

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

**Complaint No:** 4661 of 2024  
**Date of complaint:** 24.09.2024  
**Date of order:** 13.01.2026

Alka Gupta

**R/o:** Plot No.- 461P, Ground Floor, Sector-56,  
HUDA Plots, Near Alpine Convent School,  
Gurugram-122001

**Complainant**

**Versus**

1. M/s Nourish Developers Private Limited  
**Registered office at:** 12A Floor, Tower 2, M3M  
International Financial Center, Sector-66,  
Gurugram-122002  
2. Investors Clinic Infratech Private Limited  
Office at: 21<sup>st</sup> Floor, Supernova Astralis, Sector-  
94, Noida, Uttar Pradesh-210301

**Respondents**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Shri Garvit Gupta (Advocate)

Ms. Shriya Takkar and Ms. Meenal Khanna (Advocates)

Ms. Mahima (Advocate)

Complainant

Respondent no. 1

Respondent no. 2

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation 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 allottees as per the agreement for sale executed *inter se*.

### A. Unit and project related details

2. The particulars of the project, the details of 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	"Smart One DXP Phase-2", Sector-113, Gurgaon
2.	Nature of the project	Residential colony
3.	DTCP license no.	106 of 2022 dated 05.08.2022 valid up to 04.08.2027 (area 16.1125 acre)
4.	RERA Registered/ not registered	69 of 2024 dated 24.06.2024 valid up to 31.08.2031
5.	Date of Allotment letter	23.07.2024 (As per page no. 96 of the reply)
6.	Unit no.	J-501, Tower-J, 5 <sup>th</sup> Floor (As per page no. 123 of the reply)
7.	Unit admeasuring area	1027.66 sq. ft. (carpet area) and 1927 sq. ft. (super area) (As per page no. 123 of the reply)
8.	Date of builder buyer's agreement	13.08.2024 (As per page no. 120 of the reply)
9.	Possession clause	<i>7.1 (ii) The promoter assures to offer possession of unit along with right to use car parking space (as applicable) as per agreed terms and conditions on or before 31.08.2031 unless there is delay due to force majeure.....</i> (As per page no. 135 of the reply)
10.	Due date of possession	31.08.2031 (As mentioned in the possession clause)
11.	Total sale consideration	Rs.2,59,18,091/- (As per page no. 169 of the reply)

12.	Total amount paid by the complainant	Rs.77,01,442/- (As per page no. 7 of the reply)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions:
- I. That the respondent no.1 is a company incorporated under the Companies Act, 1956 having its registered office at the above-mentioned address and existing under the Companies Act, 2013. The respondent no.1 is comprised of several clever and shrewd types of persons. The respondent no.1 now does not enjoy good reputation at all and has cheated many innocent people like the complainant. Respondent no.2 is a Real Estate agent who is involved in facilitating the sale of the units on behalf of respondent no.1.
  - II. That the respondent no.2 is a registered agent bearing registration no. 95/2017 and acted as channel partner of respondent no.1 in selling the units in the project in question. As per Section 2(zm) of the Real Estate (Regulation and Development) Act, 2016, the respondent no.2 falls under the category of 'Real Estate Agent' and is equally responsible and is bound to adhere to the duties and obligations mentioned in the said Act.
  - III. That the respondent no.1 through respondent no.2 offered for sale units in a Residential Group Housing project known as 'Smartworld One DXP- Phase 2' which claimed to comprise of residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector 113, Gurugram, Haryana. The respondent no.1 through respondent no.2 also claimed that the DTCP, Haryana had granted license bearing no. 106 of 2022 dated 05.08.2022 on a land area of about 16.1125 acres in Sector 113, Gurugram to its associates' companies for development of a residential group housing project in accordance with the provisions of the Haryana

Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.

- IV. That the complainant received a marketing call from the office of respondent no.1 through respondent no.2 in the month of January, 2023 for booking in the said residential project of the respondent no.1. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent no.1 through various means like various brochures, posters, advertisements etc. The complainant along with her son visited the sales gallery and consulted with the marketing staff of the respondents. The marketing staff of the Respondents painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondents in the project of respondent no.1. The marketing staff of the respondents also assured timely delivery of the unit.
- V. That the complainant, induced by the assurances and representations made by the respondents, decided to book a residential unit in the project of the respondent no.1 as the complainant required the same in a time bound manner for her own use. Initially, it was decided that the said booking would be made in the name of the complainant and her son Chandan Gupta. This fact was also specifically brought to the knowledge of the officials of the respondents who confirmed that the possession of the residential unit to be allotted to the complainant and her son would be positively handed over within the agreed time frame. It was also confirmed by the representatives of the respondent no.2 on behalf of respondent no.1 that the payment plan in question would be 10:75:10:5. The complainant and her son signed several blank and printed papers at the instance of the respondent who obtained the same on the ground that the same were required for completing the booking formalities. The complainant and her son were not given chance to read or

understand the said documents and he signed and completed the formalities as desired by the respondents.

- VI. That the respondents shared a cost sheet with the complainant and her son vide which it was informed to the complainant and her son that Unit no. 501 in Tower J on 5<sup>th</sup> Floor and admeasuring 1805 sq.ft. would be allocated to them. Vide the said cost sheet, it was also intimated to the Complainant and her son that the total cost of the unit, inclusive of all charges, would be Rs.2,31,16,946/-. Similarly, the payment plan specifically showing the stages of payment and divided in the ratio of 10:75:10:5 formed part of the said cost sheet as shared by the respondents. The said cost sheet bearing the payment plan along with the details of the allotment was also acknowledged and confirmed by respondent no.1 vide its email dated 10.04.2023.
- VII. That the complainant and her son based on the assurances of the respondents that respondents would diligently and honestly honour their commitments over a period of time starting from 07.04.2023 made the payment of Rs. 10,00,000/- at the time of booking. The receipt of the payment of Rs. 10,00,000/- paid by the complainant and her son was admitted by respondent no.1 vide its email dated 18.04.2023.
- VIII. That despite several efforts made by the complainant and her son, the respondent failed to communicate with the respondent with respect to the status of the construction of the project and failed to execute the agreement in question. When the complainant and her son enquired from respondent no.1 about the execution of the agreement, it was informed that the respondent no.1 had already submitted the draft of a sample agreement with this Hon'ble Authority for approval and immediately when the said draft is approved, respondent no.1 would execute the agreement with the complainant and her son. However, despite numerous follow-ups by the complainant and her son

for execution of the agreement, respondent no.1 failed to share even the draft with them.

- IX. That the complainant always wanted to inspect the location of the allotted unit and had requested the representatives of the respondents several times in meetings and through telephonic conversations to allow her to do the same. However, the respondents kept on making excuses and did not allow the complainants to inspect the location of the unit in question. in the meantime, on account of certain reasons, son of the complainant i.e., Chandan Gupta relinquished his rights in the allotted unit and the same was informed to respondent no.1.
- X. That the respondents informed the complainant that the draft agreement for the unit has been approved by this Hon'ble Authority and that the same would be shared with the complainant by the respondents soon. Furthermore, it was also informed that the super area of the unit has been unilaterally increased by respondent no.1 from 1805 sq. ft to 1927 sq.ft which would lead to the increase in the total sale consideration from Rs. 2,31,16,946/- to Rs. 2,46,83,896/-. It was also intimated to the complainant by respondent no.1 through respondent no.2 that the payment plan which was mutually decided as 10:75:10:5 would be changed to 9:21:40:20:10. Thus, it meant that the payments which were to be paid in four parts before were to be paid in five parts now. This also meant that the immediate liability of the complainant was now unilaterally increased by almost Rs. 55,00,000/- which had to be paid by the complainant on immediate basis to the respondent.
- XI. That the respondent no.1 acted in strict violation of section 14 of the RERA Act, 2016 which mandates a promoter to seek consent from the allottee in case of change in the layout of a unit. Moreover, there has been no change in the building plans as on date and nor the same has been intimated by the

Respondent no.1 to the complainant or to the other similarly placed allottees. Rather, the case of the complainant is on the better footing as per section 14 of the Real Estate (Regulation and Development) Act, 2016. Section 14 of the Real Estate (Regulation and Development) Act, 2016 stipulates the manner in which the layout of the unit could be altered. Hence, is a classic case of misrepresentation under section 12 of the Real Estate (Regulation and Development) Act, 2016.

- XII. That the complainant made vocal her objections to the arbitrary and unilateral change of the payment plan, increase in the super area of the unit which led to increase of the total sale consideration in which the unit allotted to the complainant was located and informed the respondent no.1 that in case, the loss to be incurred by the complainant is not compensated, the complainant would be constrained to inform the relevant authorities about the unilateral conduct of the respondent no.1. The complainant repeatedly requested the respondents for revising the payment plan to the original payment plan as was decided with it. However, it was very categorically informed to the complainant that on account of increase of the total sale consideration and change of the payment plan, respondent no.1 would provide TPR of Rs.1750/- per sq. ft. in the form of discount to the complainant.
- XIII. That the respondent no.2 on behalf of respondent no.1 shared the revised cost sheet with the complainant. As per the said revised cost sheet, the net effective cost of the unit, after taking into consideration, the TPR discount of Rs.1750/- per sq. ft. was Rs.2,13,11,646/-. It was reasserted that the said TPR discount was given by respondent no.1 on account of increase of the total sale consideration due to unilateral increase of the area of the unit as well as on account of unilateral change of the payment plan which would have led to significant financial loss/additional interest to be paid by the complainant.

- XIV. That only on the basis of the revised cost sheet shared by the respondents with the complainant, the complainant proceeded with signing the new application form. The new application form was silent on the total sale consideration of the unit. However, the representative of the respondents Mr. Varun Chopra assured the complainant in the meetings held on 07.07.2024 and 09.07.2024 that the total sale consideration of the unit would be same as mentioned in the cost sheet shared with the complainant. It was further assured that the allotment letter specifically mentioning the TPR discount would be handed over by respondent no.1 to the complainant.
- XV. That on the basis of the assurances of the respondents, the complainant further made payment of Rs. 15,65,891/- to the respondents. It is submitted that vide email dated 20.07.2024, it was requested to the respondents by the complainants that on account of change of the payment plan, discount of Rs. 1750/- per sq. ft. has been given by the respondents to the complainant. Furthermore, it was also intimated that the complainant would be applying for home loan for completing 30% of payment and that allocation/allotment letter is a necessity towards the same. The complainant vide the said email demanded allocation letter from the respondents.
- XVI. That the respondent no.1 vide its email dated 27.07.2024 acknowledged the payment of Rs.15,65,891/- and also did not deny the TPR of Rs.1750/- per sq. ft. The complainant sensing misdeed on the part of respondent no.1, vide its email dated 29.07.2024, reminded respondent no.1 to confirm the discount of Rs.1750/- per sq. ft. vide allocation letter.
- XVII. That the complainant was in complete shock and dismay to receive an email dated 02.08.2024 from respondent no.1 wherein it was informed to the complainant for the first time that the TPR which was offered to the complainant was Rs.250/- per sq. ft and that the same would be adjusted

against the last demand for the unit. The said representation came as a blow to the complainant as the complainant had made the major part of the payment only after it was confirmed by the respondents that the TPR of Rs.1750/- per sq. ft would be adjusted. It was with this very notion that the revised cost sheet stipulating net effective cost of the unit was shared by the Respondents with the complainant. Aggrieved by the contents of the email, the complainant vide her email dated 04.08.2024 detailed the entire narration of the actual facts and requested the respondents to resolve the issue.

XVIII. That the complainant was constrained to yet again approach the representatives of respondent no. 1 and 2. respondent no. 2 contacted Mr. Varun Chopra of respondent no. 1 who in his WhatsApp conversations admitted that the discount rate in the form of TPR which was earlier offered to the complainant was Rs.1750/- per sq. ft and that the same was done by alleged mistake. On constant perusal by the complainant, respondent no.2 vide its email dated 13.08.2024 also admitted that it had sold the unit to the complainant on behalf of respondent no. 1 at TPR of Rs.1750/- per sq. ft which has now been unilaterally changed. It was also acknowledged by respondent no. 2 vide the said email that the rest of the details mentioned in revised cost sheet was absolutely correct and that there cannot be any mistake on part of respondent no.1 when it offered the TPR of Rs.1750/- per sq. ft. Hence, it is clear that either respondent no. 2 has acted in collusion with respondent no. 1 or that respondent no. 1 has committed fraud and misrepresentation with respondent no. 2 as well.

XIX. That all the assurances made by the respondents have turned out to be false. No concrete steps were taken by the respondents. The respondent kept on misleading the complainant by giving incorrect information and assurances that it would do the needful soon. The failure of the respondents and the fraud

played by it is writ large and has resulted in serious consequences being borne by the complainant. The complainant was coerced by the respondent to sign the agreement by respondent no.1 who threatened the complainant that if the agreement was not signed by the complainant, then the entire amount paid by the complainant would be forfeited and the unit terminated. Hence, the complainant was forced to sign the agreement on 13.08.2024 under protest. The protest letter dated 08.08.2024 has been acknowledged by respondent no.1.

- XX. That the complainant all this while was ready and willing to honour her contractual obligations of making payment towards the remaining sale consideration towards the unit in question provided that the discount of Rs.1750/- per sq. ft in the form of TPR is provided to the complainant. However, the respondents deliberately, mischievously, fraudulently and with malafide motives have cheated the complainant. The readiness and willingness of the complainant is demonstrated by the fact that the complainant had a pre-sanction letter dated 29.07.2024 for the home loan for the payment towards the next instalment. There has been deliberate lethargy, negligence and unfair trade practice by the respondents. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern towards the buyers.
- XXI. That the registration certificate for the project was obtained by respondent no.1 on 24.06.2024. However, the amount was collected from the complainant by respondent no.1 through respondent no. 2 much prior i.e., 14 months to the receipt of the registration certificate. Hence, it is clear that respondent no. 1 has acted in complete violation of section 3 of the RERA Act, 2016.
- XXII. That without prejudice to the rights of the complainant, if respondent no.1

denies offering the TPR of Rs. 1750/- per sq. ft., then it is clear that respondent no.2 has acted in violation of section 10(c) of the Real Estate (Regulation and Development) Act, 2016.

- XXIII. That the respondent no. 2 has failed to comply with and has rather contravened the provisions of section 9 and section 10 of the act, and hence is liable for penalty as prescribed under section 62 of the Real Estate (Regulation and Development) Act, 2016.
- XXIV. That due to the fault of the respondents, the complainant has been deprived of roof over her head for a long time and has suffered very badly. It is, thus clear that the respondents have been acting in contrary to law and has reduced the complainant at its mercy wherein and the complainant's questions have been left un-answered and the respondents are continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017. The respondents have violated several provisions of RERA 2016 and Haryana RERA Rules 2017 and are liable for the same. The respondents have been brushing aside all the requisite norms and stipulations and have accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the possession of the unit despite repeated assurances.
- XXV. That the respondents have taken undue advantage of the helplessness of the complainant and has further exploited its dominant position. It would not be out of place to mention that the complainant was always ready and willing to perform her part of the contract. Therefore, it is evident from the entire sequence of events that no illegality or acts can be attributed to the complainant. The respondents cannot be permitted to take advantage of their own illegal acts. Respondent no.1, in order to create false evidences have sent pre-cancellation letter dated 08.08.2024 to the complainant. It is an apt case

of the promoter claiming premium of his own wrongs and illegalities. Hence, it is necessary under section 36 of the Real Estate (Regulation and Development) Act, 2016, that an interim relief be granted by this Hon'ble Authority restraining respondent no.1 from terminating the allotment and/or creating third party right on the unit in question till the time, the matter is pending adjudication before this Hon'ble Authority as the pre-cancellation letter dated 08.08.2024 has been issued by the respondent. Rather, the respondent has vide its email dated 31.08.2024 also informed to the complainant that on account of alleged delay in making the payments, the TPR discount stood revoked. On account of constant and repetitive threat of the respondent, the complainant was coerced to make further payment of Rs. 6,25,800/- and Rs. 45,09,751/- to the respondent on 04.09.2024. The respondent acknowledged the receipt of the said payment vide its email dated 05.09.2024.

XXVI. That the project is an ongoing project and hence falls under the first proviso to section 3(1) of RERA 2016. The complainant believe that no completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Hon'ble Authority. The respondent in utter disregard of its responsibilities has left the complainant in the lurch and the complainant has been forced to chase the respondents for seeking relief.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief:
  - i. Direct the respondents to adjust the TPR of Rs.1750/- per sq. ft. in the net effective sale consideration of the unit in question. Without prejudice, if the same is not allowed by this Hon'ble Authority, then the respondent no.1 be directed to revert the payment plan back to 10:75:10:5 with same terms and

conditions as aligned between the complainant and the respondents and additional payment made by the complainant i.e., Rs.51,35,551/- be refunded to the complainant with interest.

- ii. Direct respondent no.1 to make payment of interest to the complainant on the excess amount (more than 10% of the sale consideration) collected by it from the Complainant prior to execution of the agreement.
- iii. Impose penalty upon respondent no. 1 under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3 of the Real Estate (Regulation and Development) Act, 2016.
- iv. Impose penalty upon respondent no. 2 under section 62 of the Real Estate (Regulation and Development) Act, 2016 for violation of sections 9 and 10 of the Real Estate (Regulation and Development) Act, 2016.
- v. Direct the respondents to not terminate the allotment and create third party rights upon the unit in question.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**D. Reply by the respondent:**

7. The respondent has contested the complaint on the following grounds:
  1. That at the very outset, the respondent wants to bring to the kind knowledge of this Hon'ble Authority that the complainant has not approached this Hon'ble Regulatory Authority with clean hands and is guilty of suppression of material facts absolutely relevant for just and proper adjudication of this complaint.

The complainant herein had earlier expressed her interest through her broker respondent no.2 for booking of a residential apartment in the project "Smartworld One DXP- Phase 1, an independent standalone real estate project within Mixed Land Use Colony situated in Sector 113, Gurugram Manesar Urban Complex, Haryana being developed by respondent no.1 company and paid booking amount towards the same. However, the parties herein could not reach an agreement qua allotment of the unit in Smartworld One DXP - Phase 1.

- II. That thereafter, the complainant requested that an apartment be allotted in Smartworld One DXP -Phase 2 an independent standalone real estate project within mixed land use colony situated in sector 113, Gurugram Manesar Urban Complex, Haryana being developed by respondent no.1 company and applied for booking of an apartment vide application form. The complainant had signed the application form after duly understanding all the clauses stipulated thereinunder and after being completely satisfied with the particulars/details of the project. The complainant to mislead this Hon'ble Authority has not annexed the complete copy of the application form. The complainant to make good the booking amount of 10% of sales consideration requested that the amount paid earlier towards the booking in Phase 1 be transferred towards the present booking. Accordingly, the answering respondent transferred amount paid by the complainant towards the unit in 'Smartworld One DXP Phase 2', Sector 113, Gurugram and issued receipts for the same.
- III. That in due consideration of the complainant's commitment to make timely payment, the respondent issued, welcome and allotment letter dated 23.07.2024 by way of which residential apartment bearing no. J-501 (residential 3bhk + study type unit) admeasuring 1027.66 sq. ft. carpet area was allotted to the complainant. The cost of the apartment was Rs.

2,59,18,091/- plus other charges. The payment plan opted by the complainant was under a specific payment plan i.e. 30-40-30 and the same is reproduced hereinbelow:

Name of Installment	%	BSP	CGST	SGST	Total Amount
On Allotment	9.00	22,21,551	55,539	55,539	23,32,629
Within 7 days from the date of Allotment (On Execution/ Signing of Agreement for Sale)	21.00	51,38,618	1,29,590	1,29,590	54,42,799
On completion of 27 <sup>th</sup> Floor Slab	40.00	98,73,558	2,46,839	2,46,839	1,03,67,236
On Application of Occupation Certificate	20.00	49,36,779	1,23,419	1,23,419	51,83,618
On Offer of Possession	10.00	24,68,390	61,710	61,710	25,91,810
Total		2,46,83,896	6,17,097	6,17,097	2,59,18,091

- IV. That the respondent no. 1 on the very same day i.e., 23.07.2024 vide cover letter dated 23.07.2024 dispatched triplicate copies of the buyer's agreement for execution at the complainant's end and requested the complainant to come forward for getting the same registered.
- V. That the respondent no.1 raised the demand vide letter dated 23.07.2024 in respect of the allotted unit for an amount of Rs. 67,75,433/- which was payable on or before 30.07.2024. The respondent no.1 vide email dated 25.07.2024 also shared the copy of the welcome letter and the allotment letter with the complainant. The complainant wanted to avail loan facility. Accordingly, the respondent vide email dated 27.07.2024 requested the complainant to share the copy of the sanction letter at the earliest.
- VI. That the respondent no.1 thereafter after showing a stoical composure until the due date as per demand letter 23.07.2024 issued reminder vide letter dated 31.07.2024 in favour of the complainant requesting the complainant to make good the balance payments to the tune of Rs. 52,09,542/- but the same was paid no heed to by the complainant.
- VII. That the respondent no.1 vide email dated 02.08.2024 informed the

complainant that her booking is eligible for timely payment rebate of Rs. 250/- per sq. ft. and the same would be adjusted against the last demand for the unit as per the eligibility criteria i.e. making all the payments on time. Thus, the pre-requisite for availing timely payment rebate (TPR) was making all payments on or before the due date of payment mentioned in the demand letter raised by the respondent company.

- VIII. That since the complainant failed to clear her outstanding dues and failed to execute the buyers' agreement despite issuance of repeated reminder, the respondent no.1 having no remedy was forced to issue pre-cancellation letter dated 08.08.2024 tendering another opportunity to clear the balance payment accruing upon the complainant within a period of 7 days from the date of the receipt of the notice. Thereafter belatedly, the buyers' agreement was executed between the parties and duly registered on 13.08.2024. the buyer's agreement sets out the rights and liabilities of the parties.
- IX. That since, no payment was forthcoming therefore, the respondent no.1 duly sent the copy of the pre-cancellation to the complainant vide email dated 31.08.2024 and since, the complainant failed to make payments of the demands raised within the prescribed time limit stated in the demand letter, therefore the timely payment rebate was withdrawn/revoked by the respondent and the same was informed to the complainant vide said email
- X. That accordingly, a permission to mortgage was issued by the respondent no.1 to the bank. Thereafter, the complainant in lieu of the demand raised vide letter dated 23.07.2024 belatedly the complainant made part payment of Rs.45,09,751/- and Rs.6,25,800/- vide online mode on 04.09.2024 and the same were duly acknowledged by the respondent no.1. The said fact is evident from the email dated 05.09.2024. The complainant till date has deposited an amount of Rs.77,01,442 /- towards the apartment in question. The

complainant has failed to make the complete payment of the outstanding dues as per the terms of the buyers' agreement along with interest. The complainant as on 03.05.2025 is still liable to pay an amount of Rs.73,991/- towards her pending dues and further is liable to pay interest at the prescribed rate for every day of delay. The complainant is in default of her obligations under sec 19(6) and (7) of RERA Act, 2016 as well under the contract.

- XI. That the respondent company has complied with all its contractual obligations. it is submitted that it is the complainant who failed to make timely payment of dues and is now trying to escape her liability cast upon her by the virtue of the terms of the buyers' agreement. Thus, the complainant is not entitled to any relief whatsoever.
- XII. That a perusal of the complaint would show that the affidavit attached to the complaint is not adequately verified and it is not duly notarized by the Oath Commissioner. As per settled law laid down by the Hon'ble Supreme Court, improper verified and an unsigned affidavit without even having the notary seal of 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".
- XIII. That at no point of time the respondent ever promised or offered TPR of Rs.1,750/- to the complainant. The respondent is not privy to the understanding between the complainant and her broker. it is submitted that the terms of the booking have been recorded in the allotment letter and the

buyers' agreement and the alleged cost sheet are of no consequence whatsoever and are denied in toto. That the respondent no.1 vide email dated 02.08.2024 informed the complainant that her booking is eligible for TPR of Rs. 250/- per sq. ft. and the same would be adjusted against the last demand for the unit as per the eligibility criteria i.e. making all the payments on time. Thus, the pre-requisite for availing timely payment rebate (TPR) was making all payments on or before the due date of payment mentioned in the demand letter raised by the respondent company.

- XIV. That as per the allotment letter dated 23.07.2024, the due date of handing over possession of the residential apartment is 31.08.2031, however the same is subject to force majeure conditions and any extension granted by the HRERA on or before 31.08.2031, hence, the present complaint is pre-mature.

#### **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**

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 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 completed territorial jurisdiction to deal with the present complaint.

##### **E.II Subject matter jurisdiction**

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) 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. Maintainability of the complaint.**

10. The complainant has booked a unit in the project of the respondent no. 1 namely, "Smart One DXP Phase-2", situated at Sector-113, Gurugram through respondent no. 2. A builder buyer's agreement was executed between the complainant and the respondent no. 1 on 13.08.2024 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.77,01,442/-.
11. The complainant has sought the relief of adjustment of the TPR of Rs.1750/- per sq. ft. in the net effective sale consideration of the unit in question and interest on excess payment of 10% of sale consideration accepted by respondent before execution of BBA.
12. The complainant has opted for a 9:21:40:20:10 payment plan and as per the opted payment plan the complainant has to pay 9% of the total sale value on allotment, 21% within 7 days from the date of the allotment on execution of registration of agreement for sale, next 40% on completion of 27<sup>th</sup> floor slab, another 20% of application of occupation certificate and remaining 10% on

offer of possession. The complainant has paid an amount of Rs.77,01,442/- which amounts to almost 30% of the total sale consideration.

13. During proceedings of the day dated 13.01.2026, the counsel for the complainant stated that as per cost sheet of a unit provided by respondent no. 2 (an agent), it is ascertained that earlier the booking in Smart One DXP Phase-I project and Rs.1,00,000/- was paid by her for booking in the said registered project which is further supported by complainant's request letter dated 28.06.2024 for transferring funds from Phase-I to Phase-II. Further as per page no. 42 of the complaint, it is evident that the said TPR discount of Rs.1750/- per sq. ft. was offered to the complainant.
14. The counsel for the respondent no. 2 stated during the proceedings of the day dated 13.01.2026 that based on the representations made by the respondent no. 1, it has merely communicated the cost sheet provided by the developer and it did not independently commit to any pricing structure. Further, the respondent no. 1 stated that it has neither promised nor offered TPR of Rs.1750/- to the complainant rather it has only informed the complainant that her booking is eligible for TPR Rs.250/- per sq. ft. vide email dated 02.08.2024. Moreover, there is no document on record vide which it can be ascertained that the said TPR discount of Rs.1750/- per sq. ft. was ever offered by the respondent no. 1.
15. The Authority has gone through the documents placed on record and observed that vide email dated 02.08.2024 sent by the respondent no. 1, the complainant was informed that her booking is eligible for a TPR of Rs.250/- per sq. ft. and the same shall be adjusted against the last demand of the unit of the complainant. But the complainant stopped paying the outstanding dues after paying the 30% of sale consideration.

16. The respondent no. 1 in its reply dated 06.05.2025 mentioned that as per the possession clause of the agreement, the due date of possession is 31.08.2031 which is yet to arrive. Moreover, the respondent no. 1 has not issued any offer of possession along with outstanding dues which is supposed to be paid on offer of possession. Thus, the complaint is not maintainable being pre-mature as the due date of possession has not lapsed till date and requested the same to be dismissed on this ground alone.
17. On perusal of the documents placed on record, the Authority has observed that the complainant has failed to substantiate his claims with any documentary evidence. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainant's concerns about the claimed reliefs. Moreover, the due date of possession has not lapsed till date. Thus, the present complaint is not maintainable being pre-mature and is accordingly dismissed on this ground alone.
18. Complaint as well as applications, if any, stand disposed off accordingly.
19. File be consigned to the registry.

  
**(Arun Kumar)**  
**Chairman**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026