BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. : 1757 of 2018
Date of first hearing : 13.02.2019
Date of Decision : 10.04.2019

Sh. Ankur Dhanuka
R/o D-2304, Pioneer Park, Golf Course Extension Road, Sector-61, Gurugram-122011, Haryana **...Complainant**

Versus

1. Godrej Projects Development Limited
Address: 3rd floor, UM House, Tower A, Plot no. 35P, Gate no. 1, Sector 44, Gurugram-122002
2. Magic Info Solutions Private Limited
Address: D-13, Defence Colony, New Delhi **...Respondents**

CORAM:
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Akshat Goel and Shri Dushyant Tiwari	Advocate for the complainant
Shri Ankur Dhanuka	Complainant in person
Shri Divij Kumar and Shri Himanshu Sharma	Advocate for the respondent no.1
None for the respondent no.2	Proceeded ex parte

ORDER

1. A complaint dated 14.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Sh. Ankur Dhanuka, against Godrej Projects Development Limited, Magic Info Solutions Private Limited in respect of apartment described below for not fulfilling the obligations of the promoter under section 11(4)(a) and section 11(5) of the Act ibid.

Note: The respondent no.1 averred by the complainant, Godrej Premium Builders Private Limited has been substituted with Godrej Projects Development Limited as per the application submitted by the respondent no.1. The respondent no. 3 to 6 as per the complaint, namely Manoj son of Lt. Sh. Ajit Singh, Rajhans son of Baljeet Singh, Sheela Devi widow of Lt. Sh. Ajit Singh, Sukhbir Singh son of Bhim Singh have not been arrayed as respondents as they are individual land owners and have no obligations towards the complainant. Further, they do not fall within the definition of 'real estate agents' or

'promoters' as defined under section 2(zm) and section 2(zk) of the Act, respectively.

2. Since the apartment buyer's agreement has been executed on 19.05.2015, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligations on the part of promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Godrej Summit", Sector 104, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	K1804, 17th floor, tower 'K'
4.	Unit area	1816 sq. ft.
5.	Project area	22.123 acres
6.	Registered/ not registered	**Registered (75 of 2017- registration of 2.0130 acres)**
7.	Revised date of completion as per RERA registration certificate	**30.09.2018**
8.	DTCP license	102 of 2011 dated 07.12.2011

9.	Date of occupation certificate	20.06.2017
10.	Date of intimation of possession	06.07.2017(pg. 127 of complaint)
11.	Date of booking	04.02.2014 (as per the complaint)
12.	Date of allotment letter	28.08.2014
13.	Date of apartment buyer's agreement	19.05.2015
14.	Total consideration	Rs. 1,58,24,240/- (as per agreement, pg 108 of the complaint)
15.	Total amount paid by the complainant	Rs. 41,88,850/- (as per the complaint) Rs.41,51,453/- (as per statement of account dated 01.07.2017, annexure P/22, pg 124 of the compliant)
16.	Payment plan	Possession linked payment plan (as per pg 109 of the complaint)
17.	Due date of delivery of possession	Clause 4.2– 33 months from date of issuance of allotment letter, i.e. 28.08.2014 + 6 months grace period i.e. **by 28.11.2017**
18.	Delay of number of months/ years up to 10.04.2019	1 year 4 months (approx.)
19.	Penalty clause as per apartment buyer's agreement dated 19.05.2015	Clause 4.3- Rs. 5/- per sq. ft. per month of the super built up area
20.	Date of termination letter	09.12.2017

4. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant and the respondent no 1. An apartment buyer's agreement dated 19.05.2013 is available on record for unit no. K1804 02 on 17th floor, tower 'K', admeasuring super area 1816 sq. ft. approximately, according to which the possession of the aforesaid unit was to be delivered by 28.11.2017. A termination letter dated 09.12.2017 is placed on record.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 13.02.2019 and on 10.04.2019. The reply has been filed on behalf of the respondent no. 1 and the same has been perused. Despite service of notice, no reply has been filed by the respondent no.2. Hence, the case has been proceeded ex-parte against respondent no.2.

Facts of the complaint

6. The complainant submitted that on 04.02.2014, the complainant booked a unit in the project named "Godrej Summit", by paying an amount of Rs.10,00,000/- to the

respondents. Accordingly, vide allotment letter dated 28.08.2014, the complainant was allotted a unit bearing no. K1804 on 17th floor, in the tower 'K'.

7. The complainant submitted that a total sum of Rs.41,88,850/- was paid by the complainant to the respondents till 10.02.2015 and still no agreement was executed between the complainant and the respondents.

8. The complainant submitted that after much delay, on 19.05.2015, an apartment buyer's agreement was executed between the complainant and the respondents, but however, the same was not supplied to the complainant as is evident from reply email dated 12.07.2015 of the respondents to the email dated 11.07.2015 of the complainant, whereby, it has been mentioned that the agreement is under the process of stamping from court and that the same would be dispatched on 14.07.2015.

9. The complainant submitted that the apartment buyer's agreement contained clauses 2.5 & 2.6 which are reproduced as under: -

> *"2.5. In the event of non-payment of any installment of the balance money by the buyer together with interest*

payable of the same as per clause 2.4 herein above on or before the expiry of grace period – balance money, the same shall be a buyer's event of default under this agreement as specified in clause 8.1, and the developer may, at its sole discretion, terminate this agreement in the manner specified in clause 8 herein and be entitled to forfeit the earnest money out of the total amounts paid by the buyer to the developer till that date. However, the developer may, at its sole discretion, decide not to terminate the agreement and condone the delay in payment of the installment of the balance consideration, subject to the condition that the buyer shall pay interest on the unpaid amounts at the rate of 15% per annum computed from the due date till the date of actual payment. Such discretion to condone the delay and not terminate this agreement shall vest exclusively with the developer and all decisions taken by the developer in this regard shall be final and the buyer agree that all such decisions of the developer shall be binding on and acceptable to him. It is made clear and so agreed by the buyer that exercise of such discretion by the developer in the case of other buyers in the project shall not be construed to be a precedent and/or binding on the developer to exercise such discretion in the case of the buyer."

"2.6 It has been specifically agreed between the parties that, 20% of the basic sale price, shall be considered and treated as earnest money under this agreement ("earnest money"), to ensure the performance, compliance and fulfillment of the obligations and responsibilities of the buyer under this agreement.

It has been made clear by the developer and the buyer have understood that the sale consideration and statutory charges as mentioned in schedule VI hereto have been computed on the basis of super built up area of the apartment. The buyer agrees that the calculation of super built up area in respect of the apartment is tentative at this stage and subject to variations till the completion of construction. In case such variations are beyond +/-5%, then the developer shall take prior consent of the buyer."

10. The complainant submitted that as per clause 4.2, the apartment should have been ready for occupation within 33 months from date of issuance of allotment letter, i.e. 28.08.2014 + 6 months grace period i.e. by 28.11.2017.

11. The complainant submitted that on 30.06.2017 the respondents issued the following invoices to the complainant with the following details:

i. Invoice no.1032110307 for a sum of Rs.1,15,56,893/- (Rupees one crore fifteen lacs fifty-six thousand eight hundred ninety-three only).

ii. Invoice no. 1032204874 for a sum of Rs.4,63,080/- (Rupees four lacs sixty-three thousand eighty only).

iii. Invoice no.1032204875 for a sum of Rs.78,316 (Rupees seventy-eight thousand three hundred sixteen only).

iv. Invoice no.1032204876 for a sum of Rs.1,29,376/- (Rupees one lac twenty-nine thousand three hundred seventy-six only).

v. Invoice no.1032204877 for a sum of Rs.93,976/- (Rupees ninety-three thousand nine hundred seventy-six only).

vi. Invoice no. 1032204878 for a sum of Rs.94,876/- (Rupees ninety-four thousand eight hundred seventy-six only).

vii. Invoice no. 400055651 for a sum of Rs.78,190/- (Rupees seventy-eight thousand one hundred ninety only).

It is submitted that all the above invoices were premature as no intimation of possession letter was sent to the complainant by the respondents.

12. The complainant further submitted that on 06.07.2017 the respondents sent the possession intimation letter to the complainant.

13. The complainant submitted that the State Consumer Disputes Redressal Commission, Haryana at Panchkula vide its final order dated 01.08.2017 in the case of one ***Vidyut Arora Vs. Godrej Properties Limited*** observed as under: -

"The builder acknowledged and replied the aforesaid email stating therein that "Thank-you for contacting Godrej Properties. We have received your email and we will get back to you. Regards Team Godrej Summit." Meaning thereby, the builder was having knowledge of the new address of the complainant. The complainant approached the builder. The builder asked the complainant to deposit the outstanding amount of Rs.52,05,875/-, to which the complainant issued a cheque of Rs.52,05,875/- dated March 28, 2016 (Exhibit OP-24) to the builder. The builder returned the aforesaid cheque (Exhibit OP-24) to the complainant. The builder without any rhyme or reason terminated the allotment of the apartment of the complainant and forfeited the deposited amount of Rs.20,80,057.83. The complainant was ready to pay the outstanding amount, which he paid by cheque (Exhibit OP-24) but the builder returned the cheque and terminated the allotment of the apartment and forfeited the deposited amount. The act and conduct of the builder clearly shows that it's only intention was to forfeit the deposited amount of the complainant."

14. The complainant submitted that on 05.09.2017, the respondents sent an email being reminder 1 regarding outstanding dues to the complainant, whereby, they claimed a sum of Rs.1,25,09,037/-. On 18.09.2017 the respondents replied by an email to an email dated 12.09.2017 sent by the complainant to the respondents in response to an earlier email dated 02.09.2017 of the respondents. On 05.10.2017, the respondents sent an email being reminder 2 regarding outstanding dues to the complainant, whereby, they claimed a sum of Rs.1,26,57,336/-. This amount was calculated after levying 15% interest on the amount mentioned in reminder 1 dated 05.09.2017. On 25.11.2017 the respondents sent a final opportunity letter by email to the complainant whereby, they claimed a sum of Rs.1,28,66,209/-.

15. The complainant submitted that on 09.12.2017, the complainant sent an email to the respondents seeking refund of the entire booking amount. Further, on 09.12.2017 the complainant sent another email in reply to the reminder 1 email dated 05.07.2017 whereby again the complainant reiterated for refund of the money that was advanced.

16. The complainant submitted that after receiving the request for refund of the complainant, the respondents vide their email dated 09.12.2017 terminated the booking of the complainant and forfeited a sum of Rs.38,42,304/- from the advances that was paid by the complainant. Thereafter, on 21.02.2018 the respondents sent email to the complainant again intimating that a sum of Rs.38,42,304/- towards earnest money has been forfeited and that an amount of Rs. 3,09,150/- was being refunded to the complainant. A cheque of Rs.3,09,150/- which was sent by the respondents to the complainant has not been encashed by the complainant.

17. **Issues to be determined**

The relevant issues as culled out from the complaint are: -

I. Whether on the reading of the documents which have been annexed with the present complaint it is evident that the complainant has suffered/will suffer loss/damage and that the complainant is entitled to withdraw from the project of the respondents and is further entitled to be returned his entire investment along with appropriate interest?

II. Whether the unilateral, one sided, unfair & arbitrary stipulation in the apartment buyer's agreement whereby, the respondents get 6 months grace period over and above 33 months from the issuance of allotment letter to make the apartment ready for occupation is not binding on the rights of the complainant and that the same should be struck down as being detrimental to the rights of buyers like that of the complainant?

III. Whether the respondents are liable to refund the complete amounts advanced by the complainant along with the interest for not getting the apartment ready in 33 months from the date of allotment?

IV. Whether the action of the respondents whereby, they have cancelled the allotment of the apartment allotted to the complainant and have forfeited approximately 25% of the cost of the apartment paid by the complainant is liable to be quashed specially when such cancellation and forfeiture comes after the complainant has sought to withdraw from the project of the respondents and has sought for the refund of the amounts advanced by him?

V. Whether the respondents can be allowed to alter/change the price of the apartments at their own free will to the detriment of the buyers who have purchased apartments in their project without redressing their grievances?

18. **Relief sought**

I. Refund the entire amount paid by the complainant being Rs.41,88,850/- along with interest at the prescribed rate which was paid in advance for an apartment, bearing code number GODSUMK1804 on 17th floor, in Godrej Summit tower-K in group housing residential project "Godrej Summit", situated at Sector-104, Gurgaon as the complainant is entitled for the same after the issues raised in this complaint are decided in his favour.

II. Quash the termination letter dated 09.12.2017 issued by the respondents being unilateral, one sided, unfair, arbitrary and to the detriment of the complainant as the complainant is entitled for the same after the issues raised in this complaint are decided in his favour.

Respondent no.1's reply

19. The respondent filed an application under order 1 rule X CPC for substitution of respondent no.1. It is submitted that Godrej Premium Builders Private Limited (averred as respondent no .1) stood merged with Godrej Projects Development Private Limited w.e.f. 21.08.2015 vide order dated 03.07.2015 of Hon'ble High Court of Bombay in CP no. 154/2015 titled as Godrej Premium Builders Pvt. Ltd. v. Godrej Projects Development Private Limited. Later, vide 22.11.2017, Godrej Projects Development Limited was converted to a public limited company. The complainant has made Godrej Premium Builders Pvt Ltd. a party, i.e. a company which has ceased to exist subsequent to the merger and accordingly, Godrej Projects Development Ltd. be substituted as respondent no.1.

    The aforesaid application has been allowed and Godrej Projects Development Ltd. has been substituted as respondent no.1.

20. The respondent submitted that respondent no. 3 to 6 who are individual land owners to whom the RERA, 2016 does not apply as they are neither real estate agents nor promoters as defined under section 2(zm) and 2(zk) of the Act. In light of

the above, the respondent no. 3 to 6 are liable to be deleted from array of parties.

The aforesaid submission of the respondent is allowed.

21. The respondent submitted that a perusal of the brief facts submitted by the complainant does not reveal any deficiency or any allegation which would attract the filing of the present complaint. From a perusal of the complaint, the grievance of the complainant seems to be that in light of the fact that he was unable to pay the contractually liable balance consideration, he choose to opt out of the allotment and hence the contractually agreed earnest money should not have been deducted. The said understanding is absolutely false and contrary to what was mutually agreed to between the parties vide the ABA.

22. The respondent submitted that admittedly, occupation certificate and the possession intimation letter was sent much prior to enactment of HRERA rules. In such circumstances, the jurisdiction of this hon'ble authority is not made out.

23. The respondent submitted that the present complaint is barred by limitation. It is humbly submitted that from a perusal of the complaint and the documents annexed therein, it is evident that the complainant has challenged clauses of the apartment buyer's agreement on the grounds of being unfair, arbitrary and one sided after more than three years of executing the same. Despite having willfully executed the ABA on 19.05.2015, the complainant remained silent for more than three years. Further, during the said period of three years, there was not even a whisper of any such grievance by the complainant against any of the respondents. On the contrary, realizing that he was not in a position to the pay the balance consideration of Rs. 1,25,09,037/-, as is evident from the complainant's e-mail dated 09.12.2017(annexure P/32 of the complaint), the complainant as an afterthought choose to file the present frivolous complaint.

24. The respondent submitted that the relief sought by the complainant are contradictory to each other as on one hand he is seeking refund of the amount paid and on the other he is seeking quashing of the termination letter. It is submitted

that it is the complainant himself who has caused wrongful loss to the respondent and wrongful gain to himself by not paying the balance amount till date. It will not be out of place to state that the non-payment of outstanding dues by the complainant has resulted in considerable financial losses to the respondent who in turn has to ensure the progress of the construction without delay. The complainant has deliberately and in complete violation of the terms of the agreement has withheld legitimate dues of the respondent, now he cannot be allowed to take advantage of its own wrongs. The fact that the failure on part of the complainant to pay the outstanding dues has caused losses to the respondents, which is evident from the fact that a similar apartment has been resold at a sale consideration of Rs. 1,07,00,000/-as per the application form, while the for apartment in question in the present complaint was sold to the complainant for Rs. 1,58,24,240/-. It is evident that the respondents are suffering a loss of approximate Rs. 51,24,240/- in sale of such apartments. Application Form confirming sale of similar apartment at Rs. 1,07,00,000/- is annexed and marked as annexure R3.

25. It is further submitted that the present complaint is an outburst of the termination of allotment of complainant's apartment and forfeiture of earnest money etc.

26. The respondent submitted that the complainant duly executed and submitted the application form, in which it was clearly mentioned that upon allotment of the apartment, the applicant will not be allowed to cancel the transaction and in the event such an applicant applies for cancellation of the transaction, the company shall cancel and forfeit the entire earnest money along with deduction of interest on delayed payment. Therefore, the complainant unequivocally and willfully having agreed to such terms applied for an apartment in the project "Godrej Summit".

27. The respondent denied that that the entitlement to grace period is in any manner unfair, one sided or to the detriment of the complainant. The complainant was well aware of the terms and conditions of the ABA. In the event he did find them to be unfair or one sided, as claimed in the corresponding paragraph, what stopped him from objecting to the same there and then itself? Be that as it may, the possession was offered to the complainant on 06.07.2017.

There is no communication from the Complainant between 28.05.2017 (the date as per the complainant tentative completion date) till date wherein he has ever objected to the grace period of 6 months being one sided. The said allegation is a mere afterthought.

28. The respondent submitted that the facts of the case cited by the complainant are differentiable from the present facts. In any event, the said decision of the Hon'ble State Commission Panchkula has been challenged vide appeal bearing no. 671 of 2018 before Hon'ble National Consumer Dispute Redressal Commission, Delhi ("NCDRC"). The Hon'ble NCDRC has been pleased to grant a stay on the aforementioned judgment vide its order dated 25.05.2018 passed in appeal bearing no 671 of 2018.

Written arguments filed by the respondent no. 1

29. The respondent submitted that the possession of the said flat has been offered to the complainant within the time period stipulated in the apartment buyer's agreement. A perusal of clause 4.2 of the apartment buyer's agreement (pg. no. 82 of the complaint) would reveal that the possession was to be offered within 39 months (including grace of 6 months) from

the issuance of the allotment letter and admittedly, the allotment letter was issued on 28.08.2014. Vide letter dated 06.07.2017 the possession was offered to the complainant.

30. It is respectfully submitted that the complainant has filed present complaint with a mala-fide intention to circumvent its contractual obligation to pay the contractually liable balance consideration. The said intention of the complaint is evidently visible upon a perusal of the emails sent by the complainant to the respondent, requesting refund of amount already paid by it. It is imperative to note that a perusal of the afore-said emails (pg. 147 – 148 of the complaint) would reveal that the complainant wanted to back out from the said project, not on the account of any violation of any provision of RERA, 2016 or HRERA or any deficiency, but for the reasons mentioned the afore-said emails. The said fact is further buttressed from the fact that the complainant has failed to place any communication on record to suggest that he was aggrieved by any violation or deficiency on the part of the respondent.

31. The respondent submitted that as an afterthought, the complainant resorted to the present complaint to coerce the

respondent to refund the earnest money which has been rightly forfeited by the respondent. Further, the mala-fide afterthought of the complainant is buttressed from the fact that the complainant for three years, after executing the apartment buyer's agreement, did not raise any grievance with respect to the same and suddenly is aggrieved with the agreement.

32. The respondent submitted that as per clause 14 of the application form and clause 2.5 of the agreement, the respondent is entitled cancel the allotment and forfeit the earnest money, in case the complainant defaults in making payment of the due instalment together with the interest payable as mentioned in clause 2.4 of the apartment buyer's agreement.

33. The respondent submitted that the present complaint has been filed as a counterblast of the termination of the allotment of complainant's apartment and rightful forfeiture of the earnest money.

34. The respondent submitted that the earnest money has been deducted in terms of the judgment of Hon'ble National Consumer Disputes Redressal Commission in ***"DLF Ltd. vs.***

Bhagwanti Narula [RP No. 3860/2014 decided on 06.01.2015], which has been followed by this hon'ble authority in various pronouncements. It is respectfully submitted that the afore-mentioned judgment has settled the law that if the complainant/allottee wishes to cancel/backout from an allotment, the developer/respondent herein is entitled to forfeit the earnest money to an extent of *"reasonable amount"* provided the developer/respondent is able to show from evidence losses suffered by it. In the present case, the agreement between the parties provided for 20% of the amount to be treated as earnest money, which has been rightly deducted by the respondent as 20% rightly constitutes the *"reasonable amount"*, because cancellation sought by the complainant in the present case has put the respondent to a wrongful loss of roughly Rs. 51,24,240/-. It is also pertinent to mention that the Hon'ble National Consumer Disputes Redressal Commission in "**Kavita Sikka v. Oasis Landmark LLP & Anr.**" *CC No. 2790* upheld that 20 % of sale consideration can be forfeited as per the terms of the contract, and the same has been upheld by the Hon'ble Supreme Court vide its order dated 07.05.2018 passed in

Civil Appeal No. 4430 of 2018 titled as "***Kavita Sikka v. Oasis Landmark LLP Godrej & Anr.***

35. The respondent submitted that the complainant has sought refund in present complaint, which in turn amounts to cancellation of the allotment by the complainant. It is respectfully submitted that, firstly, there is no such clause in the agreement between the parties, which allows refund of the entire amount to the complainant, after the complainant has been allotted a unit, in the present case, the said flat.

36. The respondent submitted that as per clause 20 of the application form (pg. no. 75 of the documents filed along with the reply filed by the respondent) whereby it is categorically captured that once an apartment has been allotted to the complainant, the complainant shall not be allowed to cancel the said transaction. And in case the complainant applied for cancellation of the allotment of the apartment, the respondent shall be entitled to forfeit the entire earnest money, after cancelling the said allotment.

37. The respondent submitted that non-payment of outstanding dues by the complainant or un-timely/pre-mature cancelation of the allotment by the complainant has caused

considerable financial loss/wrongful loss to the Respondent, who in turn has to ensure the progress of the construction without delay for the sake of other customers/allottees.

38. The respondent submitted that considerable financial loss has been caused to the respondent which is evident from the fact that a similar apartment has been resold at a sale consideration of Rs. 1,07,00,000/- (ref: annexure r-3 @pg. no. 44 of the documents filed along with the reply filed by the respondent). The total sale consideration which was agreed upon by the complainant for the flat in question was Rs. 1,58,24,240/-, failure on part of the complainant to pay the outstanding dues has cause losses to the respondent, which is equivalent to Rs. 51,24,240 in terms of the aforesaid.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent no.1 and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

39. In respect of the **first issue**, the complainant has failed to furnish sufficient particulars in order to show any loss or damage suffered by him. Rather, the cancellation was applied

for by the complainant himself vide cancellation letter dated 09.12.2017.

40. In respect of **second issue**, the complainant himself executed the apartment buyer's agreement with wide open eyes on 19.05.2015 which confined the extension of 6 months grace period granted to the respondent. Thus, the complainant cannot raise this issue at this stage.

41. In respect of **third issue**, as per clause 4.2 of the agreement, the due date of possession comes out to be 28.11.2017. Further, the occupation certificate was received on 20.06.2017 and the possession intimation letter was sent on 06.07.2017, much prior to the said due date. Thus, it cannot be said that the respondent failed in getting the apartment ready as per the agreement.

42. In respect of **fourth issue**, the complainant failed in making the payments as per the demands raised by the respondent. Further, the cancellation was done on account of failure in making said payments and upon the demand of complainant seeking refund and as per the terms and consitions of the application form and the agreement. However, the respondent has forfeited 20% of the total consideration. In

this regard as per the regulations of the HARERA authority, Gurugram, the earnest money should be reasonable. As per the order in the case of **DLF v. Bhagwanti Narula (revision petition no. 3860 of 2014 decided on 6.01.2018),** the respondent cannot forfeit an earnest money of more than 10% of the total sale consideration of the unit as per regulation no. 11/RERA GGM regulation dated 5 December 2018 .

43. In respect of **fifth issue**, the complainant has failed to furnish any material documentary proof in order to prove that the respondent changed the price of the apartment to the detriment of the buyers.

44. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

45. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

46. **Jurisdiction of the authority**- The respondent admitted that as the project "Godrej Summit" is located in Sector 104, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

47. As per clause 4.2 of the agreement dated 19.05.2015 for unit No. K1804, tower-K, in project "Godrej Summit" Sector-104,

Gurugram, possession was to be handed over to the complainant within a period of 33 months from the date of issuance of allotment letter i.e. 28.8.2014 + 6 months grace period which comes out to be 28.11.2017. However, the respondent has not delivered the unit in time.

48. Certain issues w.r.t. to width of the road have been raised by the complainant. However, as per the provisions of The Haryana Development and Regulation of Urban Areas Act 1975, the respondent has scuttled all the arguments raised by complainant. Vide cancellation letter dated 9.12.2017, it has been brought on record that respondent has cancelled the flat/unit after forfeiting 20% of the total consideration from the amount deposited by the complainant. However, the balance too has not been encashed by the complainant. As per the regulations of the HARERA authority, Gurugram. As per the orders in the case **DLF v. Bhagwanti Narula (revision petition no. 3860 of 2014 decided on 6.01.2018),** the respondent cannot forfeit an earnest money of more than 10% of the total sale consideration of the unit. The respondent can forfeit 10% of the total consideration amount alongwith GST, if any as per regulation no. 11/RERA GGM Regulation dated 5 December 2018.

Decision and directions of the authority

49. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

I. The respondent is directed to forfeit 10% of the total sale consideration amount and refund the balance amount deposited by the complainant as per regulation no. 11/RERA GGM dated 5 December 2018 within a period of 90 days from the date of issuance of this order.

II. Complainant is further liable to pay GST, if any.

50. The complaint is disposed of accordingly.

51. The order is pronounced.

52. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated:10.04.2019

Judgement Uploaded on 29.05.2019