

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM.**

Complaint No. :2926 of 2024

Date of Decision: 01.05.2026

Ms. Indu Dhir wife of Mr. Ravinder Kumar Dhir, resident of
H.No.800, Sector-4, Panchkula, Haryana.

..... Complainant.

Versus

Almond Infrabuild Private Limited, office address 711/92, Deepali,
Nehru Place, New Delhi.

.....Respondent.

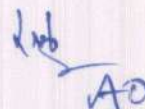
APPEARANCE

For Complainant: Mr. S.S. Hooda, Advocate.

For Respondent: Ms. Shivani Dang, Advocate.

ORDER

This is a complaint filed by Ms. Indu Dhir (allottee),
under section 31 of The Real Estate (Regulation and Development)
Act, 2016 (in brief The Act of 2016) read with Sections 35,36,37
&38 of The Haryana Real Estate (Regulation and Development) Act,
2016 against M/s Almond Infrabuild Pvt. Ltd.
(promoter/developer).



2. Briefly stated, according to the complainant, pursuant to her booking application dated 16.06.2016 for allotment of a residential unit in the project "ATS Tourmaline" Sector-109, Gurugram, being developed by the respondent, it (respondent) allotted a unit/apartment bearing no.2242 in Tower-2 on 24th Floor. It has a super area measuring 2585 sq. ft. and built-up area 2100 sq. ft. Total sale consideration was agreed as Rs.1,69,70,875/- out of which, she(complainant) paid Rs.22,65,834/- as booking amount of the unit. An Apartment Buyer's Agreement (ABA) was executed between the parties on 21.07.2016. Due date of possession was 21.01.2020.

3. That after the allotment of the unit, the complainant applied for bank loan from HDFC Bank, Gurugram. A Tripartite Agreement among HDFC Bank, complainant and the respondent was executed and an amount of Rs.1,11,79,349/- was disbursed by the bank in favour of the respondent.

4. That as per the payment plan opted by the complainant, she paid an amount of Rs.1,81,13,438/-, but the respondent did not hand over the physical possession of the unit

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within stipulated period, due to which the complainant had to live in rental accommodation.

5. That the respondent handed over physical possession of the unit to the complainant on 16.12.2021, but the said unit was not found as per the site plan issued by the respondent at the time of agreement. Then, the complainant filed a complaint (no.1045 of 2022) before the Authority for compensation on account of reduced built up area and delay possession charges. The Authority vide its order dated 01.05.2024 observed that the complainant is at liberty to seek compensation for the reduced built-up area from the Adjudicating Officer.

6. Citing facts as described above, the complainant has sought following reliefs: -

- i. to direct the respondent to pay Rs. 26,44,821/- plus interest @ 18% of Rs.34,32,224/- till 15th June as compensation for the reduced built-up area.
- ii. to direct the respondent to make the payment of Rs.4,14,358/- to the complainant as delay possession charges from 21.01.2020 to 16.12.2021.
- iii. to direct the respondent to make the payment of Rs.50,000/- to the complainant towards HRERA order dated 13.09.2023 as cost laid down upon respondent by the Authority.


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7. The respondent contested the claim of complainant by filing a written reply. It is averred that the present complaint is neither maintainable nor tenable as the Apartment Buyer's Agreement was executed between the complainant and the respondent prior to enactment of the Act of 2016. The possession of the unit was subject to the occurrence of the force majeure events. Occupation Certificate was received by it (respondent) on 09.08.2019. Thereafter, the respondent offered the possession of the unit to the complainant vide notice of possession dated 09.08.2019 and demanded the outstanding amount of Rs.20,78,087/-, but the complainant did not come forward to take possession despite sending letter dated 19.11.2020 by it (respondent). That full and final vacant possession of the unit in question was handed over to the complaint on 16.12.2021, but no objection regarding alleged reduction in the super built up area was raised by her.

8. That thereafter during the pendency of the complaint, she (complainant) got executed Conveyance Deed bearing No.9044 dated 02.11.2022. It (respondent) has adhered to all terms and

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conditions of the Agreement and has not deviated in any manner from its obligations.

9. That the complainant had filed identical complaint before the Authority seeking refund with respect to the alleged reduced super built-up area, but the same was refused by the Authority. Thus, the present complaint is barred by resjudicata and also under Rule 11 Rule 2 CPC.

10. Contending all this, the respondent has prayed to dismiss the complaint.

11. Both parties filed affidavits in support of their claims. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

12. As described above, one of reliefs sought by the complainant is for direction to the respondent to pay Rs.4,14,358/- to the complainant as delay possession charges. It is worth mentioning here that jurisdiction to allow Delay Possession Charges is with the Authority and not with the Adjudicating Officer. Similarly, another prayer of the complainant is for payment of Rs.50,000/- in her favour as cost in view of order of the Authority dated 13.09.2023. Even if, any such order was passed by the

Authority, the complainant had remedy to apply for execution of the said order before the Authority. No reason to allow any of said two reliefs by this Forum. Request in this regard is declined.

13. Now only issue between the parties remains as to whether the area of complainant's unit was reduced? This allegation is refuted on behalf of the respondent.

14. According to Apartment Buyer's Agreement dated 21.07.2016, copy of which is on record, as Annexure R2, the area of apartment as agreed between the parties was super built-up area of 240.15 square meter, equivalent to 2585 square feet, which included a built-up area of 195.09 square meter, equivalent to 2100 square feet, specifically described in Schedule-I.

15. Admittedly, after taking possession by the complainant, Conveyance Deed has been executed between the parties, copy of which is also on record. If same is taken as true, this document describes super built-up area as 240.15 square meters (2585 square feet) and Carpet area of 144.74 square meters 1558 square feet i.e. similar as was mentioned in Apartment Builder's Agreement. Again, Certificate of Possession was executed between the parties, which has been signed by the complainant also. This

document mentions about peaceful possession of unit, having been handed over to the allottee-complainant. The area of apartment No.2242 has been described as super built-up area of 2585 square feet (equivalent to 240.15 square meter approximately), which included Carpet area of 1558 square feet (equivalent to 144.74 square meter). Admittedly, no objection was raised by the complainant in this regard, before filing of this complaint.

16. The only plea of the complainant is that a Local Commissioner was appointed by the Authority, who described as less area having been delivered to her. The complainant failed to prove that the Authority appointed any Local Commissioner in this regard or the Local Commissioner gave any such a report. In this way, the complainant has failed to prove her case.

17. No other issue was raised during deliberations. The complainant having failed to prove her case, the complaint in hand is thus dismissed. File be consigned to the record room.

Announced in open court today i.e. **on 01.05.2026.**

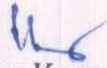


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram.

Present: Mr. S.S. Hooda, Advocate for complainant.
Ms. Shivani Dang, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
01.05.2026