BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	1612 of 2025
Date of filing	:	09.04.2025
Date of decision	:	29.09.2026

Mr. Rahul Vig
Mrs. Deepika Malhotra
Both are R/o – 228, Pocket B5, Sector 8, Rohini, Delhi-110085 **Complainants**

Versus

M/s Sky Space Developers Private Limited.
Registered Office: 4th floor, The Plaza, MG Road, Gurgaon-122002, Haryana, India. **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Sh. Sunil Kumar (Advocate) **Complainants**
Sh. Dhruv Rohtagi (Advocate) **Respondent**

ORDER

1. This order shall dispose of the aforesaid complaint titled above filed before this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"VERSALIA", sector-67 A, Gurugram, Haryana.
2.	Nature of the project	Independent floor
3.	RERA Registered/ not registered	Registered 365 of 2017 Dated-28.08.2017
4.	Plot no.	4089(page 25 of complaint)
5.	Area admeasuring	299 sq.yds.(Page no. 25 of the complaint)
6.	Agreement to sell	19.02.2025(Page no. 24 of complaint)
7.	Possession clause	5. **Possession of the said property** *The actual physical possession of the said property shall be given to the vendee within 45 days of the execution and registration of the sale deed of the said property in favour of the vendee.*
8.	Due date of possession	Cannot be ascertained
9.	Total sale consideration	Rs. 2,95,00,000/-(as per agreement to sell on page no. 26 of complaint)
10.	Amount paid by the complainant	Rs. 30,00,000/-(as per payment receipt on record)
11.	Occupation certificate /Completion certificate	18.12.2024(page 20 of complaint)
12.	Offer of possession	NA
13	Termination letter	27.02.2025(page 18 of complaint)

B. Facts of the complaint

3. The complainants have made following submissions in the complaint:

i. That on recommendation of few brokers, the complainants had approached M/s Sky Space (4S) developers private limited, respondent n relation with residential project "Ansal Versalia", marketed as "Amara Floors" situated at Sector 67 and 67A, district Gurugram, Haryana on 06.02.2025. Respondents

sales representatives boasted it to be one of the best residential group housing projects with serene environment and best world class amenities in close vicinity. When sales representatives gave assurances that project is HRERA registered, DTCP approved and that occupancy certificate has been successfully received from the corresponding agencies, the complainants handed over an advance token of Rs. 2,00,000/- in form of bank check after negotiating a deal of Rs. 2,95,00,000/- for 3rd floor of unit plot 4089, caret area 1776 sq.ft.

ii. That sales representatives gave a deadline of 2 weeks to pay 10% of total notional value i.e., Rs.29,50,000/- before an agreement is drafted. Complying with this request, the complainants transferred a sum of Rs. 28,00,000/- via online bank transfer.

iii. That the complainants were told by representatives that all relevant documents would be provided only after 10% payment is made and an agreement drafted between parties. post transferring more than the stipulated partial payment, respondent customer relationship management team representative Mr. Sunil Mishra was assigned to the case. No allotment was made and no application letter was provided to the complainants. Instead, on 19.02.2025, the complainants were made to sign an "agreement to sell on a Rs.101/- stamp paper in the absence of any witnesses. The agreement was signed by the respondent without any public notarized seal and no registration was made before the registrar office.

iv. That when complainants asked about forming a registered "builder buyer agreement or a "tripart agreement" in conjunction with bank, respondent again misled the complainants by mentioning that these and not for close to completion projects for which occupation certificate has been received.

v. That the complainants wished to get a proper legal evaluation done on the property by their preferred bank. The respondent tried to dissuade the complainants of choosing said bank and suggested going with other banks that have already approved the project for a hassle-frees disbursal. When asked as to why SBI has not approved the project, excuses were presented to misguide the complainants e.g. SBI only provides approvals when it has monopoly on the project, SBI ask for unnecessary documents etc. the complainants, in good judgment, still applied to the bank under assurances that OC has been acquired. Bank representatives tried to reach out to the CRM team but reported difficult behavior in responding to their queries.

vi. That on 25.02.2025, SBI legal team rejected the loan application after reviewing the OC with reference to following statement on the certificate- "The permission for the occupation of the above building is hereby granted by the undersigned as per report plans regarding violations/deviations at the site, as verified by architect and violation are mentioned overleaf, subject to the final outcome of CBI investigation being undertaken in view of Hon'ble Supreme Court of India in CA No. 8977 of 2014 titled as Jai Narayan @ Jai Bhagwan & Others Vs. State of Haryana. AT the time of signing agreement, the respondent assured the complainants that the said premises being the flat, the building, as well as the plot were free from all encumbrances and that there was no litigation pending on the same courts. Since the unit was subject to legal pendency, the complainants were shocked and felt deceived by the respondent for mis-selling a disputed/objectionable unit to them. On 27.02.2025, immediately after discovering legal pendency on plot, the complainants visited respondent's corporate office to submit a request to terminate the agreement and solicit a full refund. The request was hesitantly received by the respondent. An

email was sent with same content and a registered post was also sent to the address as prescribed on the agreement on the same day. As of this day, no response on email was received and the registered post was returned. The respondent has made no provisions to received post or has willfully refused to receive the post.

vii. That the complainants were lured into transferring a sum of Rs.30,00,000/- to the respondent through misguided assurances clearly an example of mis-selling which is against the law. The complainants discovered defected title and there by malafide intentional deceit by the respondent, making it a pure case of mis-selling and cheating. Now, the complainants being aggrieved people are seeking refund of his entire amount paid to the respondent with eligible rate of interest as per Act, 2016.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):

I. Direct the respondent to refund the total amount paid to them amount to Rs. 30,00,000/- along with interest calculated at the MCLR rate of SBI plus 2% from the date of first payment.

II. Direct the respondent to pay litigation cost of Rs.60,000/- in favour of complainant.

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.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.

i. At the outset, the complainants have got no locus standi or cause of action to file the present complaint and therefore the present complaint ought to be dismissed. The complainants had approached the respondent to book a residential unit in the project "Ansal Versalia", marketed as "Amara Floors", situated at Sector 67 and 67A, District Gurugram, Haryana developed by the respondent. The complainants have executed the agreement to sell dated 19.02.2025 between the parties i.e., complainants and respondent and are now seeking refund of the entire earnest money paid to the respondent. The complainants have failed to adhere to the terms and conditions of agreement to sell without there being any default on the parts of the respondent. The present complaint fails to direct any breach or fault on the part of the respondent.

ii. That the Authority lacks the jurisdiction to adjudicate the present complaint, which is in respect of a project, alleged to be unregistered. The complainant that the project in question is not RERA registered. In such circumstances, the present complaint is not maintainable before the Authority.

iii. That without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.

iv. That the present complaint is based on an erroneous interpretation of the provisions of the Acts as well as an incorrect understanding and assertion of the terms and conditions mutually agreed upon in the agreement to sell,

which was executed between the parties out of their own free will and is liable to be dismissed on this ground alone. The agreement to sell is a binding contract executed between the parties with open eyes, it was the term of the said contract wherein the complainants were allotted a specific unit with a categorical understanding and condition in clause 5.2 therein, which stipulated forfeiture of 10% of the total price being an amount of Rs.29,50,000/- as the total consideration for the said unit was Rs.2,95,00,000/- as earnest money when no default is attributable to respondent.

v. That the respondent craves leave of the Authority to refer to and rely upon the terms and conditions set out in the agreement to sell dated 19.02.2025, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainants. The present complaint and the grounds for the present complaint are afterthought. The complainants, since the time of booking were fully aware about the fact that the respondent was entitled to deduct the earnest money (10% of the total consideration amount) in event of default by the complainants. It is the admitted case of the complainants that they are seeking refund for personal reasons. Thus, the complainants are now estopped from raising any objection or concoct any story or raise any allegations, that any fraud was played by the respondent or that she was not made aware of such a term of booking. The allegations are malafide, afterthought and arbitrary.

vi. That the complainants is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants himself had agreed and accepted the terms and conditions of the booking,

by virtue of the terms of agreement to sell dated 19.02.2025. The complainants never objected to the said condition and therefore, is now estopped from raising any grievance against the said condition of agreement to sell. The reliefs sought in the present false and frivolous complaint are barred by estoppel.

vii. That the complainants are not an "allottee" but an investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. Without prejudice, it is submitted that it is the own case of the complainants that neither there is any allotment letter nor any buyer's agreement was executed and hence it is submitted that the complainants are not 'allotee' as defined in the RERA Act, 2016. Thus, it is most respectfully submitted that the Authority has no jurisdiction to adjudicate the present complaint which is in the nature of contractual dispute.

viii. That the complainants have not come before the Authority with clean hands and have suppressed vital and material facts from the Authority. The correct facts are set out in the succeeding paras of the present reply.

ix. That the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, that the complainants took an independent and informed decision to purchase the said unit, un-influenced in any manner by the respondent. The complainants consciously and willfully opted to execute agreement to sell dated 19.02.2025. The complainants as per the terms and conditions of agreement to sell dated 19.02.2025, also agreed to pay the sale consideration as agreed between the parties and specifically agreed to

bound by the terms of the agreement to sell. The respondent had no reason to suspect bonafide of the complainants.

x. That once the occupation certificate has already been obtained by the respondent on 18.12.2024, prior to the booking done by the complainants and hence, now, the complainants cannot refuse to take the possession of the property, given that there is no delay on the part of the respondent. However, if the complainants for no faults of respondent opted to cancel the ATS unilaterally, the respondent is well within the confines of the law and the contract to forfeit 10% of the total consideration from the amount already paid by the complainants.

xi. That the complainants are seeking refund and are trying to wriggle out of the legally binding terms of contract as agreed between parties in the agreement to sell dated 19.02.2025. It is submitted that the complainants are seeking refund by cancelling the said unit booked by the complainants allegedly on the ground that the said "*property is subject to the final outcome of the CBI investigation*" as mentioned in the complaint. The complainants have agreed to the specific terms of the agreement to sell foreseeing all past, present and future circumstances and therefore, cannot wriggle out of a binding contract. The alleged reason is misconceived and not pertaining to the respondent. The so-called CBI investigation was not on the project of the respondent or on the respondent itself. Rather, the said investigation involved the subject matter of land acquisition situated in sectors 58-67 of Gurugram, Haryana. The competent authority has permitted the construction of the 4 floors and the conveyance/ sale deeds are also being done. There is no legal embargo and the unit in question is free from all encumbrances. In fact, it needs to be highlighted that the floor in question

has even been sold and the registration thereof has also been completed in favour of the subsequent buyer. However, because of the actions of the complainants, the respondent was constrained to sell the unit at a much lower price and suffer a huge loss. The sale consideration agreed with the complainants was Rs. 2,95,00,000/-, while the unit has now been sold at a loss of Rs. 45,00,000/-, i.e. for a sale consideration of Rs. 2,50,00,000/-.

xii. That without prejudice it is submitted that the complainants have not brought on record any official bank documents which suggests that the property in question is subject to any CBI investigation. Rather, the complainants or their banker is relying on the mention of such remark in the Occupation Certificate. It is relevant to note that had there been any embargo in the sale of the said unit, the competent authority would not have issued the Occupation Certificate dated 18.12.2024. It needs to be noted that the complainant was advised to even opt for other Bankers for financing the purchase of the floor in question, however, he was adamant and chose to not explore other options. The subsequent purchaser has himself taken a loan for the said property, which was sanctioned without any hurdle or obstruction. The said fact can be ascertained from the clause 1 of the sale deed dated 28.07.2025 itself which signifies the amount being credited through Axis Bank. Clearly, the complainants are only trying to wriggle out of their agreement to sell and avoid the forfeiture of the earnest money.

xiii. That it is a well-established principle of law that a purchaser is expected to undertake due diligence and is deemed to have constructive notice of all relevant facts concerning the property before entering into an agreement to purchase the same. The law does not permit a purchaser to plead ignorance

at a later stage regarding facts or legal encumbrances that were available or discoverable through reasonable inquiry. Without prejudice, it is submitted that the complainants had themselves approached the respondent for purchase of the said unit and therefore they are deemed to conducted the market research about this project, more so when the said fact was under lime light for quiet a time in Gurugram and principal of caveat emptor squarely applies here.

xiv. That the respondent has diligently performed his obligations and there is no default or lapse on the part of the respondent. The Occupation Certificate of the said project had already been received on 18.12.2024, prior to the booking in the said unit by the complainants. Therefore, the unit was complete and the respondent was ready and willing to perform his part of obligations as per the terms and conditions of agreement to sell dated 19.02.2025. In fact, the respondent was ready to get the sale deed executed straightaway, as the unit was ready for handover. However, it was only due to the reason that the complainants wanted to avail a loan facility, they chose to enter into the agreement to sell first. Thus, no fault or lapse can be attributed on the respondent.

xv. That the complainants themselves voluntarily approached respondent with an offer to purchase the 3rd floor of the property bearing No. 4089, for a total sale consideration of Rs.2,95,00,000/-. The respondent, owing to his bona fide requirements, consented to sell and transfer the aforesaid 3rd floor together with two exclusive car parking spaces situated in the stilt portion of the said building, subject to the terms and conditions mutually agreed between the parties. The complainants paid Rs 2,00,000/- on 07.02.2025 vide cheque bearing no. 000054 and Rs 28,00,000/- through

electronic payment bearing reference no. (NB18133138782004127901) on 18.02.2025. Prior to the payment of the said amount the complainants, an agreement to sell dated 19.02.2025 was signed between the parties. The agreement to sell specifically contains in clause 2.2 that the balance amount to the tune of Rs. 2,65,00,000 is to be paid prior to the sale deed estimated deed, i.e., 20.03.2025 and that the same has to be cleared at least one day prior to the above stated sale deed estimated date.

xvi. That it has been specifically agreed under clause 2.6 of the agreement to Sell that in case the complainants delay in making the balance payment within the timeline agreed in clause 2.2, the complainants shall be liable to pay interest to the respondent on the unpaid amount calculated at the rate of M.C.L.R of SBI plus 2% per annum from the date the amount becomes due till the entire outstanding amount along with interest payable by complainants is to the respondent.

xvii. That the respondent is entitled to forfeit the entire earnest money because the complainants have unilaterally withdrawn from the booking of the said unit and have refused to abide by the terms and conditions of agreement to sell duly signed between the parties. The respondent is entitled to forfeit the earnest amount as per clause 5.2 and 7.3(i) of the agreement to sell dated 19.02.2025. Further as per Haryana Real Estate Regulatory Authority, Gurugram, (Forfeiture of Earnest Money by the builder 11(5) of 2018, the builder is entitled for deduction of 10% of sale consideration as the earnest money.

xviii. That the complainants have specifically agreed that time is of essence of this agreement in terms of clause 7.3 of the agreement to sell dated 19.02.2025, whereby it has been specifically agreed between the complainants and

respondent, that in case the complainants failed to pay the balance amount as per the terms of the agreement to sell dated 19.02.2025, then the respondent is entitled to cancel/terminate the said agreement to sell, and also forfeit the earnest money out of the amounts already paid by the complainants.

xix. That at this instance, it needs to be noted that relationship between the parties is commercial in nature and sacrosanct to the agreed terms. Therefore, the present complaint is filed with grave illegalities and lack of jurisdiction and the same is liable to be dismissed at the very outset. There is no cause of action whatsoever in favour of complainants which would merit the indulgence of the Authority.

xx. That the law of equity and justice cannot allow such complainants to reap benefits of such opportunistic attitude and will strive for balance of rights of both the parties at dispute. The Authority should not allow the complainants to mislead the Authority and to misuse Real Estate (Regulation and Development) Act, 2016 for harassing the builder. Despite the utter failure of the Complainants in fulfilling the obligations, the Respondent has always showed exemplary conduct.

xxi. That the present complaint under reply is a gross abuse of law. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.

xxii. That the respondent has acted strictly in accordance with the terms and conditions of the agreement to sell dated 19.02.2025 between the parties. There is no default or lapse on the part of the respondent. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. 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 submission made by the parties.

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

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the*

association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

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.

11. 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 complaint.

12. The complainants' states that relying upon the respondent's representations and assurances regarding the requisite statutory approvals and clearances, including the availability of a valid Occupation Certificate, agreed to purchase the third floor of unit/plot no. 4089 in the project "Ansal Versalia", marketed as "Amara Floors", for a total consideration of Rs. 2,95,00,000/- and paid an aggregate amount of Rs. 30,00,000/- to the respondent. However, the respondent failed to provide proper allotment and transaction documents and subsequently, upon scrutiny by SBI, the complainants discovered that the Occupation Certificate itself contained a condition making the permission subject to the outcome of a CBI investigation pursuant to proceedings before the Hon'ble Supreme Court. This material fact had been concealed from the complainants despite repeated assurances that the property was free from all encumbrances and litigation. Upon discovering the legal impediments, the complainants immediately sought termination of the transaction and refund of the entire amount paid, but the respondent failed to respond. Accordingly, the complainants seek refund of Rs. 30,00,000/- along with applicable interest

under the Real Estate (Regulation and Development) Act, 2016, on account of misrepresentation, concealment of material facts and deficiency in service.

13. On the contrary, the respondent states that the complainants' complaint is not maintainable and deserves dismissal due to lack of locus standi, cause of action and jurisdiction of the RERA Authority, particularly as the project is allegedly unregistered. The complainants voluntarily entered into an agreement to sell dated 19.02.2025 for the purchase of the third floor of property no. 4089 in Ansal Versalia, Amara Floors, Gurugram, for a total consideration of Rs.2.95 crore, after conducting their own due diligence and accepting all contractual terms, including the condition permitting forfeiture of 10% of the sale consideration (Rs.29.50 lakh) in case of default or unilateral cancellation. The respondent claims that the Occupation Certificate had already been obtained on 18.12.2024, the property was ready for possession, and there was no delay or default on its part. It further states that the complainants sought cancellation for personal reasons and concerns regarding a CBI investigation relating to land acquisition in the area, which allegedly did not create any legal restriction on the property. The property was subsequently sold to another purchaser through a registered sale deed dated 28.07.2025 for Rs.2.50 crore, resulting in an alleged loss of Rs.45 lakh.

14. After consideration of all the facts and circumstance, Authority is of view that before examining the contentions raised by the parties on merits, it is necessary to determine whether the complainants qualify as an 'allottee' within the meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, so as to invoke the statutory jurisdiction and remedies available under the Act. In this regard, it is important to note that the parties have not executed an Agreement for Sale as contemplated under the provisions of the Act. The document placed on record and relied upon by the complainants is an

Agreement to Sell dated 19.02.2025, which is distinct from an Agreement for Sale envisaged under the statutory framework of the Act. The Authority further observes that the mere execution of an Agreement to Sell, recording the intention of the parties to enter into a sale transaction in respect of the subject property, cannot, by itself, be construed as an Agreement for Sale under the Act or automatically confer upon the complainants the statutory status of an 'allottee'. The distinction between the two documents assumes significance in the context of the rights and obligations created and regulated under the RERA Act. Accordingly, in the absence of an Agreement for Sale executed between the parties, the complainants cannot be treated as 'allottees' for the purposes of the Act merely on the basis of the Agreement to Sell relied upon by them. Consequently, the complainants cannot claim the statutory remedies available to an allottee under the provisions of the Act in the present proceedings. In view of the above, the complaint is **dismissed** as being not maintainable.

15. The complaints stand disposed of.

16. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
29.09.2026