date of allotment [Note: Detailed allotment letter is on record]	22.09.2022 (As on page no. 69 of complaint)
9.	Date of builder buyer agreement	Not Executed
10.	Possession clause	N/A
11.	Due date of possession	30.09.2025 (As alleged by respondent in reply at page 12)
12.	Payment Plan	Construction Linked Plan <ul style="list-style-type: none"> a. Booking amount-10%. b. On start of construction-Excavation of the project site (on signing of the Agreement For Sale)-25% c. On completion of Bulk excavation of the project site-20% d. On completion of Stilt Roof Slab of plot-10% e. On completion of 2nd Floor Roof Slab of Plot-10% f. On completion of top floor roof slab of plot-5% g. On start of flooring of unit-5% h. On application of Occupation certificate of unit-5% i. On Offer of Possession-10% [As on page no. 73 of complaint]
13.	Total sale consideration	Rs. 76,91,250/- (As on page no. 71 of complaint)
14.	Total amount paid by the complainant	Rs. 7,69,126/- (As per SOA at page 67 of reply)
15.	Demand letters/email	24.09.2022

		30.09.2022
		16.11.2022
		24.09.2022
16.	Pre-Termination dated	10.11.2022 (As on page no. 62 of reply)
17.	Termination letter dated	23.11.2022 (As on page no. 64 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That after visiting various places in Gurugram in search of a good residential accommodation, the complainant came into contact with the respondent's company officials, where it was informed to the complainants that the respondent is developing a project "Smartworld Gems" situated at Sector-89, Gurugram.
- II. On going through the attractive Brochure, the payment plan and assurance given by the officials of the respondent regarding constructing of various projects in Gurgaon and other Districts of Haryana within the stipulated period. It was intimated that project is in pre-launching stage and the complainant was planning for settlement in NCR after retirement and by the reputation of the respondent, the complainants decided to have a residential flat in the project.
- III. That the complainant duly believed on the statement of the representative of respondent and applied for allotment of an independent floor residence bearing no. 0-157A on First Floor having the super area of 1130 sq.ft and paid Rs.2,00,000/- as booking amount to the respondent on 28.06.2021 and again paid an amount of

amounting Rs.5,00,000/- on 02-11-2021 with the payment plan in PLP 10:80:10 inclusive of all charges. The earnest money i.e. 10% which has been paid by complainant and remaining 30% was to be paid as per payment plan on start of construction and excavation of the project site (on signing of agreement of sale).

- IV. That the respondent has not delivered on its commitment and delayed the allotment procedure by more than one year. After making the payment and filling the application and submission of application in November 2021, Agreement of Sale was not executed by the respondent.
- V. That after the expiry of 01 year 03 months, the complainant had received the welcome letter and allotment letter on 22.09.2022 but still there was no confirmation of the Agreement of Sale. As per the Allotment Letter and Application Form also, second stage payment is due on signing of Agreement of Sale which should have been executed immediately on receipt of 10% booking amount as per terms of sale.
- VI. That the builder has raised the demand for second and third stage payment immediately after the allotment letter on 24.09.2022 and raised the demand of the Rs.69,126/- as the same was overdue which was duly paid by the complainant.
- VII. That instead of executing the Agreement, pre- cancellation letter was issued on 10.11.2022 and Termination of unit letter was issued on 23.11.2022. The complainant have not received any of the letters on the address and mail went into spam since it was coming from other mail ID of the respondent.
- VIII. That the complainant was in continuous touch with the CRM team of respondent for execution of BBA and visited the office of

the respondent several times but these letters were not serviced by them to the complainant. The complainant had personally collected the Allotment Letter from respondent's office in the first week of October, 2022, however, the complainant was not informed about the issuance of any Demand Letter by them and returned back of the same.

- IX. That the complainant have received an invitation for executing the BBA on 16.11.2022 at 3.05 pm, no prior intimation was given and due to the unavailability of the complainant in the city, the complainant reverted to the respondent immediately and requested the respondent to postpone execution of BBA for next week.
- X. That despite the request of the complainant for postponing the execution of BBA for next week, the respondent had illegally and unlawfully cancelled/ terminate the booking of the unit vide its letter dated 23.11.2022. which was not served to the complainant.
- XI. Thereafter the complainant without knowing the fact that the unit has been terminated by the respondent. That on 08-12-2022 around 12:56 pm, the complainant again e-mailed the respondent to know the update on execution of the BBA. The respondent rebutted to mail informing the complainant about the cancellation of the unit.
- XII. That it came as a surprise to the complainant that the respondent had cancelled the unit on 23.11.2022 itself and the same was not informed to the complainant on his visit to the respondent's office on 05.11.2022. In-spite the respondent asked for the 2nd and 3rd stage Payment from the complainant. The complainant again visited the office of the respondent and offered to make the full payment but the same was denied by the officials of the respondent. The complainant also sent a mail regarding the same on 12.12.2022.

XIII. That thereafter, the complainant visited several times to the office of the respondent and asked about the same but the officials of the respondent did not give any satisfactory answer to the complainant.

XIV. That the complainant even tried to reach out to the officials through mail on several occasions to get the termination letter and other relevant documents to make a representation before the Authority but the same were not provided to the complainant. The complainant e-mailed the respondent on 15.12.2022, 16.12.2022, 17.12.2022, 19.12.2022, 20.12.2022 and 21.12.2022.

XV. That the allotment of the unit was terminated despite the following clauses in the documents:

- a. *As per Allotment Letter Second stage payment is on signing of Agreement of Sale and the agreement was not executed by the company.*
- b. *As per RERA Act states that promoter can only accept 10% of total cost of the property as advance payment from the buyer without first entering into a written agreement to sale. No further deposit or advance to be taken by promoter without first entering into agreement for sale and the builder has issued demand letter and forced to pay before entering into a Registered Agreement of Sale.*

XVI. That the complainant had sent many mails to the top management and grievances officer of the respondent regularly after getting information about the cancellation of the unit but they have not responded in any of the mails and CRM of the company were not letting the complainant meet the appropriate higher authority to represent the illegal action taken by the respondent.

XVII. In the present case Termination of unit letter was issued on 60 day of the Demand Letter and allotment letter, timelines of the terms are not fulfilled. The respondent has never informed the stage of construction during the 01 year between booking of the unit and allotment letter so that the buyer can be ready with the payment. The demand for 45% of the flat value is also

raised without informing the stage of construction by providing appropriate document justifying the demand.

XVIII. The irresponsible behaviour of the top management and no response from the grievance redressal officer has shown the faulty internal redressal mechanism of the builder and insensitiveness towards the home buyers, not following the laid procedures under RERA. Several mails were sent to the grievance officer, top management and nodal authority, none of which is responded by any of the promoter/directors/ grievance officer.

XIX. That the complainant realised that at the time of booking of the unit, he has always been provided with false and frivolous assurances and that the respondent had malafide and to grab the hard earned money of the complainant after cancellation of the unit of the complainant.

XX. That the respondent, with malafide intentions, had induced the complainant to buy a unit in their project. That as a matter of fact, all that the respondent has done since booking of the said unit, is to provide false promises and assurances to the complainant and induce him to invest his hard-earned money in their project. Moreover, the respondent had no intention, since the beginning, to fulfil their promises. That the cause of action arose in the favour of the complainant and against the respondent in the month of November 2022 when the respondent cancelled the unit.

C. Relief sought by the complainant:

4. The complainant is seeking the following relief(s).

- i. Pass directions to the respondent to set aside termination dated 23.11.2022.
- ii. Direct the respondent to pay interest on paid amount of Rs.7,69,126/- from the date of deposit till the actual date of receipt.
- iii. Litigation charges.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.
 - I. That the complainant had earlier expressed his interest for purchase of a ready to move in unit in the properties acquired by the respondent. The complainant after conducting his own due diligence and independent enquiries and only after being fully satisfied about the projects of the respondent, applied for allotment of an independent floor residence in the project "Smartworld Gems" being developed by the respondent in Sector 89, Gurugram vide Application Form through his broker Philby Real Estate.
 - II. That the complainant on his own free will and understanding and after having read and understood all the terms of the application form, signed the said Form.
 - III. After repeated requests and follow ups by the Respondent, the complainant selected unit bearing no. O-157A and accordingly, the respondent allotted unit bearing no. O-157A in the said project for a total consideration of Rs.76,91,250/- plus other charges vide allotment letter dated 22.09.2022. The complainant on his own free will and understanding of the legal import and effect opted for a specific payment plan i.e., 10:80:10. The allotment letter was also duly sent by the respondent vide email dated 26.09.2022.
 - IV. That earlier the complainant expressed his interest for booking of a ready to move in unit in one of the properties acquired by its associate

company, M/s. Suposhaa Realcon Pvt. Ltd. That M/s. Suposhaa Realcon 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 appropriate time. The M/s. Suposhaa Realcon Pvt. Ltd. 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. The complainant paid an amount of Rs.2,00,000/- to M/s. Suposhaa Realcon Pvt. Ltd. towards expression of interest in the ready to move in unit. Thereafter, the complainant approached the respondent and requested that the amount of Rs.2,00,000/- paid to Associate Company M/s. Suposhaa Realcon Pvt. Ltd. towards booking of a ready to move in unit be transferred towards the unit. The respondent being a customer-oriented Company acceded to the request of the complainant and transferred the amount of Rs.2,00,000/-.

V. That the complainant collected the copies of the Buyers Agreement for execution at his end, however the complainant failed to come forward for the execution and registration process, for the reasons best known to himself. The respondent on various occasions vide emails dated 30.09.2022 and 16.11.2022 requested the complainant to come forward for signing and registration of the Buyers Agreement, however to no avail.

VI. That thereafter, the respondent as per the payment plan opted by the complainant, raised a demand dated 24.09.2022 of Rs.35,30,188/- which was due on or before 24.10.2022. The demand letter was also

duly sent by the respondent vide email dated 24.09.2022. The complainant paid a part payment of amount of Rs.69,125/- on 04.11.2022 which was duly acknowledged by the respondent. Since the complainant failed to get the Buyer's Agreement registered and make the complete payment of the outstanding dues against the demand raised, the respondent was left with no other alternative and issued a pre-cancellation letter dated 10.11.2022 to the complainant calling upon the complainant to make payment of Rs.35,30,188/- along with interest within 7 days of receipt of the said letter, failing which the allotment/booking shall be cancelled/terminated.

VII. That the complainant even after the issuance of the abovementioned pre-cancellation letter failed to take advantage of this opportunity and continued to breach the terms of the Application Form/Allotment. As a consequence, of the same the respondent was constrained to terminate the allotment of the complainant vide cancellation letter dated 23.11.2022 and forfeit the amount as per terms of the Application Form/Allotment.

VIII. Thereafter, the complainant approached the respondent and requested for extension of time to make payment. The respondent being a customer-oriented company acceded to the request of the complainant and stayed the operation of the cancellation letter subject to execution of Buyers Agreement and payment of outstanding dues. Since, the complainant failed to clear his dues therefore the cancellation letter dated 23.11.2022 stands in its operation and the unit in question stands cancelled. It is submitted that the complainant has approached this Authority after approximately 1.5 years.



IX. That the respondent was constrained to cancel/terminate the unit as per the terms of the Application Form/Allotment as the complainants failed to come forward to execute the Buyers Agreement and get the same registered. Further, the complainant failed to clear his pending dues. It is submitted that the complainant had paid an amount of Rs.7,69,125/- which is 10% of the total sales consideration against the unit in question.

X. That the respondent is incurring losses/damages on account of the breach of the terms of the allotment and application by the complainant, which the complainant is liable to pay to the respondent as per the terms of the Allotment. The losses suffered by the respondent are as follows:

- i. *Earnest Money -Rs. 7,69,125/- It is submitted that the Complainant herein had agreed to the forfeiture of the earnest money, in the event of failure to comply with the terms of the Application Form/allotment and perform his obligations.*
- ii. *Interest - Sum of Rs. 35,937/- was the interest payable by the Complainant for the delayed payments.*

XI. Thus, the total loss calculated comes to Rs.8,05,062/- which includes, earnest money deduction @10% to the tune of Rs.7,69,125/- and further sum of Rs.35,937/- was the interest payable by the complainant for the delayed payments.

XII. Further, the respondent without prejudice to its rights, to close the matter and subject to the orders passed in the present case, has already refunded the entire amount deposited by the complainant i.e. Rs.7,69,125/- on 09.04.2024 vide RTGS to the complainant without any deductions, even though the respondent was entitled to forfeit the amount deposited being 10% of the sale consideration in accordance with the terms of the Application Form/Allotment.



XIII. That the respondent has fulfilled its contractual obligations under the Application Form/Allotment however, despite that the complainant has failed to execute the Buyers Agreement and clear his outstanding dues. The complainant is in default of his contractual obligations and is raising these frivolous issues in order to escape the liability cast upon them by the virtue of the terms of Application Form/Allotment. Therefore, the complainant is not entitled to any relief whatsoever.

XIV. That the respondent was constrained to cancel the unit on account of non-execution of the Buyers Agreement and non-payment of the demands as raised by the respondent. As per the Allotment letter dated 22.09.2022, the due date of handing over possession of the independent floor residence is 30.09.2025, however the same is subject to force majeure conditions and any extension granted by the HRERA on or before 30.09.2025.

XV. Thereafter the complainant approached the respondent and requested for extension of time to make payment. Since, the complainant failed to clear his dues therefore the cancellation letter dated 23.11.2022 stands in its operation and the unit in question stands cancelled. The complainant was informed about the same on 08.12.2022.

6. 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

7. The Authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.



E.I Territorial jurisdiction

8. 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

9. 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;

10. 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 reliefs sought by the complainants:

F.I Pass directions to the respondent to set aside termination dated 23.11.2022.

F.II Direct the respondent to pay interest on paid amount of Rs.7,69,126/- from the date of deposit till the actual date of receipt.

11. The complainant in the present complaint have booked a unit in the project of the respondent namely 'Smartworld Gems" situated at Sector-89, Gurugram, Haryana. The booking of the subject unit was made by the complainant on 21.09.2022 and thereafter, the complainant was allotted a unit bearing no. O-157 A on first floor in Block-O-157, admeasuring 583.10 sq.ft of carpet area and 1103 sq.ft. of super area and 141.11 sq.ft of Balcony Area vide Allotment Letter dated 22.09.2022. The Builder Buyer's Agreement for the said unit has not been executed between the complainant and respondent till date. The sale consideration of the unit was Rs.76,91,250/- and an amount of Rs.7,69,126/- has been paid by the complainant till date to the respondent, which is 10% of the sale consideration of the unit. The allotment of the complainant's unit has been terminated by the respondent on 23.01.2022.
12. The complainant has sought the relief of setting aside the Cancellation Letter dated 23.1.2022 and interest on the amount paid from the date of deposit till the actual date of receipt.
13. The complainant submits that he paid 10% of the total sale consideration as earnest money, and that the balance 30% was payable in accordance with the payment plan upon commencement of construction and excavation at the project site, i.e., at the time of execution of the Agreement of Sale. It is his case that after making the requisite payment, completing the application formalities, and submitting the application in November 2021, the respondent failed to execute the Agreement of Sale.

14. The complainant further contends that although he had requested postponement of the execution of the Builder Buyer Agreement (BBA) to the following week, the respondent illegally and unlawfully cancelled/terminated the booking of the unit vide letter dated 23.11.2022, which, according to him, was never served upon him. Being unaware of the said termination, the complainant addressed an email dated 08.12.2022 at about 12:56 p.m. seeking an update regarding execution of the BBA. In response, the respondent informed him that the unit had already been cancelled. The complainant asserts that the said cancellation came as a complete surprise, as the termination had allegedly been effected on 23.11.2022 without his knowledge.

15. It is further averred that after a lapse of one year and three months, the complainant received the Welcome Letter and Allotment Letter dated 22.09.2022; however, no Agreement of Sale was executed. According to the complainant, as per the terms of the Allotment Letter and Application Form, the second stage payment was payable only upon signing of the Agreement of Sale, which ought to have been executed immediately upon receipt of the 10% booking amount in terms of the conditions of sale.

16. Per contra, the respondent submits in its reply that on various occasions, vide emails dated 30.09.2022 and 16.11.2022, the complainant was requested to come forward for signing and registration of the Buyer's Agreement, but he failed to do so. It is further contended that in accordance with the payment plan opted by the complainant, a demand dated 24.09.2022 for a sum of Rs. 35,30,188/- was raised, payable on or before 24.10.2022, and the same was duly communicated through email on 24.09.2022.

17. The respondent states that the complainant made only a part payment of Rs. 69,125/- on 04.11.2022, which was duly acknowledged. Since the complainant allegedly failed to execute and register the Buyer's Agreement and to clear the outstanding dues pursuant to the demand raised, the respondent issued a pre-cancellation letter dated 10.11.2022, calling upon the complainant to remit the sum of Rs. 35,30,188/- along with applicable interest within seven days from receipt thereof, failing which the allotment/booking would stand cancelled/terminated.

18. Further, despite issuance of the said pre-cancellation notice, the complainant failed to comply with the terms and conditions of the Application Form and Allotment. Consequently, the respondent terminated the allotment vide cancellation letter dated 23.11.2022 and forfeited the amount in accordance with the governing terms. The respondent maintains that, in view of the complainant's failure to clear the outstanding dues, the cancellation letter dated 23.11.2022 remains valid and operative, and the unit in question stands cancelled.

19. The Authority after considering all the documents on record observes that the complainant had only paid Rs.7,69,126/- against the sale consideration of Rs.76,91,250/-. As per the Payment Plan annexed on page no. 73 of the complaint, the payment plan was "*Construction Linked Plan*" which is as follows:

Booking amount-10%.

On start of construction-Excavation of the project site (on signing of the Agreement For Sale)-25%

On completion of Bulk excavation of the project site-20%

On completion of Stilt Roof Slab of plot-10%

On completion of 2nd Floor Roof Slab of Plot-10%

On completion of top floor roof slab of plot-5%

On start of flooring of unit-5%

On application of Occupation certificate of unit-5%

On Offer of Possession-10%

[Emphasis supplied]

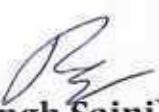
20. In terms of the aforesaid payment plan, the first stage of payment was due at the time of booking, which was duly remitted by the complainant. Thereafter, the respondent raised demands towards the second stage of payment, namely, "On start of construction—Excavation of the project site (upon signing of the Agreement for Sale)." In this regard, the respondent issued a demand letter dated 24.09.2022, which was also communicated to the complainant via email on the same date.

21. It is further on record that vide emails dated 30.09.2022 and 16.11.2022, the respondent called upon the complainant to come forward for execution of the Buyer's Agreement; however, the complainant failed to comply with the said requests. Consequently, the respondent issued a Pre-Cancellation Letter dated 10.11.2022, followed by a Cancellation Letter dated 23.11.2022. The cancellation of the allotment was also intimated to the complainant through email.

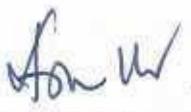
22. The respondent has annexed, at page 67 of its reply, the bank account statement of the complainant evidencing refund/payment of an amount of Rs.7,69,125/- to the complainant through RTGS on 09.04.2024.

23. It is further submitted that subsequent thereto, vide Welcome Letter dated 19.04.2023 and Allotment Letter dated 18.04.2023, the respondent has created third-party rights in respect of the unit in question.

24. In view of the aforesaid facts and circumstances, the present complaint is devoid of merit.
25. Accordingly, the Authority is of the view that no relief whatsoever is made out in favour of the complainant and against the respondents in the present complaint. The complaint is, therefore, dismissed.
26. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.01.2026



HARERA
GURUGRAM