



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

Complaint no. :	2606 of 2021
Date of filing complaint:	28.07.2021
First date of hearing:	15.09.2021
Date of decision :	11.11.2022

Anamika Singh alias Anamika Bodwade <b>R/O:</b> - C3, MEA Residential complex, S Radhakrishnan Marg, Chanakyapuri, New Delhi-110021	<b>Complainant</b>
Versus	
M/s Godrej Real View developers Pvt. Ltd. <b>Regd. Office at:</b> - 3 <sup>rd</sup> Floor UM House, Plot no. 35, Sector-44, Gurugram-122002	<b>Respondent</b>

**CORAM:**

Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

**APPEARANCE:**

Sh. Neeraj Tiwari (Advocate)	Complainant
Sh. Kapil Madan and Saurabh Gauba (Advocates)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/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

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(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:

Sr. No.	Particulars	Details
1.	Name of the project	'Godrej Meridien', Village Babupur, Sector - 106, Gurugram, Haryana.
2.	Nature of the project	Residential Group Housing Colony.
3.	RERA Registered/ Not Registered	RERA registered vide no. 09 of 2020, issued on 10.02.2020 up to 30.09.2025.
4.	Unit no.	T-1903, 18 <sup>TH</sup> Floor, Tower/Block-T1 (Page no. 26 of the complaint)
5.	Unit admeasuring	126.35 sq. metre
6.	Application Form	15.01.2020 (Page 24 of the complaint)



7.	Date of execution of builder buyer agreement	Not Executed
8.	Date of First payment	15.01.2020 (Page 46 of complaint)
9.	Due date of delivery of possession	30.09.2023 (Page 32 of the complaint)
10.	Total sale consideration	Rs. 1,62,40,780/- (Page 7 of complaint)
11.	Total amount paid by the complainant	Rs. 5,00,000/- (Page 7 of complaint)
12.	Occupation Certificate	Not annexed
13.	Offer of possession	Not annexed
14.	Email regarding refund by the complainant to the respondent on	29.01.2020 (On page 51 of complaint)

**B. Facts of the complaint:**

3. That the complainant vide application form dated 15.01.2020 booked a flat in the project namely "Godrej Meridien and was allotted a unit bearing 1903, 18<sup>th</sup> floor in Tower-1 for a total sale consideration of Rs. 1,62,40,780/-.

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4. On 14.01.2020 complainant made payment of Rs. 5,00,000/- by way of two cheques -for Rs. 1,00,000/- and another cheque for Rs. 4,00,000/- drawn on State Bank of India.
5. That on 29.01.2020 complainant wrote a letter to the respondent to cancel the booking of said flat due to financial crisis and medical emergency in the family of complainant. The same request was accepted by the respondent vide letter dated 29.01.2020 and attached sent a cancellation letter stating the amount paid by the complainant till date would be fortified.
6. The complainant then refused to sign the cancellation letter, as it was forfeiting the full amount paid by her and again wrote a letter dated 12.10.2020 requested to refund Rs. 5,00,000/- paid by her.
7. The complainant has further pleaded that she has not entered into any builder buyer agreement and due to medical emergency, she will not able to continue in the project and hence, should be refunded the complete amount of Rs. 5,00,000/- paid by her. The complainant through various e-mails requested the respondent to return the said application amount but with no result.
8. Being aggrieved by the above-mentioned acts of the respondent, the complainant is left with no option but to file this complaint.

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**C. Relief sought by the complainant:**

9. The complainant has sought following relief(s):
- Direct the respondent to refund an amount of Rs. 5,00,000/- along with interest.
  - Direct the respondent to pay Rs. 1,00,000/- as cost of litigation

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:

10. That it is submitted that the complainant along with co-applicant Mr. Rajiv Bodwade booked an apartment in its project namely "Godrej Meridien" situated at Sector 106, Gurugram, Haryana vide an application form dated 15.01.2020 and paid an amount of Rs. 5,00,000/- towards the booking of the unit.
11. It is submitted that the complainant made a surrender/refund request vide email dated 30.01.2020 and the same was accepted, submitting that the amount of Rs. 5,00,000/- would be forfeited. Further, clause 10 of the application form provided that if the complainant withdraws from the project without there being any default on the part of the respondent, then the respondent shall be entitled to forfeit the various amount paid/due from the complainant and refund the balance amount as mentioned in clause 9.

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12. It is submitted that the complainant is trying to take advantage of its own wrong and is arbitrarily seeking a refund being fully aware that she is not entitled to any such refund as per the agreed terms and conditions in the application form.
13. All the averments made by the complainant are denied in toto.
14. 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:**

15. 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**

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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.*

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. 5,00,000/- along with interest.**

16. The complainant booked a unit in the project of respondent "Godrej Meridien", in Sector 106, Gurugram vide application form dated 15.01.2020 for basic sale consideration of Rs. 1,62,40,780/-, and paid booking amount of Rs. 5,00,000/-. However, the complainant within few days approached the respondent and sought refund of the amount



paid by her and the same is evident vide e-mail dated 29.01.2020. But as per clause 10 of said application form, the developer is entitled to forfeit the amount paid by the applicant subject to provision provided under law. The relevant part of the application form is reproduced hereunder: -

*"The Applicant further agrees that in the event this Application Form is withdrawn/cancelled by the Applicant for reasons not attributable to the Developer's default, then the Developer shall be entitled to forfeit various amounts paid/due from the Applicant subject to the provisions/limits as prescribed under Applicable Laws and refund the balance amount as mentioned in clause 9 above."*

17. In the instant matter, the complainant has paid the booking amount of Rs. 5,00,000/- only and submitted that due to financial stress and medical reason, she wishes to withdraw from the project and wants the refund of the paid-up amount. The complainant applied for allotment in the project of the respondent vide application form dated 15.01.2020 and before allotment of any specific unit against such application, made request for withdrawal from the project. Thus, it is a clear case of surrender of unit. Moreover, the preamble of the Act makes it very clear that the purpose of the Act is not only to protect the rights of the allottees but to make sure development of the real estate sector should not be hampered. Thus, the respondent is entitled to make applicable deductions before refunding the balance amount.
18. Keeping in view clause 10 of application form and Regulations 11(5) of 2018, Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) wherein it states-

***"5. Amount Of Earnest Money***

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*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."*

19. The respondent is entitled to deduct 10% as per above stated factual and legal provision. However, it is case of the complainant where he has only paid an amount of Rs. 5,00,000/- against basic sale price of Rs. 1,62,40,780/- which constitutes 3.07% of basic sale consideration, which is already less than 10% consideration as specified under clause 10 and Regulations 11(5) of 2018 (Forfeiture of earnest money by the builder). Hence, no direction to this effect.

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


20. The complainant is 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 complainant may approach the adjudicating officer for seeking the relief of compensation.

**G. Directions of the Authority:**

21. 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.
22. Complaint stands disposed of.
23. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 11.11.2022**