



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

Date of Decision: 12.09.2022

Name of the Builder		Wonder city Buildcon Pvt. Ltd.	
Project Name		Godrej Aria	
1.	CR/3706/2019	Rajesh Mittal and Naveen Mittal Vs. Wonder city Buildcon Pvt. Ltd.	Shri. Karan Sehgal Sri. Kapil Madan And Saurabh Gauba
2.	CR/3704/2019	Rajesh Mittal and Naveen Mittal Vs. Wonder city Buildcon Pvt. Ltd.	Shri. Karan Sehgal Sri. Kapil Madan And Saurabh Gauba

CORAM:	
Shri. K.K. Khandelwal	Chairman
Shri. Vijay Kumar Goyal	Member
Shri. Ashok Sangwan	Member
Shri. Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the



project, namely, **Godrej Aria @101** being developed by the same respondent/promoter.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, amount paid up, and relief sought are given in the table below:

1.	2.	3.	4.	5.	6.	7.	8.
S. No	Complaint no./title/reply status	Unit no. & Area admeasuri	Allotment letter	Date of agreement	Due date of possession	Total sale consideration,	Amount paid complainant
1.	CR/3706/2019 Rajesh Mittal and Naveen Mittal Vs. Wonder city Buildcon Pvt. Ltd.	1572 sq. ft. (Page 40 of complaint)	24.02.2016 (Annexure 1 at page 30 of complaint)	16.08.2016 (Page 36 of complaint)	24.02.2021 (Calculated as 48 months from date of allotment plus grace period of 12 months as the same is unqualified)	Rs. 1,20,17,940/- (Schedule VI of BBA at page 88 of complaint)	Rs.47,83,980/- (as per SOA on page 164 of reply)
2.	CR/3704/2019 Rajesh Mittal and Naveen Mittal Vs. Wonder city Buildcon Pvt. Ltd.	1671.98 sq. ft. (Page 37 of complaint)	24.02.2016 (Annexure 1 at page 28 of complaint)	16.08.2016 (Page 36 of complaint)	24.02.2021 (Calculated as 48 months from date of allotment plus grace period of 12 months as the same is unqualified)	Rs. 1,74,78,130/- (schedule VI of BBA at page 86 of complaint)	Rs. 69,44,314/- (as per SOA on page 154 of reply)

Unit and project related details

4. 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: CR/3706/2019 Rajesh Mittal and Naveen Mittal Vs.
 Wonder city Buildcon Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"Godrej Aria @ 101", Sector 79, Gurugram
2.	Project area	14.59 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	47 of 2013 dated 06.06.2013 valid up to 13.08.2024 109 of 2014 dated 14.08.2014 valid up to 13.08.2024
5.	Name of licensee	Sterling Infrastructure Pvt. Ltd. and 2 others
6.	RERA Registered/ not registered	61 of 2017 dated 17.08.2017 valid up to 28.02.2021
7.	Allotment Letter	24.02.2016 (annexure 1 at page 30 of complaint)
8.	Unit No.	D0204, 2 nd floor, Tower D (Page 40 of complaint)
9.	Unit area admeasuring	1572 sq. ft. (page 40 of complaint)
10.	Date of execution of Apartment Buyer's Agreement	16.08.2016 (Page 36 of complaint)
11.	Possession clause	4.2 <i>"The Developer shall endeavour to complete the construction of the Apartment and to intimate you</i>



		<i>for the possession of the Apartment within 48 months from the date of issuance of Allotment Letter along with a grace period of 12 months over and above this 48 months period."</i>
12.	Due date of possession	24.02.2021 (Calculated as 48 months from date of allotment plus grace period of 12 months as the same is unqualified)
13.	Total sale consideration	Rs. 1,20,17,940/- (Schedule VI of BBA at page 88 of complaint)
14.	Amount paid by the complainants	Rs. 47,83,980/- (As per SOA on page 164 of reply)
15.	Request for merger of both units	Vide email dated 03.11.2017 (Page 93 of complaint in CR/3706/2019)
16.	Surrender of Unit	Vide email dated 24.11.2017 (Page 94 of complaint in CR/3706/2019)
17.	Cancellation Letter by respondent	07.05.2019 (Page 183 of reply)
18.	Occupation certificate	Not offered
19.	Offer of Possession	Not offered

A. Facts of the complaint:

5. The complainants booked an apartment in the project namely "Godrej 101" situated at sector 72, Gurugram, Haryana. Complainants vide application dated 23.09.2015 were allotted unit bearing no. D-204

admeasuring 1572 sq. ft. for a total sale consideration of Rs. 1,20,17,940/-.

6. The complainants signed apartment buyer's agreement dated 16.08.2016 and started making payment according to the payment plan. The respondent within 2 years demanded 80% of the payment. The complainants raised their concerned on the demand letter dated 03.08.2017 and approached the CRM department.
7. On 03.11.2017 the complainants made a request to surrender the apartment bearing no. C-403 in the same project and adjust the amount paid for that apartment to D-204.
8. The complainants vide email dated 24.11.2017 requested to surrender both the units as they were facing financial crisis. The respondent vide email dated 04.12.2017 reverted and acknowledged that the cancellation would be according to clauses mentioned in the application/ allotment letter and apartment buyers' agreement.
9. On 20.05.2018 the complainants received an email from the respondent in accepting the request of adjusting the amount paid for C-403 to D-204 and asked for merger fee of Rs. 5,89,921/-. On 02.09.2018 the complainants express their rejection for merger.
10. The complainants received termination letter dated 07.05.2019 and stating that the amount paid of Rs. 46,55,678/- stands forfeited as mentioned under terms of the application form.

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

C. Relief sought by the complainant:

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

- i. Direct to the respondent to refund an amount of Rs. 47,83,980/- along with interest.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

13. It is submitted that the complainant made the booking after going through all the terms and conditions as mentioned in the application form dated 23.09.2015. Clause 15 of the application form clearly defined earnest money to be 20% of the sale consideration.
14. It is pertinent to mention that the apartment buyer agreement was executed between parties dated 16.08.2016 containing payment plan, according to which timely payments were to be made.
15. The complainants made their request vide email dated 03.11.2017 requesting the merger of the units to the respondent. After accepting the request made by the complainants, they again sent an email dated 24.11.2017 to cancel both the units and refund the amount paid by them.
16. On 20.08.2018 the respondent again sent an email to reconsider the merger request and make timely payments. After sending various

reminder letters dated 08.03.2017,19.12.2017,26.12.2017, 11.07.2018 and followed by termination letter dated 07.05.2019.

17. It is to mention that the complainants are at fault for not making timely payments and hence are not entitled to any refund.
18. All averments were denied in toto.
19. Copies of all 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 submissions made by the parties.

E. Jurisdiction of the authority:

20. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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. Entitlement of the complainant for refund:

F.I Direct to the respondent to refund an amount of Rs. 47,83,980/- along with interest.

21. The complainant submitted that he booked two units in the project named as Godrej Aria @ 101. Thereafter, on 16.08.2016, two separate BBAs were executed between the parties for the units allotted by the respondent. Thereafter, on 03.11.2017, the complainants sent an email requesting the respondent to merge both the units as the complainants were facing some financial issues. Both the parties

communicated with each other for merger of units vide various mails. However, the merger was not finalised. The complainant sent a surrender email dated 24.11.2017 for both the units to refund the entire amount paid by him. On 20.08.2018 the respondent again sent an email to reconsider the merger request and make timely payments. After sending various reminder letters dated 08.03.2017, 19.12.2017, 26.12.2017, 11.07.2018 the respondent sent a termination letter dated 07.05.2019 for both the units, after trying coordinating with the complainant. The due date of possession as per agreement for sale as mentioned in the table above is 24.02.2021 (for both units) and the allottee in this case has surrendered the units on 24.11.2017 i.e., before the due date of handing over of possession.

22. In the instant case, the complainant is surrendering his unit and an amount beyond 10% is being deducted which is not legal in view of number of pronouncements of the Hon'ble Apex court.

Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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."

23. Keeping in view the aforesaid legal provisions, the respondent is directed to forfeit earnest money which shall not exceed the 10% of the basic sale price of the said unit as per statement of account and shall return the balance amount to the complainant within a period of 90 days from the date of this order along with interest @10% from the date of surrender i.e., till the date of its actual payment.

H. Directions of the Authority:

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter 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 amount paid by the complainant 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 along with an interest @ 10% p.a. on the refundable amount, from the date of surrender (i.e. 24.11.2017) till the date of realization of payment.
 - ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

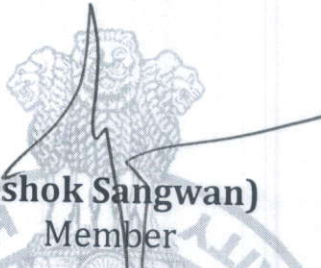


HARERA
GURUGRAM

Complaint No. 3706, 3704 of 2019

25. This order shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
26. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each complaint.
27. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2022

HARERA
GURUGRAM