

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

Complaint no.	1305 of 2018
Date of filing complaint	05.12.2018
First date of hearing	16.04.2021
Date of decision	05.09.2022

1.Sh. Antony Rajkumar 2.Smt. Sowjanya Harathi Both R/o: WW 74, 1 st Floor, Malibu Towne, Sohna Road, Gurugram, Haryana	Complainants
Versus	
1. Godrej Projects Development Ltd. (through its directors/authorised signatory) 2. Shri Amit Biren 3. Mr. Rabi Kant Sharma All at: Godrej one, 5 th floor, Pirojshanagar Eastern Express Highway, Vikhroli (East), Mumbai City, Maharashtra-400079	Respondents

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Sh. Narender Kumar (Advocate)	Complainants
Sh. Divij Kumar (Advocate)	Respondents

ORDER

- The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is



inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Godrej Summit", Sector 104, Gurugram
2.	Project area	22.123 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	102 of 2011 dated 07.12.2011 valid upto 06.12.2019
5.	Name of licensee	Magic Info Solutions Pvt. Ltd. and 1 other
6.	RERA Registered/ not registered	75 OF 2017 DATED 21.08.2017
7.	RERA registration valid up to	30.09.2018
8.	Date of Allotment Letter	14.05.2015
9.	Unit no.	A-1502, 14 th floor, Tower A (Page 43 of the complaint)
10.	Unit area admeasuring (carpet area)	1902 sq. ft. (Page 43 of the complaint)
11.	Apartment Agreement Buyer's	Executed on 25.05.2015
12.	Possession clause	4.2. Possession Time and Compensation "The developer shall endeavor to complete the construction of the Apartment within 32 months from the date of issuance of allotment letter , along with grace period of 6 months over and above this 32 months period". (Page 89 of the complaint)
13.	Due date of possession	14.07.2018 (Calculated as per Apartment Buyer's Agreement)

14.	Total sale consideration	Rs. 2,28,90,819/- (Page 117 of the reply)
15.	Amount paid by the complainant	Rs. 1, 51,01,023/- (As alleged by complainant) Amount paid by complainant: Rs. 34,13,065/- Amount paid by bank: Rs. 1,15,20,177/-
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of Possession	Not offered
18.	Cancellation Acceptance Form	23.05.2018

B. Facts of the complaint:

- In 2015, the complainants made an application for booking an apartment in the project "Godrej Summit" and was allotted an apartment bearing no. A-1502 admeasuring 1902.00 sq. ft. for a total sale consideration of Rs. 53,64,693/-. On 22.05.2015 an allotment letter was signed between the parties and paid a sum of Rs.34,13,065/-.
- It is pertinent to mention that the complainants opted for bank subvention plan. Since the ICICI bank was the project partner of the respondent in the said project , hence the complainants were left with no option but to seek finance from the ICICI bank only.
- That on 25.05.2015, an apartment buyer's agreement was executed between the parties and was allotted unit mentioned above. On 15.04.2016 first instalment of Rs.86,14,218/- was paid by ICICI Bank to the respondent. Then after the complainants had



sent e-mails, made several telephone calls and also visited the office of the respondent to cancel the booking.

6. That till 26.09.2016, ICICI bank deposited a sum of Rs. 1,16,87,958 with the respondent. On submitting the cancellation acceptance form, the respondent issued a demand draft drawn on HDFC Bank favouring the ICICI Bank. Ltd, for sum of Rs. 1,15,20,177/- as full and final payment for closing the loan account. However, on depositing the demand draft of the aforesaid amount, the ICICI bank demanded a sum of Rs. 1,57,502/- from the complainants and only on depositing the aforesaid amount the loan account of the complainants will be closed by the bank..

7. The complainants are claiming the following amount which has been deposited by the complainants :

Sr.No.	Date	Amount	Paid to
1.	01.03.2015 to 30.04.2015	Rs. 34,13,065/-	Respondent company
2.	01.01.2018 to 30.04.2018	Rs. 4,44,144/-	ICICI Bank Ltd.
3.	25.05.2018	Rs. 1,57,502/-	ICICI Bank Ltd.

Total amount recoverable from respondents = Rs. 40,14,711/-

8. The bank. had paid an amount of Rs.1,16,87,958/-in total to the respondent from 15.04.2016 to 26.09.2016 i.e., a sum of Rs.

86,44,218/-, 1,83,979/- and 28,59,761/- respectively and the respondent only paid an amount of Rs. 1,15,20,177/- to the bank through demand draft bearing No. 293205 drawn on HDFC Bank dated 16.05.2018.

9. Being aggrieved by the acts of respondent, the complainant is left with no option but to file this complaint.

C. Relief sought by the complainant:

10. The complainants have sought following relief(s):

- i) To direct the respondent to refund an amount of Rs.40,14,711/- i.e. a sum of Rs. 34,13,065/- paid by the complainants as initial payments to the respondents and Rs. 4,44,144/- as EMI paid to the ICICI Bank and Rs. 1,57,502/- paid to the ICICI Bank for closing the loan account along with interest @ 18% p.a. from the date of deposit till its realization in full and final.

D. Reply by respondent:

The respondent by way of written reply dated made the following submissions:

11. That the complainants have concealed the material facts from the authority. The complainants after going through all the pros and cons, booked a flat in A-1502, 14th floor, Tower A in the project of the respondent.
12. The complainants opted for subvention plan in which the buyer holds the unit by paying 15% of money and the rest 85% money will be paid by the bank to the respondent in the form of loan.

Accordingly, a tripartite agreement was executed between the parties dated 28.03.2016.

13. On 23.05.2018 the complainants signed the cancellation acceptance form and accepted all the terms and conditions therein. Thereafter, the respondent issued the demand draft dated 16.05.2018 bearing no. 293205 drawn on HDFC bank.

14. Thus, from the aforesaid, it becomes abundantly clear that there has been no lapse, whatsoever on the part of the respondent at any point in time.

15. All other averments made in the complaint were denied in toto.

16. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

17. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

18. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

19. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357* and reiterated in case

of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

20. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Entitlement of the complainant for refund:

F.1. Refund of an amount of Rs.40,14,711/- i.e., a sum of Rs. 34,13,065/- paid by the complainants as initial payments to the respondents and Rs. 4,44,144/- as EMI paid to the ICICI Bank and Rs. 1,57,502/- paid to the ICICI Bank for closing the

loan account along with interest @ 18% p.a. from the date of deposit till its realization in full and final.

21. In the present case, the subject unit was allotted to the complainant on 14.05.2015 under subvention plan. He paid a sum of Rs. 34,13,065/- towards total consideration of allotted unit which constitutes nearly 15 % of total consideration. The complainant approached the authority seeking relief of refund of the paid-up amount on the ground that the allottee does not want to continue with the project as he had accepted the cancellation by filling a form dated 23.05.2018. The said complaint has been filed on 05.12.2019 whereas as per clause 4.2 of the BBA, the due date of handing over of possession comes out to be 14.07.2018. The complainant has also submitted a calculation sheet which makes it clear that the complainant has made a payment of Rs. 34,13,065/- to the respondent.
22. The above-mentioned facts make it clear that the complainant wants to withdraw from the project and is seeking refund before the due date has expired. It has come in his pleadings that he sent an email back in 2015 but after that the ICICI bank disbursed loan amount to the respondent which was not challenged by complainant. This clearly proves that the complainant wanted to continue with the project. However, the complainant accepted the cancellation vide letter dated 23.05.2018 which was also before the due date for completion of the project has expired and the same has also been taken as date of cancellation of unit.

23. The cancellation of any allotted unit by the respondent builder must be as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately.
24. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

25. Keeping in view the above-mentioned facts and since the allottee accepted the cancellation by filling a form dated 23.05.2018. Hence the authority hereby directs the promoter to return the amount after forfeiture of 10% of total sale consideration which comes out to be Rs. 11,23,983.1/- with interest at the rate of 10.00% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule

15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation acceptance form i.e., 23.05.2018 (as no email is on record) till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

H. Directions of the Authority:

35. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i) The respondent-promoter is directed to refund the balance amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 with interest @ 10 % p.a. on the refundable amount from the date acceptance of cancellation form i.e., 23.05.2018 till the actual date of refund of the amount.
- ii) Out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.
- iii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

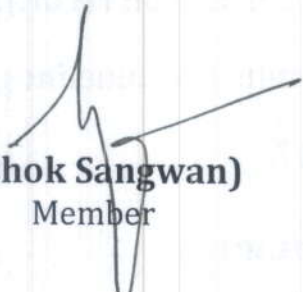


HARERA
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36. Complaint stands disposed of.
37. File be consigned to the Registry.

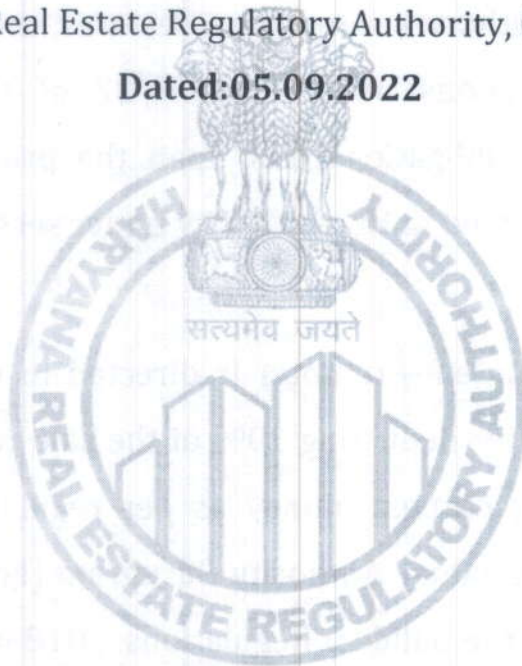

(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:05.09.2022



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