

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

Complaint no.:

156 of 2025

Date of decision:

09.01.2026

1. Sunita Rani
2. Jagmohinder Singh Lohchab
3. Yug Lohchab

Address:- 221, 1st Floor Deep Plaza Complex
Opp Civil Court Gurugram

Complainants

Versus

1. Suposhaa Realcon Private Limited
Address:- M3M Urbana Sector-67, Gurugram
2. Commander Realtors Pvt Ltd
Address:- C 4 1 Floor Malviya Nagar New Delhi

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sanjeev Kumar Sharma (Advocate)

Complainants

Ms. Shriya Takkar (Advocate)

Respondents

Ms. Shivani Dang (Advocate)

Respondent No. 2

ORDER

1. This complaint has been filed by the complainants/allottees 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 provision 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	'Smart World Orchard, Sector - 61, Gurugram, Haryana
2.	Nature of the project	Independent Floor Residence
3.	DTCP License No.	68 of 2021 dated 16.09.2011 Valid up to 15.09.2026
4.	RERA Registered/ Not Registered	RERA registered vide no. 74 of 2021 dated 03.11.2021 Valid up to- 31.12.2024
5.	Unit no.	M-19B, 2 nd floor, Block-M
6.	Unit admeasuring	621.72 sq. ft.
7.	Date of allotment letter	10.12.2021
8.	Demand letter dated	08.02.2022
9.	Cancellation dated	20.03.2022
10.	Date of execution of buyer's agreement	27.04.2022 (Page 39 of the complaint)
11.	Possession clause	7.1 POSSESSION <i>The Promoter assures to offer possession of independent floor residents along with exclusive</i>

		<i>right to use undivided demarcate proportionate terrace in basement area and one car parking space as per agreed terms and conditions here in on or before the completion time period I.E. 31.12.2024.</i>
12.	Due date of delivery of possession	31.12.2024
13.	Total sale consideration	Rs.1,24,08,375/-
14.	Total amount paid by the complainants	Rs.99,79,132/-
15.	Pre cancellation letter dated	08.02.2023
16.	Demand letter dated	07.08.2024
17.	Offer of possession	24.12.2024

B. Facts of the complaint:

3. The complainants have made the following submissions:

- i. That the Respondents represents itself as a promoter and developer of a Group Housing Residential Project "Smart World Orchid", Sector-61, Gurugram, situated on a land measuring 20.609 acres, licensed under License No. 68 dated 16.09.2021 issued by DTCP Haryana.
- ii. That the Complainants applied for an allotment in the said project and the Respondents issued an Allotment Letter dated 10.12.2021, followed by execution of the Builder Buyer Agreement (BBA) on 27.04.2022.
- iii. That the Respondents allotted Unit No. 19B, 2nd Floor, having super area 1150 sq. ft. The Complainants have paid a total sum of Rs.

- 99,79,132/- towards the said unit on the basis of construction-linked demands raised by the Respondents. However, the Respondents failed to provide any proof of stage-wise construction progress, contrary to its commitments and Clause(s) of the BBA.
- iv. As per Clause 7.1 of the Builder Buyer Agreement, the Respondents was bound to hand over physical possession by 31.12.2024. The Respondents have failed to complete construction and hand over possession by the contractual date. The Respondents have unilaterally increased the area of the unit in violation of Section 13 of the RERA Act and Rule 8 (Annexure A). No consent of the Complainants was ever obtained. The Offer of Possession issued is illegal, as it is based on excess demand beyond the agreed consideration and without proper construction milestones.
- v. The total consideration value is Rs. 1,24,08,375/-, which is escalation-free as per Clause 1.3 of the BBA. The Respondents have unlawfully raised additional charges and escalations which are void, arbitrary, and unenforceable under RERA. Along with the Allotment Letter, the Respondents issued a letter dated 11.12.2021 promising Rs. 30,000/- per month discount, to be adjusted from the last installment.
- vi. This amount was payable from the date when 30% of the consideration was paid. The Complainant paid 30% amount as follows:
- Rs. 15,00,000/- on 21.11.2021
 - Rs. 22,00,000/- on 18.04.2022

- vii. Thus, the adjustment of Rs. 30,000/month became applicable from 18.04.2022 until the Offer of Possession, i.e., for 32 months, totaling: Rs. 30,000 × 32 = Rs. 9,60,000/- The Respondents failed to adjust any part of this amount. It is settled law that the Allottee is entitled to delay compensation interest at the prescribed rate under Section 18 of the RERA Act, 2016 (i.e., SBI MCLR + 2%). The Respondents have failed to meet its contractual obligations, thereby mandating payment of interest for delay until actual possession.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondents to pay delay possession charges along with possession of the unit.
 - Direct the respondents to execute the conveyance deed in favour of the complainants.

D. Reply by the respondents

5. The respondents have contested the complaint on the following grounds:
- At the outset, the Respondents deny each and every statement, submission and contention contained in the Complaint, to the extent the same are contrary to or inconsistent with the true and correct facts of the case and/or the submissions made herein on behalf of the Respondents. The Respondents further humbly submit that no averment or contention in the Complaint shall be deemed to have been admitted unless the same is specifically and expressly admitted herein, and all remaining statements be read as a travesty of facts.
 - Without prejudice to the above, it is submitted that the Complainants have not approached this Authority with clean hands.

The Complainants have deliberately made incorrect, false and misleading averments, and have suppressed material facts. The Complaint is therefore vitiated by *suppressio veri* and *suggestio falsi*. On this ground alone, the Complaint is liable to be dismissed as an abuse of the process of law.

- iii. It is submitted that the Complainants have no cause of action and no locus standi to maintain the present Complaint, particularly when they are themselves defaulters who failed to make payments in accordance with the terms mutually agreed between the parties. The Complaint is misconceived, baseless, vexatious, and not tenable in law, and is liable to be dismissed at the threshold.
- iv. The Complainants, after carrying out their own due diligence and being fully satisfied with the Respondent Company's project "Smartworld Orchard" at Sector 61, Gurugram, voluntarily applied for the allotment of an independent floor unit. They signed the Application Form after understanding all terms.
- v. Based on their commitments, Unit No. M-19B was allotted to them for a total consideration of Rs. 1,24,08,375/- plus other charges vide Allotment Letter dated 10.12.2021. The Complainants initially opted for the 15:75:10 payment plan but subsequently requested for a change to 30:30:40. The Respondents, acting in good faith and accommodating their request, issued a fresh Allotment Letter dated 10.12.2021 incorporating the revised payment plan.
- vi. Pursuant thereto, acknowledgment letter dated 11.12.2021 was issued offering monthly pre-handover amounts of Rs. 30,000/- subject to strict compliance by the Complainants with all terms of the Buyer's Agreement, including timely payment of dues.

- vii. Thereafter, the Respondents raised the demand upon commencement of construction vide letter dated 08.02.2022 for Rs. 50,24,609/-. The Complainants failed to clear the dues, resulting in issuance of pre-cancellation notice dated 25.02.2022, and subsequently cancellation letter dated 20.03.2022.
- viii. Upon their request, the Respondents restored the allotment subject to timely payment of future dues. The Buyer's Agreement was executed on 27.04.2022 and duly registered. As per Clause 7.1(ii), the due date of possession is 31.12.2024.
- ix. Subsequent demands were duly raised, including the demand dated 05.01.2023 for Rs. 36,67,488/- upon completion of the top floor slab. The Complainants again defaulted, necessitating issuance of pre-cancellation notice dated 08.02.2023. Though they later made the principal payments, they failed to pay interest, thereby violating Section 19(7) of the RERA Act, 2016.
- x. The Respondents completed construction within the stipulated time and received the Occupation Certificate on 29.07.2024. Demand on application for OC was raised on 07.08.2024 for Rs. 37,22,514/-, but the Complainants failed to make complete payment. A reminder dated 31.08.2024 was issued.
- xi. Possession was offered on 24.12.2024 — prior to the contractual due date of 31.12.2024. The area increased by 12.75%, but the Respondents charged only for 5% in accordance with Clause 1.8. POD details issued through Blue Dart Courier evidencing delivery are annexed.

xii. The Complainants sought extension for payment, which was granted till 15.05.2025, yet they again failed to clear their dues. As on 26.05.2025, the Complainants remain liable for:

- Outstanding amount on offer of possession: Rs. 20,54,527/-
- EUICC Charges: Rs. 82,720/-

Thus, no claim under Section 18 of the RERA Act, 2016 arises.

xiii. **DEFAULT ON PART OF THE COMPLAINANTS**

It is clear that the Complainants defaulted repeatedly:

- Default in second demand → pre-cancellation notice dated 25.02.2022 → cancellation letter dated 20.03.2022.
- Default in third demand → pre-cancellation notice dated 08.02.2023.
- Default in subsequent demand → reminder dated 20.08.2024.
- Failure to pay interest on delayed payments.
- Failure to take possession despite offer on 24.12.2024.

Being defaulters, they are not entitled to any pre-handover amounts.

xiv. The Buyer's Agreement executed on 27.04.2022 is binding on both parties. The Complainants voluntarily executed the Agreement after understanding its terms. The law is well settled that a person signing a contractual document is bound by it (Bharti Knitting Co. v. DHL, (1996) 4 SCC 704; Bihar SEB v. Green Rubber Industries, AIR 1990 SC 699).

xv. The Complainants have suppressed material facts integral to the adjudication of the dispute. Suppression of material facts amounts to fraud upon the Tribunal (S.P. Chengalvaraya Naidu v. Jagannath,

1994 (1) SCC 1; Amar Singh v. Union of India (2011) 7 SCC 69). On this ground alone, the Complaint deserves dismissal.

- xvi. Material facts suppressed include:
- Their voluntary request for change of payment plan.
 - Receipt of offer of possession dated 24.12.2024.
 - Updated Statement of Account requiring objections within 10 days, failing which it is deemed accepted.
- xvii. The dispute involves complicated questions of fact requiring detailed evidence and is not suitable for adjudication under the summary jurisdiction of this Authority.
- xviii. In view of the facts and circumstances stated herein, the Complaint is frivolous, vague, vexatious and motivated. It has been filed to unjustly pressurize the Respondents and obtain benefits to which the Complainants are not entitled. The Complaint deserves to be dismissed in limine.
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 complainants.

E. Jurisdiction of the Authority:

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial Jurisdiction

8. 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

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)(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.

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 complainants at a later stage.

F. Findings on the relief sought by the complainants:

- i. Direct the respondents to pay delay possession charges along with possession of the unit.
 - ii. Direct the respondents to execute the conveyance deed in favour of the complainant.
11. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —
.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

12. The counsel for the complainants submits that delayed possession charges are liable to be awarded in favour of the complainants. It is further contended that there is no *rasta* (access road) leading to the floors constructed by the respondents, rendering the offer of possession illusory. Accordingly, a request is made for appointment of a Local Commissioner to verify and report on the existence of a proper access road to the subject unit.
13. The counsel for Respondent No. 2 has placed on record the written submissions and contends that Respondent No. 2 has been wrongly impleaded in the present complaint, as he is merely the landowner and bears no liability towards the complainants. It is submitted that Respondent Nos. 1 and 2 have executed a Collaboration Agreement dated 26.10.2020, under which the entire development, construction, marketing, and dealings with the allottees were to be undertaken exclusively by Respondent No. 1. Therefore, Respondent No. 2 cannot be fastened with any responsibility in respect of the claims raised by the complainants.
14. After hearing the parties and perusing the material on record, the Authority observes that the complainants duly executed the Builder Buyer Agreement (BBA) with Respondent No. 1 as well as Respondent No. 2. The execution of the BBA by Respondent No. 2 clearly establishes that he is not a mere landowner but has voluntarily assumed the role of a

co-promoter as defined under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. Once Respondent No. 2 became a signatory to the BBA, all statutory obligations and liabilities arising therefrom bind him jointly and severally with Respondent No. 1.

15. The plea of Respondent No. 2 that he is only the landowner and therefore not responsible for the commitments made to the complainants are untenable and is rejected.
16. However, to the extent of statutory and contractual obligations under the BBA, both Respondent No. 1 and Respondent No. 2 are jointly and severally liable. All objections of Respondent No. 2 on the ground of being merely a landowner thus stand dismissed.
17. The counsel for Respondent No. 1 submits that a valid offer of possession was issued to the complainants on 24.12.2024, subsequent to the grant of the Occupation Certificate dated 29.07.2024. It is further submitted that the complainants have suppressed material facts and have intentionally failed to accept the offer of possession. According to Respondent No. 1, there is no delay whatsoever in handing over possession, as the due date for delivery under the Builder Buyer Agreement was 31.12.2024. It is also contended that the construction has been carried out strictly in accordance with the building plans duly approved by the competent authority.
18. Upon consideration of the documents available on record and the submissions made by both the parties, the Authority observed that the Builder Buyer Agreement dated 27.04.2022, placed at page 39 of the complaint, was duly executed between the parties. As per Clause 7.1 of the said Agreement, the stipulated date for handing over possession of the unit was 31.12.2024. The Respondent has placed on record the

Occupation Certificate obtained from the competent authority on 29.07.2024, and the offer of possession was issued to the complainants on 24.12.2024, i.e., prior to the contractual due date. In view thereof, the Authority is of the considered opinion that there is no delay attributable to the Respondents in offering possession of the unit. Consequently, the prayer for grant of delayed possession charges is rejected.

F.II Direct the respondents to execute the conveyance deed in favour of the complainants.

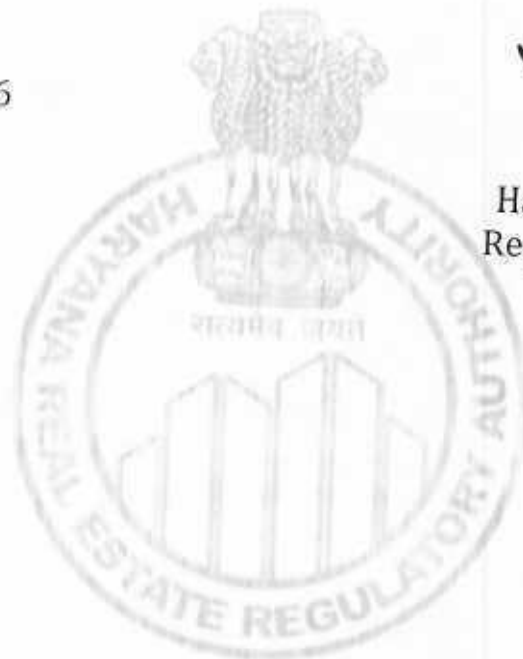
19. The respondents are directed to hand over physical possession of the subject property to the complainants and execute the conveyance deed within a period of two months in terms of Section 17(1) of the Real Estate (Regulation and Development) Act, 2016, subject to payment of applicable stamp duty and registration charges.


G. Directions of the Authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. There is no delay attributable to the Respondents in offering possession of the unit. Consequently, the grant of delayed possession charges is rejected.
 - ii. The respondents are directed to hand over physical possession of the subject property to the complainants and execute the conveyance deed within a period of two months from the date of this order in terms of Section 17(1) of the Real Estate (Regulation

- and Development) Act, 2016, subject to payment of applicable stamp duty and registration charges.
- iii. The respondents/promoter shall not charge anything from the complainants which is not the part of the buyer's agreement.
21. The complaint and application, if any, stands disposed of.
22. File be consigned to registry.

Dated: 09.01.2026




(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM