

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

Complaint no. :	6092 of 2022
Date of filing complaint:	28.09.2022
First date of hearing:	11.11.2022
Date of decision :	21.03.2023

Archana Gupta and Manoj Kumar Gupta Both R/O: D-1996, Fourth Floor, Palam Vihar, Gurgaon, Haryana	Complainants
Versus	
M/s Godrej Properties Ltd. Regd. office: Godrej One, 5 th floor, Pirojshanagar, eastern expressway highway, Vikhroli, Mumbai-400079	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms Arushi Gupta (Advocate)	Complainants
Shri Rohan Malik (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottees 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 Habitat", Sector 3, Gurugram
2.	Project area	7.46875 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	18 of 2018 dated 26.02.2018 valid upto 25.03.2023
5.	Name of licensee	Sh. Narender Singh Dhingra and 1 other
6.	RERA Registered/ not registered	Registered vide 11 of 2018 dated 08.03.2019
7.	RERA registration valid up to	25.02.2023
8.	Application form	31.03.2019 (Page 27 of the reply)
9.	Allotment Letter	07.01.2020 (Page 46 of the reply)



10.	Unit no.	Unit no. 1-0001, Ground Floor, Tower 1 (Page 46 of the reply)
11.	Unit area admeasuring	98.16 sq. metre. (Carpet area) (Page 30 of the reply)
12.	Date of execution of Flat Buyer's Agreement	Not Executed
13.	Possession clause (Taken from page 36 of application form)	18. Schedule for possession of the said Unit <i>"The Developer shall offer possession of the units falling in the Project on or before February 25, 2023, with additional grace period of upto 12 (twelve) months as may be approved by Real Estate Regulatory Authority ("RERA") or such extended period as may be granted by RERA ("Completion Time Period".</i>
14.	Due date of possession	25.02.2023
15.	Total sale consideration	Rs. 94,74,854/- (Page 48 of the reply)
16.	Amount paid by the complainants	Rs. 5,00,485/- (As alleged by the complainants on page 15 of complaint)
17.	Occupation certificate	Not obtained



18.	Offer of Possession	Not offered
19.	Last and final reminder/pre-termination	19.01.2020 (Page 58 of the reply)
20.	Cancellation letter	31.01.2020 (Page 60 of the reply)

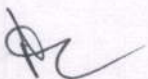
B. Facts of the complaint:

3. That the complainants had booked a unit in the project under the name and style "GODREJ HABITAT PROJECT" ("Project") and were allotted **Unit Tower 1- 0001** of the project. They were given assurances, representations, and warranties of the highest-class aesthetic apartment and timely delivery of the unit and completion of the development activities of the project. Thereafter, they were duped into buying the flat. The sale team of the respondent had wrongfully and with dishonest intention persuaded the complainants into believing the deceptive promises sold by them.
4. They booked an apartment for Rs. 94,74,854/- on 31/03/2019. The respondent had asked them to deposit the booking amount to book a flat in the said project. Therefore, they made an earnest deposit of amount Rs. 5,00,485.34/-.
5. That the respondent has sent demand letters to the complainants demanding the instalments. However, they refused paying such instalments due to the fact that an agreement to Sell/BBA was not executed by the respondent. The complainants paid an amount of Rs. 5,00,485.34/- towards the payment of the total sales consideration of



the unit and there is not any documented proof of agreement to sell to be seen.

6. Further, **Para 11** of the terms and conditions in the said application Form lays down that if the complainant withdraws or cancels the application for reasons not attributable to the developer's default, then the developer is entitled to forfeit the booking amount and non-refundable amount. It is pertinent to note that such a clause is arbitrary and biased. The respondent has himself admitted that the application form cannot be construed as a contract and as this is true, then the complainants is not legally bound to follow the terms and conditions of the application. The respondent cannot be allowed to act contrary to the spirit of the RERA Act by devising formats which are ambiguous, unreasonable and inequitable. It is pertinent to note that the respondent has formulated the application form that would favour it and would be biased against
7. That the complainants, after timely communicating surrendered towards the said project and time and again requested the respondent for the payment of amount Rs. 5,00,485.34/- paid to it. But the amount has still not been received by the complainant. Such an action on the part of the respondent is illegal and goes against the essence of the formulation of RERA.
8. That, the complainants repeatedly inquired on mobile as well as mail and regularly requested the respondent, about the payment which was



to be paid. However, on one pretext or another, the respondent avoided the said payment despite repeated follow-ups through various verbal discussions and repeated reminders. But the profound efforts of the complainants went in vain as the amount has not been received to date. The complainants suffered irreparable loss at the hands of the respondent, due to the wilful and malafide conduct and it should be held liable for the same.

9. That the complainants being aggrieved from the unfair practice of the respondent were put to financial and mental predicament and to constant ignorance by it with regard to the draft of the agreement to sell. The complainants were left with no option but to approach the Authority for refund of the paid up amount.

C. Relief sought by the complainant:

10. The complainants have sought following relief(s):
- Direct the respondent to refund an amount of Rs. 5,00,485/- along with interest.
 - Direct the respondent to pay cost of litigation of Rs. 1,25,000/-

D. Reply by respondent:

The respondent by way of written reply made following submissions:

11. Before raising objections to the present complaint, the respondent seeks to highlight the following relevant clauses of the application form and allotment letter which are germane for effective adjudication



of the present dispute. It is relevant to note that vide clause 3 of annexure A to the application form, the complainants agreed and undertook to pay all the amounts due to the respondent in accordance with the opted payment plan provided in the application form on or before the respective due date. Further, vide Clause 4 of Annexure A to the application form, the complainants agreed that the 10% of the cost of property shall be construed as "**Booking Amount**", to ensure the performance, compliance and fulfilment of his obligations.

12. After agreeing to the opted payment plan in the application form, the complainants were required to make a payment towards application money (forming part of the Booking Amount). Further, in terms of the opted payment plan, the complainants were also required to make a payment of 10% of cost of property within 30 days from the date of booking. In pursuance of the payment schedule, the respondent sent a demand letter dated 10.04.2019 along with an invoice dated 10.04.2019, requesting the complainants to make a payment of Rs. 4,47,485.34/-. In terms of the plan, the due date of payment of the said demand was 29.04.2019. The complainants paid the complete application money with a delay of 7 days on 25.04.2019. However, they failed to clear the second instalment i.e., "*within 30 days from the booking*" and out of which Rs. 4,47,000/- remained pending. Admittedly, that instalment was never paid which eventually led to termination of the booking.

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13. Since no payment was received, the respondent sent various reminders to the complainants requesting them to fulfil their part of the obligations. Further, a reference was drawn to the invoice dated 10.04.2019 which was pending payment for many months and accordingly, the complainants were requested to make a payment of Rs. 4,47,000/- plus the accrued interest on the delay.
14. Even after many reminders, the complainants continuously defaulted in making the payments towards the total price. In view of the same, the respondent was constrained to issue a pre-termination letter dated 19.01.2020. Vide the said pre-termination, the complainants were once again called upon to make the payments of the outstanding amount of Rs. 4,86,424.52/- including the accrued interest. In pursuance of continuing defaults and after a year from the first default, the booking was terminated in terms of the application form and allotment letter vide termination notice dated 31.01.2020 ("**Termination Notice**"). It was informed to the complainants that as per the terms of the application form/ allotment letter, it was agreed that the respondent shall have a right to cancel/revoke/terminate the application/allotment in the event complainants failed to make payments as per the opted payment plan. In pursuance of the same, booking of the unit was terminated and an amount of Rs. 5,00,485.34/- stood forfeited. It is to be noted that the amount forfeited is even less than the actual booking amount. It is pertinent to mention that the



complainants had only paid Rs. 5,00,485.34/- out of a total price of Rs. 94,74,854/-, which is not even 10% of the total price to be paid.

15. Thereafter, the complainants belatedly on 10.06.2020 requested the respondent to revoke the cancelation as they wished to continue with the booking. Upon receipt of this request, the respondent being customer centric organisation vide emails dated 11.06.2020 (both emails) gave another opportunity to the complainants and agreed to revoke the cancelation subject to the complainants clearing the outstanding amounts. However, the complainants yet again failed to clear the same.
16. Despite the aforesaid, the complainant, de-hors the agreed terms in the application form and allotment Letter, have proceed to the file the present complaint, thereby unlawfully claiming refund of the amount. On the contrary, it is respectfully submitted that the respondent has suffered losses due to the complainant's breach of the terms and conditions of the application form. Delay in payment by a buyer is fatal to the very concept of the construction linked payment plan. And if such buyers are allowed to back out from the allotment mid-way, without consequence, it may have a cascading effect for the developers. Further, the respondent has not only suffered a loss of forfeiting the entire booking amount as the complainants never paid the entire booking amount but also lost an opportunity to sell the said Unit to some other person, (at the time when complainants booked the



unit) who would have adhered with the terms of the application form and timely paid the total price which would have not hindered the progress of the project.

17. All the averments made by the complainants are denied in toto.
18. 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

19. 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 complete 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 allottees 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 complainants at a later stage.

F. Entitlement of the complainants for refund:

F.I Direct to the respondent to refund an amount of Rs. 5,00,485/- along with interest.

20. The complainants were allotted a unit in the project of respondent "Godrej Habitat", in Sector 3, Gurugram vide allotment letter dated 07.01.2020 for a total sum of Rs. 94,74,854/-. Though no buyer's agreement was executed between the parties, but the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 5,00,485/-. It was pleaded by complainants that respondent sent various demand letters demanding outstanding amount, which was due, but they refused paying such instalments as no agreement to Sell/BBA was executed.

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21. On the contrary, it was submitted by respondent that even after many reminders, the complainants continuously defaulted in making the payments towards the total price. In view of the same, the respondent was constrained to issue a pre-termination letter dated 19.01.2020 demanding Rs. 4,86,424.52/- including the accrued interest but that was of no use. Subsequently vide dated 31.01.2020, it issued cancellation letter for the allotted unit for non-payment.
22. It is evident from the above mentions facts that the complainants paid a sum of Rs. 5,00,485/- against sale consideration of Rs. 94,74,854/- of the unit allotted to them on 07.01.2020. Further, it was contended by respondent that on request of complainants on 10.06.2020, it agreed to revoke the cancelation and gave an alternative to them that they can continue with the booking subject to payment of outstanding dues as it being customer centric organisation. However, they yet again failed to clear the same.
23. Now when the complainants approached the Authority to seek refund, the respondent already clarified their stance that the complainants are not entitled to refund as according to clause 11 of Annexure A (terms and conditions) of the application form the respondent-builder is entitled to forfeit the entire booking amount. Clause 11 is reproduced hereinbelow: -

The applicant further agrees that in the event this application form is withdrawn/ cancelled by the applicant for reasons not attributable to the developers default then the developer shall be entitled to forfeit the booking amount and non-refundable amounts.



24. Even otherwise, 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.**"*

25. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the amount paid by the complainants against the allotted unit as it is both the earnest money and 10% of the consideration amount. So the same was liable to be forfeited as per clause 11 of Application form and Haryana Real Estate Regulatory Authority Regulation 11(5). However, the amount paid by the complainants i.e., Rs. 5,00,485/- constitutes 5.28% of sale consideration of Rs. 94,74,854/-. Thus, no direction to this effect.

F. II Direct the respondent to cost of litigation and mental agony.

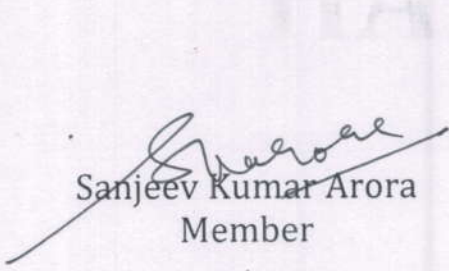
26. The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation

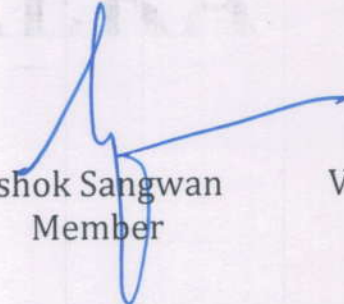


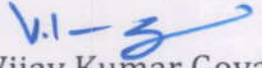
under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

27. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
28. Complaint stands disposed of.
29. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2023