HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	20.04.2026

Name of the Builder/ Respondent		WTC Faridabad Infrastructure Development Pvt. Ltd.		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of the complainant (through VC)	Appearance on behalf of the respondent (in person)
1.	1254 of 2025	Shri Harirar Nath Choubey and Ors. Vs. 1. WTC Faridabad Infrastructure Development Pvt. Ltd. 2. Viridian Holdings Private Limited 3. Clara Township Private Limited 4. Bhutani Infra Developers Private Limited. 5. Global Investors LLP	Adv. Saket Singh, counsel for the complainant through VC	None for the respondents.
2.	1255 of 2025	Shyam Sundar. Vs. 1. WTC Faridabad Infrastructure Development Pvt. Ltd. 2. Viridian Holdings Private Limited 3. Clara Township Private Limited	Adv. Saket Singh, counsel for the complainant through VC	None for the respondents.

		4. Bhutani Infra Developers Private Limited. 5. Global Investors LLP		

Hearing: 2nd

ORDER (NADIM AKHTAR- MEMBER)

1. Above captioned complaints are taken up together for hearing as facts and grievances to be addressed in the complaints involve similar issue and are related to the same project situated at Sector-114, Faridabad, Haryana. Therefore, this order is being passed by taking the Complaint No. 1254 of 2025 titled *"Shri Harirar Nath Choubey and Ors. versus WTC Faridabad Infrastructure Development Pvt. Ltd. and others,"* as a lead case for deciding both the captioned matters.

A. FACTS OF THE CASE AS STATED IN THE COMPLAINT NO. 1254 OF 2025

2. That complainants are bona-fide purchasers who intended to buy a residential plot for their personal residential use in a project proposed to be developed around Sector-111 and Sector-114, Faridabad. Respondent Nos. 1, 2 and 3 are companies incorporated under the provisions of the Companies Act and are engaged in the business of development, marketing and sale of real estate projects in Faridabad and adjoining areas. The project in question was

actively promoted by *Respondent No. 1* as the lead promoter, having primary responsibility for development and execution, in collaboration with *Respondent Nos. 2 and 3*. *Respondent No. 4* is a brokerage/real estate intermediary firm that was actively involved in approaching the complainants and facilitating the transaction for booking of plots in the project being developed by Respondent Nos. 1 to 3. *Respondent No. 5* is also a real estate development company and as later learnt by the complainants, has entered into an understanding with Respondent Nos. 1 to 3 for acquiring the projects under development for onward sale, including the project in which the complainants invested. All the Respondents are jointly and severally responsible for the grievances raised in the present complaint.

3. That in March 2022, employees and representatives of Respondent Nos. 1 and 2, in collusion with Respondent No. 4 (broker), approached the complainants and induced them to invest in a proposed residential plotted development project situated around Sector-111 and Sector-114, Faridabad.

4. That the complainants were assured that the project was being promoted by Respondent No. 1 as the lead promoter along with Respondent Nos. 2 and 3 as partners and that the project would offer attractive returns and assured security of investment. Relying upon the representations and assurances made by the Respondents, all three complainants jointly applied for

registration/allotment of a residential plot by submitting an Expression of Interest (EOI) Form.

5. That along with the EOI form, the complainants paid a sum of ₹2,00,000/- through cheque in favour of Respondent No. 1 and submitted all required KYC documents as demanded by Respondents Nos. 1 and 2.

6. That on 07.04.2022, the complainants received an acknowledgement-cum-welcome email from the official email ID of Respondent No. 1 confirming their investment for a tentative plot size of 160 sq. yards at a basic rate of ₹24,000/- per sq. yard. The email also recorded that the complainants had opted for "Option-2" offering a 15% NPV return and demanded further payment of ₹15,00,000/- towards allotment. On the same day, a Unique ID No. FBD01650 was allotted to the complainants for their booking.

7. That the representatives of Respondents repeatedly assured the complainants about the viability of the project and promised that in case the complainants did not wish to retain the plot, a post-dated cheque would be issued guaranteeing attractive returns. Relying upon these assurances, the complainants entered into a formal agreement dated 07.06.2022 with Respondent No. 1 for allotment of the plot and paid a total amount of ₹17,00,000/-.

8. That a post-dated cheque bearing No. 494875 dated 09.05.2024 for ₹20,00,000/- drawn on Axis Bank was issued in favour of Complainant No. 1 as a guarantee of return in case of delay or non-continuation of the investment. As the cheque date approached, the complainants sought updates regarding project progress. The representatives of Respondents Nos. 1 and 2 informed the complainants that Respondent No. 3 had applied for licence approvals under the New Integrated Licensing Policy and that the layout plan had already been approved.

9. That the complainants were persuaded not to present the cheque and were assured issuance of a fresh post-dated cheque along with provisional allotment of a plot.

10. That the complainants were induced to execute an extension agreement and pay an additional amount of ₹2,50,000/- for provisional allotment of Plot No. AC-16 measuring 102.26 sq. yards at a revised rate. On 15.07.2024, an extension agreement was executed and Plot No. AC-16 was provisionally allotted to the complainants.

11. That the earlier cheque of ₹20,00,000/- was taken back and replaced by a new post-dated cheque bearing No. 591403 dated 09.09.2024 for ₹20,21,000/- issued by Respondent No. 1, assuring encashment in case of non-allotment. That despite repeated follow-ups, the complainants never received the

Builder-Buyer Agreement, payment receipts, or any meaningful update regarding project development.

12. That subsequently, Respondent No. 4 informed the complainants that Respondent Nos. 1 to 3 had entered into collaboration with Respondent No. 5 for takeover of the project and resale at higher prices. Complainants were further pressured to invest in other projects of Respondent No. 5 at higher prices. The complainants presented the cheque dated 09.09.2024 for encashment, however, the same was dishonoured due to "stop payment" instructions issued by Respondent No. 1.

13. That the Respondents have neither refunded the amounts paid by the complainants nor provided any update regarding the development of the project.

14. That the complainants have not received the Builder-Buyer Agreement, payment receipts or any progress updates and have strong reasons to believe that the Respondents have acted in collusion to inflate prices and divert resources. Left with no alternative remedy, the complainants have approached the Hon'ble Haryana Real Estate Regulatory Authority seeking appropriate relief and directions against the Respondents.

B. RELIEFS SOUGHT

15. The complainants in their complaint have sought following reliefs:

(i) To Provide Stay on the above mention plot till the final disposal of this case pending to the Hon'ble court.

(ii) To give possession of Plot as soon as possible and get the conveyance deed registered in name of complainant Plot buyer.

(iii) To grant compensation for delay and also compensate for legal fees which has been occurred because of fraud by the respondent builder.

(iv) To impose penalty upon the respondents as per the provisions of Section 61 of the RERA for contravention of section 15 and Section 11(4)(f) read with Section 17 of the RERA Act.

(v) Impose penalty on the Respondent-Developers for violation of the mandate contained in Section 11(4)(f) read with Section 17 of RERA Act.

(vi) Direct the respondent to pay compensation in favour of the Complainants for non-possession and non -execution of registered sale deeds in their favour.

(vii) Direct the Respondent-Developer to pay compensation for harassment and unfair trade practices in favor of the complainant allottees.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT

16. As per the office records, notices dated 11.09.2025 were successfully delivered to Respondent Nos. 3, 4 and 5 on 15.09.2025 and 16.09.2025 respectively. However, notices dated 11.09.2025 sent to Respondent No. 1 and 2 were returned undelivered. Therefore, vide order dated 10.11.2025,

Complainants were directed to collect dasti notices of the respondent no. 1 and 2 from the registry of office and then serve it upon the respondents and Respondent no. 3, 4 and 5 were given an opportunity to file the replies. However even today, i.e., 20.04.2026, respondent no. 1 and 2 neither appeared nor filed reply. Even complainants didn't complied with the directions given vide order dated 10.11.2025, and have not filed service report of dasti notice of respondent no. 1 and 2. Authority is of the view that proceedings before this Authority are summary proceedings and sufficient opportunities have already been granted to the respondent to file reply, any further delay shall defeat the ends of justice. Thus, matter is proceeded based on the documents available on file.

D. ORAL SUBMISSIONS BY THE PARTIES

17. Counsel appearing on behalf of complainants reiterated the submissions made in their respective complaint and supporting documents. The issues arising therefrom have already been addressed and dealt with in the foregoing paragraphs of this order.

E. ISSUES FOR ADJUDICATION: -

18. Whether the complaints are maintainable and complainants are entitled to the reliefs sought or not?

F. OBSERVATIONS OF THE AUTHORITY

19. In view of the facts, circumstances, and documents placed on record, this Authority is of the considered opinion that the captioned complaints pertains to the upcoming project situated at Sector-114, Faridabad, Haryana,". The complaints revolves around the factum that the complainants and respondent are related to each other and the parties agreed to execute a purported "Memorandum of Understanding" (MoU) dated 07.06.2022, and "Addendum to the Collaboration Agreement" dated 15.07.2024 under which the complainants have claimed rights in respect of allotment of a unit in the project of the respondent. The complainants allege that the said MoU created binding obligations of allotment and possession.

20. In view of the above, the preliminary issue for determination is whether the complainants can be regarded as "allottees" under the Act so as to maintain the present proceedings.

21. At this stage, reference must be made to Section 31 of the RE(R&D) Act, 2016 which provides for filing of complaints. Section 31 is being reproduced below for reference-

> ***"Section 31- Filing of complaints with the Authority or the adjudicating officer.***
>
> *(1) **Any aggrieved person** may file a complaint with the Authority or the adjudicating officer, as the case may be,*

for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.
Explanation.-For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.
(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed]."

22. A plain and literal construction of the provision makes it clear that the right to invoke the jurisdiction of this Authority is not restricted only to "allottees." The legislature in its wisdom has consciously employed the expression *"any aggrieved person"* so as to vest locus standi in a wider category of individuals who can demonstrate that they have suffered a legal injury on account of a violation of the Act or rules made thereunder. The use of the word *"may"* in conjunction with the words *"any aggrieved person"* expands the remedial jurisdiction and ensures that technical objections do not defeat substantive justice.

23. It is therefore not an indispensable pre-condition that the complainant must necessarily fall within the definition of an "allottee" under Section 2(d) for filing of complaint before the Authority. The critical test under Section 31 is whether the complainant has established himself to be an *"aggrieved person"* in respect of an alleged violation or contravention attributable to the

promoter, allottee or real estate agent. Once this threshold is crossed, next steps will come into play. In the present case, the complainants by placing reliance on the MoU, cheques, and the collaboration agreement annexed by the complainant in the Complaint book have prima facie demonstrated a grievance referable to the conduct of the promoter and accordingly fall within the ambit of an "aggrieved person" under Section 31.

24. The next question which arises for determination is whether the complainants are entitled to the reliefs sought in the present proceedings. The complainants are still waiting for the possession of the unit in the captioned complaints. Reliance in this regard has been placed on Section 18 of the RERA Act, 2016.

"Section 18- Return of amount and compensation.

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
he shall be liable on demand to the ***allottees,*** *in case the* ***allottee*** *wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*
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.*

*(2) The promoter shall compensate the **allottees** in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*
*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the **allottees**, in the manner as provided under this Act."*

25. A careful reading of Section 18 makes it evident that the legislature while structuring the framework under Section 18, has deliberately employed the expression "allottee". The relief of refund and compensation is therefore, legislatively circumscribed to those who qualify as allottees under Section 2(d) of the Act. The use of this restrictive terminology underscores the legislative intent to confine such statutory remedies only to genuine homebuyers or person vested with enforceable right of allotment.

26. Thus, even if for the sake of argument the claim for refund/possession, the sine qua non for availing such relief under Section 18 is that the complainants must first establish their legal character as "allottees." The critical enquiry therefore is not merely whether payment was advanced but whether such advancement culminated in a present binding allotment which would attract the statutory protections of the Act.

27. Thus, the second test is to determine whether the complainants are allottee or not? Therefore, it becomes necessary to consider the specific grounds urged by the complainants to bring themselves within the ambit of the definition of "allottee" under Section 2(d) of the Act.

28. The complainants have sought to substantiate their claim primarily on two sets of documents. First, reliance is placed on the *Memorandum of Understanding* dated 07.06.2022, wherein according to the complainants, the expression "allottee" finds mention in various clauses, thereby evidencing the intent of the parties to treat the complainants as purchasers of a unit in the project. Secondly, reliance is placed upon *Addendum to the Collaboration Agreement* executed on 15.07.2024 .

29. However, if we look at the content of the MOU dated 07.06.2022, which is annexed by the complainant in his complaint too. Relevant part of the MOU is reproduced as under as under:

> *(A) The First Party has acquired some land and is in process of acquiring more raw/agricultural land for developing a plotted residential project (hereinafter referred to as 'Said Project') in and around Sector-111 to 114, Faridabad (Haryana) either in its own name or in the names of its associates/group companies (hereinafter referred to as "Said Land").*
>
> *(B) After acquiring the Said Land, First Party/its associates will obtain necessary permissions/Licenses for developing the Said Project from*

competent authorities and will thereafter the start the process of marketing and development of Said Project on Said Land.

(C) The Second Party has expressed its willingness to join hands/collaborate with the First Party in/for its efforts to purchase raw land and for development of the contributing money for acquisition of land and for development expenses and by carrying out publicity campaign and to do the marketing of the said Project.

(D) The First Party has accepted the request of the Second Part the Second Party to join hands/contribute/collaborate in/with its efforts and to develop & market the Said Project.

(E) In furtherance of above, Second Party has collaborated with First Party in development of said project and has agreed to contribute funds to the tune of Rs. 17,00,000/-(Rupees Seventeen Lacs Only) ["Collaboration Money"] as debenture subscription/assignment or otherwise for utilization thereof by First Party for procuring land, permissions, licenses, general corporate purposes, development of said project etc. on terms and conditions mentioned in Annexure, attached hereto.

(F) With the above background, Second Party shall have the option to take allotment of a residential plot in Said Project. Hence this agreement is being executed.

NOW THE PARTIES HERETO HEREBY DECLARE, UNDERTAKE AND AGREE AS UNDER

1. *That the First Party hereby agrees to acquire raw land in and around Sector 111 to 114, Faridabad in its own favour or in favour of its associates and the Second Party also agrees to put its efforts in marketing and development of the said Project.*
2. *The First Party and the Second Party shall jointly collaborate and undertake to develop the Said Land after the First Party/its associates procuring/obtaining the requisite licenses, permissions, sanctions and approvals of all Competent Authorities. All expenses involved in and for obtaining licenses, tax clearances, permissions or sanctions from the concerned authorities shall be incurred and paid by the First Party. First Party may use the amounts received by it*

from the Second Party for the corporate purposes including for procuring said Land, Permissions, Licenses, Sanctions, Clearances, Development, etc.

3. *First Party shall have unhindered authority and discretion in matters related to choice of land to be purchased, location of land, terms & conditions of procurement of land, project size, layout of Said Project, sanctions, approvals, development of Project etc. Second Party hereby acknowledges that First Party shall take all decisions pertaining to Said Land. The Second Party shall not interfere with or obstruct in any manner in this regard.*
4. *First Party and Second Party may jointly do the marketing of the Said Project. However, the Second Party is primarily responsible to carry out the publicity campaign and to do marketing of SPOA (defined in Clause 5, below).*
5. *That after receiving the required permissions and licenses for Said Project and registration of Said Project with the concerned Real Estate Regulatory Authority, Second Party shall have the option to nominate any person of his choice (including himself/itself) for taking allotment of residential plots) measuring about 160 Square Yards (or of such size as may be available at the time of allotment) hereinafter referred to as Second Party Option Area ("SPOA")], in Said Project at a special down payment rate of Rs. 24,000/- (Rupees Twenty Four Thousand Only) per square yard (exclusive of EDC, IDC, Preferential Location Charges, Other Charges, Taxes, Stamp Duty, Registration Charges and Expenses, which shall be payable extra by th Plot Buyer) from First Party.*
6. *That after registration of Said Project with the concerned Real Estate Regulatory Authority, First Party shall send written communication of such registration and booking application form containing payment schedule to Second Party through email or through post/courier.*
7. *That in case Second Party does not exercise its preferred allotment option within 60 days of receipt of communication mentioned in*

Clause 6 above, First Party shall make the allotment in the name of the Second Party on availability basis.

8. *That the allotment of the plot to the Second Party shall be made as per the approved zoning plan received by the First Party with the variation of plus/minus 15% in the area allotted. The rates mentioned in Clause 5 above shall be applicable only if Said Project is approved under Deen Dayal Jan Awas Yojna of Government of Haryana. In case Said Project is approved under any other policy/scheme of Government of Haryana, SPOA shall accordingly change.*
9. *That allotment of SPOA shall be made on first come first serve basis subject to availability. Upon allotment, First Party/its associate and Second Party or its nominee shall execute Plot Buyer's Agreement in First Party's standard format for such allotment under Down Payment Plan. The special rate offered to the Second Party in Clause 5, above is contingent upon the buyer making all its due payments in time. Second Party shall ensure that buyer make all payments in time and as and when demanded. Second Party shall have the option to utilize the Collaboration Money, as mentioned in Recital (E) above, actually paid by it to First Party, for payment of cost of plot.*
10. *Upon execution of abovementioned Plot Buyer's Agreement, this agreement shall get superseded by the Plot Buyer's Agreement and this agreement shall stand automatically terminated and become void. Upon execution of Plot Buyer's Agreement, this agreement will not survive for any purpose and all rights of parties in relation to said allotment shall be governed only by said Plot Buyer's Agreement only.*
11. *That in case First Party/its associate fail to make the allotment within 24 months from the date of execution of this agreement or if allotment is not acceptable to Second Party, this agreement shall terminate, without leaving any right or claim or obligation of any party towards the other except Second Party's right for refund of Collaboration Money as mentioned in Recital (E) actually paid by Second Party to First Party along with interest as mentioned in*

Annexure. It is clarified that upon termination of this agreement either under this clause or under clause 10, above, Second Party shall not claim any damages or compensation from First Party on any ground whatsoever.

12. *That Recitals/Preamble of this agreement shall be read as pairt of convenat's /terms & conditions of this agreement, agreed between the parties.*
13. *That two original copies of this Agreement are being prepared; one each shall be retained by both the parties*
14. *That Second Party shall keep the terms hereof confidential and will not disclose the same to any person without the prior written consent of First Party.*
15. *That this Agreement is understanding between the parties only for the matters specified herein above and the same shall never be deemed to constitute as any of the party being agent of the other, and the First Party has the absolute right and authority to enter into any joint venture or collaboration or other arrangements including for raising funds with respect to purchase/ development of remaining land forming part of the said Project with any third Parties) at its sole discretion.*
16. *That in the event of any dispute between the parties, same shall be got adjudicated through the process of Arbitration. Arbitrator shall be appointed with mutual consent of parties or through Court. Seat and Venue of Arbitrator shall be at New Delhi. Arbitration shall be conducted in English Language.*
17. *That subject to arbitration, all disputes and differences between parties shall be subject to the exclusive jurisdiction of Courts at New Delhi.*
18. *This agreement shall be deemed to have been executed at New Delhi.*

33. Authority deems it appropriate to first examine Clause (B) of the MoU dated 07.06.2022, as the same goes to the very root of the matter. Clause (B)

unequivocally records that *after acquiring the said land*, the First Party or its associates *"will obtain necessary permissions/licences"* and *thereafter start the process of marketing and development* of the proposed project. When Clause (B) is read conjointly with Recital (A), which states that the First Party *"has acquired some land and is in process of acquiring more raw/agricultural land"*, it becomes manifest that, as on the date of execution of the MoU, the respondent promoter did not possess the complete and identifiable land parcel required for development of the proposed plotted residential project. The language used in Clause (B) is clearly prospective and conditional, signifying that land acquisition, procurement of licences, and commencement of marketing were future events yet to materialise. Thus, the MoU itself acknowledges that the project was at a preliminary and pre-licensing stage and had not crystallised into a legally cognisable real estate project at the relevant time. Further, even if Recital (F) of the MoU is considered, the same is of crucial significance, as it categorically provides that the Second Party *"shall have the option to take allotment of a residential plot"* in the said project. The use of the expression *"option"* unmistakably indicates that no allotment had taken place as on the date of execution of the MoU and that any future allotment was contingent upon fulfillment of subsequent events, including acquisition of land, grant of licences and

registration of the project. An optional or contingent right to seek allotment at a future stage cannot be equated with a present, concluded or binding allotment so as to attract the definition of *"allottee"* under Section 2(d) of the Act. This conclusion is further fortified by Clauses 6 and 7 of the MoU, which expressly contemplate a future booking and allotment process, including issuance of a written communication regarding project registration, supply of booking application forms, and exercise of allotment preference within a stipulated period. These clauses leave no manner of doubt that the MoU does not, by itself, create any vested or enforceable right of allotment, but merely provides a preferential mechanism subject to availability and completion of future formalities. Even Clause 9 of the MoU assumes particular importance, as it mandates execution of a *Plot Buyer's Agreement* in the standard format of the First Party upon allotment. The clause further clarifies that the special rate offered is contingent upon timely payments and that the so-called *Collaboration Money* may be adjusted towards the plot cost. This clause conclusively establishes that the MoU was never intended to be the final or binding document governing allotment or possession and that contractual rights, if any, were to arise only upon execution of a duly stamped and registered Plot Buyer's Agreement.

34. Further, in order to strengthen its findings, the Authority has put reliance on the collaboration agreement dated 15.07.2024. Relevant clauses of this agreement is reproduced below:

1. *The Second Party has contributed/agreed to contribute additional funds, in addition to the funds amounting to ₹17,00,000/- already contributed by the Second Party ("Collaboration Money" towards the procurement of land in around Sector- 111 to 114, as well as obtaining licenses, permissions, sanctions and approvals of all competent authority, particularly Deen Dayal Awas Yojna of Government of Haryana", which the First Party had obtained after procuring the said land vide licenses bearing no. 187 of 2022 & 19 of 2023. However, now the said scheme has now been suspended by the concerned department vide notification dated 20.04.23*

2. *The First Party is in the process of obtaining fresh/new licenses under the New Integrated Licensing Policy, ("NILP"), RERA, which the First Party undertakes to obtain as soon as possible. In view thereof, now the second party has agreed to infuse additional funds, ("Collaboration Money") of ₹2,00,000/- (Rupees 2 Lacs Only), with tentative BSP of 32761/- plus (additional charges); which may be utilized by the First Party, for obtaining permissions, licenses, corporate purpose, development of the said Project, etc., vide the following:*

Date	*Amount*	*Cheque/RTGS/UTR No.*	*Drawn on*
21.06.24	*200000*	*352929*	*DIRECT DEPOSIT*

3. *The present addendum does not create any builder-buyer relationship between the parties and the Second Party will continue to be considered as the collaborative partner of the First Party. Now the Second Party is being provisionally allocated residential plot/apartment, no AC16 measuring about (102.26 Sqyds) in term of Clause 5 of the Collaboration*

Agreement dated 07-06-2022 which is being done on the first come first serve basis.

For the said purpose. The present Addendum shall be considered as provisional allocation of Plot/apartment between both parties herein.

4. *That save and excepts the amendments made herein, the parties here shall remain bound by all terms and conditions of Collaboration Agreement dated 07-06-2022."*

35. A perusal of the said addendum clearly shows that the parties consciously continued their relationship in the nature of a collaborative/investment arrangement, and not that of a promoter–allottee or builder–buyer. The Authority has carefully examined the clauses of the aforesaid addendum agreement. From a plain and meaningful reading of the document, it becomes evident that the dominant intention of the parties was to continue the relationship as that of collaborative partners and not to create a builder–buyer relationship. Clause 1 and Clause 2 of the addendum explicitly record that the Second Party agreed to infuse additional funds as "Collaboration Money" to be utilised by the First Party for procurement of land, obtaining permissions and licences, corporate purposes, and development of the proposed project. The language used therein clearly demonstrates that the funds were contributed towards project development and licensing activities, and not towards the purchase price of any specific plot. The Authority observes that

the very expression used in the agreement — *"infuse additional funds (Collaboration Money)"* — unmistakably reflects an investment-oriented arrangement rather than a transaction of sale and purchase of immovable property. Clause 3 of the addendum assumes decisive significance. The clause categorically provides that *The present addendum does not create any builder-buyer relationship between the parties and the Second Party will continue to be considered as the collaborative partner of the First Party.* The Authority finds that the above clause leaves no room for ambiguity. The parties themselves expressly agreed that no builder–buyer relationship was being created. It is a settled position that relief under the Real Estate (Regulation and Development) Act is available to a person who falls within the definition of an "allottee", i.e., a person to whom a specific unit has been allotted under a builder–buyer relationship with a promoter. However, where the documents executed between the parties expressly negate the existence of such a relationship, the Authority cannot ignore the clear contractual intent. It is further noteworthy that the said addendum agreement has been annexed by the complainant himself. The signatures of the complainant appearing on the document demonstrate that the complainant had consciously agreed to the terms and conditions contained therein, including the express stipulation that the relationship between the parties would remain that of collaborative

partners. Therefore, from the cumulative reading of the Collaboration Agreement dated 07.06.2022 and the Addendum dated 15.07.2024, the Authority is of the considered view that the transactions between the parties were in the nature of investment/collaboration for project development, and not a transaction of allotment of a plot so as to create a promoter–allottee relationship under the Act.

36. Further, Authority is of the considered view that in order to arrive at a conclusion as whether the complainant could be defined as an allottee or not, it is necessary to refer to Section 2(d) of the Act which is reproduced below-

> *"2(d) **"allottee"** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

37. It is clear that the statutory definition of "allottee" under Section 2(d) of the Act requires that a plot, apartment, or building must be allotted, sold, or otherwise transferred by the promoter. It further contemplates cases where an existing allotment stands subsequently transferred. The determinative question, therefore, is whether in the facts of the present case there exists any

valid and genuine allotment which would bring the complainants within the ambit of the said definition.

38. It is an admitted position that no allotment letter or builder buyer agreement was ever executed vis-a-vis the complainants and the respondent. The Authority is, therefore, constrained to examine whether any other document on record can be treated as equivalent to a binding allotment.

39. Nevertheless, for the limited purpose of ascertaining whether the MoU can be said to evidence a genuine allotment, this Authority has scrutinized the said document, Authority observes that there is no clause which specifically states that what unit number was allotted to the complainant which clearly depicts that this was only a general document for executing the agreement in the future. Further, the MoU does not contain essential contractual elements which are mandatory under the Act and the Haryana Real Estate (Regulation and Development) Rules, 2017, such as execution in the prescribed form of an Agreement for Sale, specification of consideration in relation to a particular plot, consequences of default in terms of interest and compensation as mandated under the Act. Merely because the expression "allottee" has been loosely employed in certain clauses of the MoU, the same cannot, by itself, confer statutory status upon the complainants. It is a settled principle of law that the substance of a document must prevail over its nomenclature or

isolated expressions used therein. The legal character of a party flows from the rights actually created under the document and not from descriptive labels casually used by the parties. Significantly, the MoU itself contemplates execution of a future Agreement for Sale, upon fulfillment of statutory requirements and approvals. Such a stipulation clearly demonstrates that the parties were ad idem that the MoU was not intended to be a final or binding instrument of allotment but only an interim arrangement pending formalization of contractual relations in accordance with law. Authority also takes note of the fact that neither the license to develop the project was granted by the Department of Town and country planning nor the project was registered under the Act at the time of execution of the MoU. In the absence of any license to develop a colony or subsequent registration with RERA, no lawful allotment within the meaning of the Act could have been made. Any document executed prior to registration, therefore, cannot be elevated to the status of an Agreement for Sale nor can it confer statutory rights under the Act. The payments made by the complainants, as reflected in the statement of accounts, though indicative of financial transactions between the parties, cannot by themselves establish allotment in the absence of a legally valid and enforceable Agreement for Sale. Payment of money, howsoever substantial, does not ipso facto crystallize the status of an allottee unless it culminates into

a lawful allotment of a specific unit. Further, even if this Hon'ble Authority peruses Recitals D and E, and Clauses 2, 4, and 11 of the Memorandum of Understanding/Agreement dated 07.06.2022, it is submitted that the Complainant was referred to therein merely as a joint developer/collaborator for the limited purposes of participating in the marketing and development of the Project and contributing towards the acquisition of land. At no stage did the Complainant enter into any Agreement for sale or allotment with the Respondent, nor was any consideration paid for allotment of any unit.

40. The definition of "allottee" under Section 2(d) of the Act contemplates a person to whom an apartment, plot or building has been allotted, sold or otherwise transferred by the promoter. In the present case, no material has been placed on record to show that any apartment, plot or building was ever allotted or transferred to the complainants. The MoU, at best, evidences an intention to consider allotment in future and does not create any present or vested right in favour of the complainants.

41. In view of the foregoing analysis, this Authority is of the considered opinion that the MoU dated 07.06.2022 does not constitute an Agreement for Sale under the Act, nor does it effectuate any valid allotment in favour of the complainants. Consequently, the complainants cannot be held to fall within the definition of "allottee" under Section 2(d) of the Act. Once the

complainants fail to establish their status as allottees, the reliefs sought under Section 18 of the Act, including refund, interest and compensation, are not maintainable before this Authority.

42. The silence of the MoU on such vital terms casts a grave doubt on the true nature of the transaction. It is difficult to accept that a genuine homebuyer, while parting with substantial sums of money would remain unconcerned with essential stipulations such as timelines for possession, construction milestones, or facilities to be provided. The absence of these fundamental terms strongly indicates that the MoU was never intended to function as a builder buyer agreement but was in substance no more than a financial arrangement between the parties.

43. Moreover, it is a settled principle that in construing a contract, the decisive factor is not the nomenclature employed but the substance and intent of the parties. Tested on this touchstone, the present MoU being bereft of the fundamental attributes of an agreement for sale as contemplated under Section 13 of the Act cannot be elevated to the status of a binding builder buyer agreement.

44. The Hon'ble Supreme Court in *Civil Appeal No. 3826 of 2020 titled as* "***Mansi Brar Fernandes v. Shubha Sharma and Anr***", while examining the nature of agreements between developers and allottees, has dealt at length the

distinction between a genuine homebuyer contract and a speculative or purely financial arrangement. The Court reiterated the principle laid down in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, wherein a clear distinction was drawn between speculative investors and genuine homebuyers. The Hon'ble Apex Court observed as under:

> *"15.3 The decision of this Court in Pioneer Urban Land and Infrastructure Ltd v. Union of India (supra) drew a distinction between speculative investors and genuine homebuyers. The present case affords an opportunity to reinforce that distinction through a principled intelligible differentia."*

The Hon'ble Supreme Court has clearly delineated the parameters for distinguishing a genuine homebuyer transaction from one that is purely financial in nature and unconnected with the intent of purchasing a residential unit. The following parameters were laid down to identify whether a person is a genuine homebuyer or a speculative investor:

> *"18.1. The determination of whether an allottee is a speculative investor depends on the facts of each case. The inquiry must be contextual and guided by the intent of the parties. Indicative factors include: (i) the nature and terms of the contract; (ii) the number of units purchased; (iii) presence of assured returns or buyback clauses; (iv) the stage of completion of the project at the time of investment; and (v) existence of alternative*

arrangements in lieu of possession. Possession of a dwelling unit remains the sine qua non of a genuine homebuyer's intent."

It is further added that "*Unlike financial markets — where speculation may sometimes serve a liquidity function – speculation in residential housing undermines stability, fairness, and the very object of housing development. Schemes of assured returns, compulsory buybacks, or excessive exit options are in truth financial derivatives masquerading as housing contracts."*

The court also stated that -

"Criteria to identify speculative investors

18.4. "Speculation" has been defined in P. Ramanatha Iyer's Law Lexicon (6th edition) as "a risky investment of money for the sake of and in expectation of unusually large profits". A "speculator" is "one who practices speculation in trade or business". Two elements emerge: (i) expectation of unusually high profits; and (ii) activity in the nature of business or trade. These elements accord with the ratio of Pioneer Urban, which described speculative investors as those seeking refund or profit without an intention to occupy.

18.4.1. In Duni Chand Rataria v. Bhuwalka Brothers Ltd. this Court considered the validity of an ordinance of the State of West Bengal prohibiting speculative transactions in the jute trade. A Constitution Bench

(four Judges) held that constructive delivery by intermediate parties would be valid provided that it culminated in actual delivery to the end purchaser. The Court observed:

"The mate's receipts or the delivery orders as the case may be, represented the goods. The sellers handed over these documents to the buyers against cash payment. The constructive delivery of possession which was obtained by the intermediate parties was thus translated into a physical or manual delivery of possession in the ultimate analysis eliminating the unnecessary process of each of the intermediate parties taking and in his turn giving actual delivery of possession of the goods."

Thus, where there is an actual chain of delivery ending with possession by a genuine buyer, the transaction is not speculative. Conversely, in the present context, where there is no intention to take possession, the onus to find another buyer and effect resale is cast on the developer. Delivery in such cases is more in the nature of a lien or an option. For a genuine allottee, however, delivery and possession are a sine qua non.

Applying the above decision of the Hon'ble Apex court, is amply clear that the complainants never intended to occupy the unit in question. With no timelines for delivery, no specifications and nothing containing to the delivery of unit, it was obvious that the contract was only a masquerade for a housing

contract. It is clear that this arrangement is squarely covered by the above judgment of the Hon'ble Apex Court.

30. Complainants have even failed to place on record any document whatsoever to establish that certain payments were made specifically towards consideration of an identified unit or plot in the project in question. The absence of any accompanying booking form, allotment letter, or builder buyer agreement makes it clear that this statement of account cannot be construed as evidencing a valid allotment under the Act.

31. Section 10 of the Indian Contract Act, 1872, clearly provides that all agreements are contracts only if they are made by the free consent of competent parties, for a lawful consideration and a lawful object, and are not expressly declared to be void. A valid builder–buyer agreement under the scheme of the RERA Act must necessarily reflect such essential elements of contract formation, in addition to incorporating vital particulars such as the description of the unit, the payment plan, timelines for possession, and the rights and obligations of both parties.

32. In view of the above, this Authority is of the considered opinion that the statement of account, though evidencing payments, cannot be elevated to the status of a binding agreement for sale, nor can they, in isolation, establish the

complainants' legal character as "allottees" within the meaning of Section 2(d) of the Act.

33. Further, the complainants have failed to place on record any correspondence or communication, whether by way of email, letter or otherwise, addressed to the respondent enquiring about the status of allotment of any unit or seeking execution of a Buyer's Agreement. There is no material on record to demonstrate that the complainants ever demanded execution of a Plot Buyer's Agreement or pursued allotment of a specific unit in the project. The absence of any such contemporaneous communication is of material significance, as it fails to establish the intention of the complainants to enter into the project as purchasers in a real estate transaction governed by the Act. On the contrary, the silence on record corroborates the nature of the MoU as a collaboration or funding arrangement rather than a buyer–seller relationship envisaged under the RERA framework. These communications viewed cumulatively, dispel any doubt and fortify the conclusion of this Authority that the complainants never intended to act as allottees in the sense of Section 2(d) of the Act, but instead participated in what was in substance a financial arrangement. *In the absence of a lawful and binding document establishing allotment, the complainants have failed to establish their locus as "allottees" under Section 2(d) of the Act. Accordingly, this Authority is constrained to hold that the*

complainants reliefs cannot be granted by this Authority. The complainants can approach the appropriate forum.

34. In view of aforesaid observations, this Authority is of the considered view that the complainants have failed to establish their status as "allottees" within the meaning of Section 2(d) of the Act. Accordingly, the complaints cannot be adjudicated upon by this Authority given the facts, the circumstances and the very clear judgments of the Hon'ble Apex Court.

35. The complaints accordingly stands **disposed**. File be consigned to the record room after uploading of the order on the website of the Authority.

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NADIM AKHTAR
[MEMBER]