

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

<b>Complaint no. :</b>	<b>3894 of 2021</b>
<b>Date of filing complaint:</b>	<b>12.10.2021</b>
<b>First date of hearing:</b>	<b>24.11.2021</b>
<b>Date of decision :</b>	<b>25.08.2023</b>

Vipin Raina <b>R/O:</b> - U-22/76, Ground floor, Pink Town House, DLF Phase - III, Gurugram-122010	<b>Complainant</b>
Versus	
Respondent no. 1 - 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 Respondent no. 2 - Property Pistol (Mr. Nitesh Sardar) R/o Unit no. 422, 4th Floor, Tower-B4, Spaze IT Park, Sector-49, Sohna Road, Gurgaon- 122018.	<b>Respondents</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Vipin Raina (Complainant in person)	Complainant
Sh. Ranjit A.R.	Respondent no.1
None	Respondent no.2

**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



(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 and location of the project	"Godrej Meridien Phase III", Sector 106, Gurugram
2.	Nature of the project	Group Housing Project
3.	RERA Registered/ not registered	<b>Registered vide no. 09 of 2020 issued on 10.02.2020 up to 30.09.2025</b>
4.	Unit no.	T4-0403, 4 <sup>th</sup> floor, Tower 4 (Page 74 of complaint)
5.	Unit admeasuring area	1657.212 sq. ft. of carpet area (Page 74 of complaint)
6.	Allotment letter	31.01.2021 (Page 41 of complaint)
7.	Date of builder buyer agreement	Not executed
8.	Possession clause	<b>7.1. Schedule for possession of the unit</b> <i>"The Promoter shall offer possession of the Unit along with Common Areas on or before 30.09.2025 ("Completion Time Period") or</i>





such extended period as may be granted, unless there is delay due to Force Majeure, Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. The Force Majeure shall mean and include war, flood, fire, draught, cyclone, earthquake, epidemic, pandemic or any other calamity caused by nature affecting regular development of project, civil commotion or act of God or any notice, order, rule, notification of the Government and / or other public competent authority / Court affecting the regular development of said Project, beyond the control of the Promoter."

**(Page 81 of complaint- unexecuted agreement to sell)**

9.	Due date of possession	30.09.2025
10.	Total sale consideration	Rs. 2,55,00,000/- (Page 102 of complaint)
11.	Total amount paid by the complainant	Rs. 5,00,000/- (As per SOA at page 40 of complaint)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered
14.	First letter w.r.t. surrender of unit	12.01.2021, 20.01.2021, 14.03.2021, 25.06.2021 and 17.07.2021 (Page 144 of complaint)



**B. Facts of the complaint:**

3. That, at my first visit at the site office of Godrej Properties sector 106, I met with sales person Mr. Amit Sejwal of respondent no. 1, he invited me to check out the sample apartment which is of 4BHK with servant room, on my query as what all fixtures & fittings will I get with the 4BHK apartment, he repeatedly confirmed that it will be of top most brand except for the movable decorative furniture displayed and glass separators in the bathroom, I kept on reconfirming the same almost at a every stage to make sure that I get everything as promised to me which is - modular kitchen , wardrobes in every room , branded electric fittings & branded bath fittings , smart locks at doors , LPG supply line in kitchen besides other things like air-conditioning, marble flooring and good quality wall paints etc. On 25<sup>th</sup> December 2020, trusting the information supplied by the sales person Mr. Amit Sejwal of respondent1, I went back to pay the initial amount and to sign the documents. Mr. Amit Sejwal handed over me an application form of Godrej Meridein project, this booklet was having too many pages of T&C, it was humanly not possible for anyone to read all the pages in such a short time, So I asked him again if modular kitchen, wardrobes, branded electric fittings, branded bath fittings etc. are included in the booking form as per the promise he made to me, he replied as YES. Since it was getting dark outside, Mr. Amit Sejwal requested me to sign the documents urgently so he can leave the office, but with a promise that he will give me a copy to read and confirm



the T&C again, mainly prior to depositing the bank cheque of four lakh rupees that I gave it to him. So again, on good faith I signed on the dotted lines, totally unaware that sales person Mr Amit Sejwal is cheating me to meet his sales targets. I paid the initial amount of one lakh rupees immediately through internet banking.

4. Before I left the site office on 25th December 2020, I again reminded to Mr Amit Sejwal that a copy of the application form must be provided to me immediately so I can review the details and get back to him in case I see any issue. He promised me that since he is running late, he will send the copy of booking form on 26th December 2020, that he would arrange the delivery of the application form at my house. Finally, I left the site office of the Godrej Meridian without the copy of said application form. After continuously chasing Mr Amit Sejwal for 14 days, finally on 7th January 2021, I informally received the poor quality file of application form over the what's app message from respondent no.1, but I managed to read the basic information with a great difficulty and able to find many issues mainly the fixture and fittings that were promised to me were totally missing, like modular kitchen, wardrobes in every room, branded electric fittings, branded bathroom fittings etc. so I sent an email message to my customer relationship manager Mr. Sagar Kapoor on 8th January 2021 informing him about all such issues, an email was again sent on 14th January 2021 to remind respondent1 that they must include the branded fittings and other things as promised to me.



5. Even vide email dated 20.01.2021, the complainant has requested the respondent to refund the paid up amount the said request through mail has been made before allotment.

6. That, I always made sincere efforts to resolve the issues with respondent1, I also wrote a humble email message to Mr. Pirojsha Godrej with message cc to their group Chairman Mr Adi Godrej, requesting them for their help to resolve the situation or to refund the amount paid on account of misrepresentation, unfortunately no direct reply received from them. (Enclosed copy of email message sent to Mr. Pirojsha Godrej dated 17/07/2021 and dated 23/07/2021.)

7. However, I received a message from Project Director Mr. Gurmukh Singh Bajwa who was copied on most of my email messages since I started writing to them about the issues between us but he did nothing to resolve the situation, instead wrote back to me stating that my money will be forfeited if I decide to cancel the booking, he did not even considered the actual facts of the case.

8. 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:**

9. The complainant has sought following relief(s):

- i. Direct the respondent to refund an amount of Rs. 5,00,000/- along with interest.



- ii. Direct the respondent to pay Rs. 5,00,000/- as cost of litigation, compensation for mental agony.

**D. Reply by respondent no. 1**

The respondent by way of written reply made following submissions:

10. No reply has been received from respondent no.2 with regard to the present complaint despite multiple opportunities already granted. Therefore, the respondent no.2 is being proceeded ex-parte and the complaint will be decided as per the documents available on record as well as submissions made by the parties.
11. That At the very foremost, it is the humble submission of the Respondent No.1 that the captioned Complaint is bad in law as it falls outside the scope and ambit of this Hon'ble Authority. The Complainants are not allottees as per the mandate of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "**the Act**"). That Section 2 (d) of the Act is reproduced herein under for ready reference:

*"allottee in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such*



*plot, apartment or building, as the case may be, is given on rent."*

12. In light of the afore-stated definition, the Complainant cannot be construed to be an allottee as the Complainant, on his own accord, has terminated the allotment of the booked unit vide multiple Emails already on record, dated 12.01.2021, 20.01.2021, 14.03.2021, 25.06.2021 and 17.07.2021 demanded a refund of the booking amount. Thus, it is submitted that this Hon'ble Authority has no jurisdiction to entertain and adjudicate upon this instant Complaint, in its present form.
13. It is most respectfully submitted that the complaint filed by the Complainants is extremely vexatious and has been filed with malafide intentions and oblique motives to gain undue enrichment from the Respondent No.1. The Complainants vide this instant Complaint has raised false and frivolous issues and has filed the same on concocted grounds that hold no truth.
14. It is submitted that the Complainant had booked a residential unit being 403 / Godrej Meridien Tower-4 in the project namely 'Godrej Meridien' situated at Sector 106, Gurugram, Haryana vide the Application Form dated 25.12.2020 [hereinafter referred to as "the Application Form"] wherein the Complainants unequivocally agreed to terms and conditions mentioned therein. That the terms and conditions laid down in Annexure A of the Application Form clearly stipulate that -



- 13. The Applicant(s) further agrees that in the event this Application Form is withdrawn/ cancelled by the Applicant(s) for reasons not attributable to the Developer's default, then the Developer shall be entitled to forfeit the Booking Amount and Non-Refundable Amounts"*
15. That the Complainant cancelled his allotment at his own behest thereby attracting the aforesaid Clause 13 of Annexure A of the Application Form. That in light of the aforementioned Clause the Respondent No.1 is entitled to forfeit the Booking Amount and the Complainant having not paid any installment, other than the Booking Amount, is not entitled to any refund whatsoever.
16. Be that as it may, the Complainant has failed to paying the regular installments mentioned in the Payment Plan which the Complainant was bound to do under the mandate of Clause 5 of Annexure -A. That Clause 5, as had been agreed to by the Complainant, lays down as follows:
- "The Applicant(s) hereby agrees and undertakes to pay all the amounts due and payable to the Developer in accordance with the Payment Plan opted by the Applicant(s) in Annexure E on or before the respective due dates."*
17. It is pertinent to mention herein that the failure to abide by Clause 5 results in forfeiture of the Booking Amount and cancellation of the said Allotment by the Developer. That Clause 12 of Annexure-A which lays



down the consequences and repercussions of such failure. Hence, it is safe to conclude that the Complainant has waived off his right to any refund by defaulting on multiple fronts- firstly by failing to make timely payments of the installations given in the Payment Plan and secondly, by terminating the allotment himself. That the terms and conditions given in the Application deal with both circumstances in detail and proscribe any sort of a refund on account of default on the part of the Complainant. That the Complainant is bound by the aforesaid terms and conditions since he has executed the Application Form and affixed his signatures to the same thereby consenting to the said form. Furthermore, the Complainant had given his consent to the said form on his own accord and without any influence or coercion and thus cannot renege from the same.

18. Therefore, in light of the aforesaid, according to Clause 11 which had been reiterated above, the Complainants are not entitled to any refund of the booking amount as they have withdrawn the booking on no fault of the Respondent No.1's, rather based on their own unreasonable demands and malafide intentions.
19. It is submitted that the captioned Complaint is a gross abuse of the process of law and has been filed with the sole intent to arm twist and coerce the Respondent No.1 into parting with amounts, which are contractually not due and payable to the Complainants herein. The captioned Complaint is also devoid of merits, and it is also pertinent to



note herein that the Complainants have not filed an Affidavit in terms Section 65-B of the Evidence Act, w.r.t. the emails appended along with the Complaint. This being the case, the aforesaid emails filed with the Complainant cannot be admissible nor be relied upon by this Hon'ble Authority. Hence, the captioned Complaint merits outright dismissal on this ground alone.

20. All the averments made by the complainant are denied in toto.
21. 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:**

22. 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 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.**

23. The complainant booked a unit in the project of respondent no. 1 "Godrej Meridien", in Sector 106, Gurugram vide application form dated 25.12.2020 for basic sale consideration of Rs. 2,55,00,000/-, and paid booking amount of Rs. 5,00,000/-. However, the complainant after receiving the welcome letter on 03.01.2021 came to know the specifications he was promised for and agreed on like modular kitchen , wardrobes in every room , branded electric fittings & branded bath



fittings was not there in the welcome letter and later on even to a utter shock he came to know that a revenue rasta was intervening in the said unit which made him realised and he was being misrepresented and falsely promised by the officials of the respondent. Thereafter he approached the respondent no. 1 and sought refund of the amount paid by him vide email dated 12.01.2021 and 20.01.2021 but that of was no use as he hasn't got reply to the mail and instead of reply he got a threatening mail cum demand letter with a deadline of paying the next installment by 31.01.2021.

24. In the instant matter, the complainant has paid the booking amount of Rs. 5,00,000/- only and submitted that due to misrepresentation, breach of trust, concealment of facts and deceptive behaviour of respondent, he 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 no. 1 vide application form dated 25.12.2020 and before allotment of any specific unit against such application, on 20.01.2021 made request for withdrawal from the project/refund of paid amount. It is observed that the surrender cum refund request was acknowledged by respondent no. 1 through his reply to the present complaint at page 3 of the reply. Thus, it is a clear case of surrender of unit on the ground of above-mentioned reasons. Moreover, the essence of the Act makes it noticeably clear that the purpose of the Act is not only to protect the rights of the allottees but also to make sure that allottee should not be suffered by the arbitrary action of the respondent. Thus, the respondent no. 1 is not entitled to make applicable deductions(that it has mentioned in its reply) before refunding the balance amount as in the present case it is considered to



be the fault of respondent no. 1 as it misrepresented the specifications of the subject unit which made the complainant to withdraw from the project and also allottee has wished for withdrawal before allotment of any specific unit.

25. Keeping in view the documents on record and arguments put before the bench while deciding the merits of the case. The authority came to a conclusion that respondent no. 1 is directed to refund the paid-up amount of Rs. 5,00,000/- to the complainant. Even though , it is case of the complainant where he has only paid an amount of Rs. 5,00,000/- against basic sale price of Rs. 2,55,00,000/- the allottee has full right to seek the refund.

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

26. 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:**

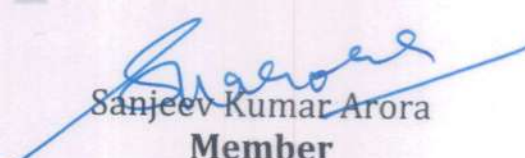
27. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent-builder is directed to refund the paid-up amount i.e., Rs. 5,00,000/- received from the allottee deposited by it against the subject unit.
- ii) 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.

28. Complaint stands disposed of.

29. File be consigned to the registry.

**HARERA**

  
Sanjeev Kumar Arora  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 25.08.2023**