

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

Complaint no.	:	87 of 2019
Date of decision	:	26.05.2023

Dhiraj Chawla and Sadhna Chawla R/O: J-8, Second Floor, Rear Portion, Vikas Puri, New Delhi- 110018	Complainants
Versus	
1. M/s Godrej Properties Ltd. Regd. office: U.M. House 3 rd floor, Plot no. 35, Sector - 44, Gurugram 2. M/s Magic Info Solutions Pvt. Limited Regd. office: D-13, Defence Colony, New Delhi - 110024	Respondents

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Sanjana Manchanda proxy counsel	Complainants
Shri Rajat Tanwar proxy counsel	Respondents

ORDER

1. The present complaint dated 21.01.2019 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 (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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	
1.	Project name and location	Godrej Summit, Sector- 104, Gurugram
2.	Project area	22.123 acre.
3.	Nature of project	Residential
4.	RERA registered/not registered	75 of 2017 dated 21.08.2017
5.	DTPC license no. & validity status	102 of 2011 dated 07.12.2011
6.	Allotment letter dated	29.01.2013 (As per page 80 of complaint)
7.	Date of execution of buyer agreement	29.04.2013 (As per complaint on page no. 28 of complaint)
8.	Possession Clause	4.2 Possession The apartment shall be ready for occupation within 48 months from the date of issuance of allotment letter. However, the developer is entitled for a grace period of 6 months over and above this 48-

		month period. Upon the apartment being ready for possession (Page 46 of the complaint).
9.	Due date of possession	29.07.2017 (As per allotment letter)
10.	Occupation certificate	Not annexed
11.	Date of offer of possession to the complainants	Not annexed
12.	Unit no. as per the buyer's agreement	G-608 (As per page no. 37 of the complaint)
13.	Unit measuring	1269 sq. ft. (As per page no. 37 of the complaint)
14.	Total consideration	Rs. 77,68,510/- (As per page no. 8 of the complaint)
15.	Total amount paid by the complainants	Rs. 28,44,703/- (As per page no. 8 of the complaint)
16.	Email by complainants for cancellation of booking and refund of amount	19.06.2015 (On page 118 of complaint)
17.	Email by respondents to complainants w.r.t. refund of amount	08.06.2018 (As per page no. 103 of reply) It was stated by respondent no.2 in the above-mentioned mail that the unit in question was duly cancelled in March 2016. After deduction of cancellation charges as per norms an amount of Rs. 8,71,109/- was issued but they failed to collect the same

		from the respondent.
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B. Facts of the complaint:

3. That the complainants booked a unit in the project namely "Godrej Summit", Sector 104, Gurugram and paid booking amount of Rs. 10,00,000/- Subsequently, they were allotted a unit bearing no. G-608 on 6th floor admeasuring 1269 sq. ft. in tower-G for a total sale consideration of Rs. Rs. 77,68,510/-
4. That the complainants paid a total sum of Rs. 28,44,703/- from 11.09.2012 till 31.03.2014 which is 36.6% of the total sale consideration to the respondent. The respondents duly confirmed the payment. On 29.01.2013, an allotment letter along with agreement to sale was issued by the respondents.
5. That parties entered into an agreement on 29.04.2013 w.r.t the said unit. Later on, when complainants visited the project site in August 2014, they found no representative of respondent no. 1 is available to which queries can be raised. The complainants wrote many emails to respondents w.r.t. knowing the current status of the project and for other details but that of was no use as no reply has been received.
6. That they with heavy mind accepted the offer to withdraw/ surrender apartment, as offered/decided by sole designated authority one Guneet Josh, also being sole signatory of agreement. They also agreed

to condition put by respondent no.2 that says deduction of 2% of deposit and refund in maximum two months and took the hard decision for cancellation and sent a mail to respondent dated 19.06.2015 for cancellation and refund the booking in the said project.

7. That the designated authority of respondents sent reply to complainants on 05.08.2015 about cancellation of flat and said that there "*there will be deduction of 2 lacs + interest charges (as per policy) till date.*
8. That between cancellation and refund process the respondents sent a demand letter to them on 20.08.2015 and demanded the payment of Rs. 48,63,304/- of outstanding amount regarding the said unit. Even after many mails, they have not got the refund amount.
9. They were left with no option but to approach the Authority. Hence, this complaint.

C. Relief sought by the complainants:

10. The complainants have sought following relief(s):
 - i. Direct the respondents to refund the amount of Rs. 28,44,703/- along with @18 per annum.
 - ii. Direct the respondents to pay cost of litigation of Rs. 1,00,000/-.

D. Reply by respondents:

The respondents by way of written reply made following submissions:

11. That all the allegations as are sought to be levelled against the respondent no. 1 are false, vexatious, illegal and unwarranted and no claim is maintainable against it either as claimed or otherwise.
12. It is submitted that respondent no. 1 entered into development agreement with respondent no. 2 on 05.08.2011 for developing the project in question. The said agreement empowers M/s Godrej Properties Ltd. to assign its rights, interest and obligations under the said agreement.
13. It is pertinent to mention here that an order dated 03.07.2015 passed by Hon'ble Bombay High Court in company petition no. 153 of 2015 wherein the M/s Godrej Projects Development Pvt. Ltd. has been merged with respondent no. 1 whereby all rights, title, entitlement and interest of M/s Godrej Premium builders Pvt. Ltd. have been vested in M/s Godrej Projects Development Pvt. Ltd. On 22.11.2017, M/s Godrej Projects Development Pvt. Ltd. was converted into M/s Godrej Projects Development Limited.
14. They cannot have any cause of action to claim any relief from respondent no. 1. It is also relevant to mention here that it has received no payment from complainants.
15. It is submitted that they sent a mail dated 19.06.2015 for refund w.r.t. termination and refund. It is denied that respondent no. 2 offered a deduction of 2% on BSP upon termination as alleged. But as per clause 8.4 of the agreement 20% of earnest money was to be deducted on

cancellation/ termination by the buyer. It is further submitted that the mention of 2% deduction in the email dated 05.08.2015 was merely a typographical error.

16. It is also submitted that they failed to make payment against the invoices. Further it also issued a demand letter dated 20.08.2015 to clear the outstanding payment. That respondent no. 2 addressed all the grievances of them in timely manner. They never clearly indicated their intent for cancellation agreed term as per agreement.
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 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 complainants at a later stage.

20. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357* 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 observed as under: -

25. *The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

F. Entitlement of the complainants for refund:

F.I Direct to the respondent no. 2 to refund an amount of Rs. 28,44,703/- along with interest.

21. The complainants were allotted a unit in the project of respondents "Godrej summit", in Sector 104, Gurugram vide allotment letter dated 29.01.2013 for a total sum of Rs. 77,68,510/- Further a buyer's agreement was executed between the parties on 29.04.2013, and complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 28,44,703/-. On various occasions, the complainants sent emails to respondents regarding their concerns and issues w.r.t. status of the project vis a vis unit in question. The complainants were in utter shock that the key features showed to them at the time of booking through brochure and presentations were not there in the reality.

22. The complainants sent an email on 19.06.2015 for cancellation of the unit and seeking refund of the amount on considered advice of respondents that on account of cancellation, entire deposited amount would be refunded after deducting maximum of 2%. To this the designated authority of respondents sent a reply to them through mail on 05.08.2015 about cancellation of unit and refund of the amount said that there "*there will be deduction of 2 lacs + interest charges (as per policy) till date.* But no amount has been received by the respondents.
23. Later, it has been contended by the respondent no.2, that complainants sent a mail dated 19.06.2015 for refund w.r.t. termination and refund. It was denied that respondent no. 2, offered a deduction of 2% on BSP upon termination as alleged. But it further contends that as per clause 8.4 of the agreement 20% of earnest money was to be deducted on cancellation/ termination by the buyer. It is further submitted that the mention of 2% deduction in the email dated 05.08.2015 was merely a typographical error.
24. It is evident from the above mentions facts that the complainants paid a sum of Rs. 28,44,703/- against sale consideration of Rs. 77,68,510/- of the unit allotted to them on 29.01.2013. The respondents failed to respond to any emails sent by the complainants. Subsequently an email dated 19.06.2015 has been placed in file wherein which the complainants stated that they want to surrender their unit and sought refund of the amount paid. To which the respondent no. 2 replied

through email dated 05.08.2015 which states that they had already clarified their stance that the complainants are entitled to refund and there will be a deduction of 2 lacs + interest charges (as per policy) till date on the contrary they made a contention in reply that as per clause 8.4 of the agreement 20% of earnest money was to be deducted on cancellation/ termination by the buyer.

25. Even otherwise, no provision of any agreement between the party is above any law. 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.**”*

26. Keeping in view the aforesaid factual and legal provisions, the respondent no. 2 cannot retain the 20% of the amount paid by the complainants against the allotted unit as firstly they cannot as they agreed to deduction of 2 lacs plus interest through mail and now later on at this stage they cannot turn back from their stance and secondly the allotment and agreement was executed in the year of 2013 so it is

unfair and unreasonable at this stage with the complainants to make the deduction of more than 10% of the consideration amount. Accordingly, the respondent no. 2 is directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money from the date of surrender i.e., 19.06.2015 till the date of realization of payment within 90 days from the date of this order along with an interest @10.70 % p.a. on the refundable amount.

F. II Direct the respondent no. 2 to cost of litigation and mental agony.

27. 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:

28. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

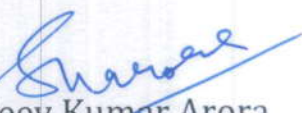
obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent no. 2 is directed to refund to the complainants the paid-up amount of Rs. 28,44,703/- after deducting 10% as earnest money of the sale consideration of Rs. 77,68,510/- with interest at the prescribed rate i.e., 10.70% is allowed, from the date of surrender i.e., 19.06.2015 till the date of realization of payment.
- ii. A period of 90 days is given to the respondent no. 2 to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to the registry.

 **HARERA**


Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.05.2023