



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>411 of 2022</b>
<b>Date of filing:</b>	<b>07.03.2022</b>
<b>Date of first hearing:</b>	<b>29.03.2022</b>
<b>Date of decision:</b>	<b>08.08.2023</b>

Smt. Neelam Khanna

w/o Sh. Shri Ravindra Khanna

R/o H.No.86-87, Pocket C-5, Sector-6, Rohini, Delhi.85

Presently at: H.No.233/29, Main Gali, Vikas Nagar, near Vivekanand Public School, Sonapat-131001 Haryana.

....COMPLAINANT(S)

VERSUS

M/s Godrej Properties Ltd. & Anr.

Godrej Retreat Symphony at Sector-83, Faridabad, Haryana

....RESPONDENTS(S)

**CORAM:**

**Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Present:** Mr. Sandeep Dahiya, counsel for the complainant.

Mr. Kunal Dawal and Shashikant, counsel for the respondents.

### **ORDER(DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint has been filed by the complainant on 07.03.2022 under the provisions of The Real Estate (Regulation & Development) Act, 2016 (for Short Act of 2016) read with Rule 28 of the Haryana Real

*Geeta Rathee*

Estate (Regulation & Development) Rules,2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**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, delay period, if any, have been detailed in the following table :

S.No.	Particulars	Details
1.	Name of the Project	Godrej Retreat Symphony, Sector-83, Faridabad.
2.	RERA registered/ not registered	Registered with RERA, vide Registration No. HRERA-PKL-FBD-215-2020 (For Godrej Retreat Symphony) dated 08.10.2020; valid upto 30.09.2022.
3.	Unit No.	GRPA-B-27
4.	Unit area	149.63 sq.mtrs.
5.	Date of allotment	21.01.2021 as per allotment letter

*[Handwritten Signature]*  
Pattee

6.	Date of builder buyer agreement	Builder Buyer Agreement is yet to be executed between the promoter and the allottee.
7.	Due date of offer of possession	Not yet finalized in the case of complainant
8.	Basic sale price	Rs.1,06,52,058.61p
9.	Amount paid by complainant	Rs.10,65,206/- (10% of cost of the plot)
10.	Offer of possession	No offer

## B. FACTS OF THE COMPLAINT

On perusal of the case file, following facts emerged:

- That in November 2020, the complainant deposited a booking amount of ₹10,65,260/- for allotment of a plot measuring 149.63 sq.mtr. with the respondent M/s Godrej Properties Ltd., in the project namely; Godrej Retreat Symphony, located at Sector 83, Faridabad, Haryana. Accepting her application, she was allotted a plot no. GRPA-B-27 measuring 149.63sq.mtrs. approximately against a total sale consideration of ₹1,06,52,058.61/- by the respondent, however, no builder buyer agreement was executed between the parties.

*Rathore*

4. After allotment and without execution of the builder buyer agreement, respondent asked for a payment of ₹10,62,969/- on account of various charges but same was resisted and objected by the complainant. Being aggrieved, complainant filed a police complaint on 24.06.2021 beside filing complaint no.874/- 2021 with this Authority seeking directions to the respondent not to ask any further amount i.e. ₹10,62,969/- as other charges, ₹6,78,045/- as EDC/IDC, ₹44,741/- as IFMS without sending BBA. Said complaint was disposed of on 23.11.2021 by the Authority with an order that respondent is duty bound to execute BBA before asking any further payment. Relevant extract of the order is reproduced below:-

*“4. Authority observes that the complainant had booked a plot in the year 2020 and had paid earnest money of ₹10,65,260/-. Plot Buyer agreement is yet to be executed. Upon payment of the earnest money, the legal right vested in complaint so far is to seek allotment of the plot and execution of the BBA. Full contractual relationship between the parties is yet to come in existence. The respondent/promoter is duly bound to execute the agreement in accordance with the standard agreement provided in the RERA Rules, 2017 and charge consideration as per mutual agreement to be arrived at between the parties. Complainants may sign the agreement if they so like at their free will. They are entitled to negotiate the consideration amount with*



*the respondent/promoter. If they do not like the offer made by the respondent/promoter, the complainant may walk out of this proposal and seek refund of the earnest money paid. It is a premature stage to challenge the amounts of EDC, IDC, IFMS etc. demanded by the promoter. This Authority is duty bound to enforce the agreements arrived at between the parties. This is a pre-agreement stage and discretion is available with the complainant to agree with demanded amount or not. If they do not agree, they may not sign plot buyer agreement.*

*5. For the foregoing reasons, Authority considers that this complaint is premature and not maintainable at this stage. Accordingly, the same is **dismissed**. File be consigned to record room after uploading of order on the website."*

6. Learned counsel for complainants drew attention of Authority toward protracted correspondence that took place between complainants on one hand and respondents on the other. In the month of January 2022, numerous emails and documents have been exchanged between complainants and the respondent. Respondent had asked the complainant to schedule a date for registration for builder-buyer agreement. The dates were scheduled a couple of times, but first husband of the complainant and then complainant herself suffered from COVID-19. Respondents vide their email dated 09.02.2022 (Annexure,



A-12) demanded payment of Rs.85,21,647/- for executing builder-buyer agreement. Further, case of complainant is that they are ready to make payment of consideration amount. They had even arranged an amount of Rs.42,60,824/-, a photocopy of the cheque prepared has been placed in complaint file. Further, they had applied for bank loan for arranging remaining money. Respondents were fully aware of this situation that complainant is willing to execute the agreement. They had arranged over Rs.42 lakh and had applied for bank loan. Furthermore, as demanded by way of numerous correspondence and exchanges, complainant had prepared various documents as were being desired by respondents.

7. Initially, the plot was booked in the name of complainant and her son jointly. Later, son of complainant shifted to USA. Correspondence had been undertaken for deleting his name as allottee. Respondents had been duly acknowledging the fact and had been corresponding with the complainant. They eventually agreed to the request for deleting the name of complainant's son. It has further been averred that complainant had lodged an FIR in the police which was later withdrawn by her on insistence of respondents. Complainant further states that they were always ready to pay money, but the date for registration of the builder-buyer agreement had to be settled with mutual consent which could not be settled because of her ailment. Complainant alleges that without

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giving proper opportunity to complainant, respondents have cancelled the allotment of plot and forfeited entire earnest money. Such an act on the part of respondents is misuse of their dominant position. Complainant prays for giving directions to respondents to execute builder-buyer agreement as per law and demand consideration amount from the complainant as per law and policy.

**C. RELIEF SOUGHT**

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-
- i. Enforce/Implement & execute the directions in the Order dated 23.11.2021 passed by this Hon'ble Authority in Complaint No.874/2021 (Neelam Khanna vs. Godrej Properties Ltd.).
  - ii. Quash/set aside/cancel the termination letter dated 14 Feb2022 issued by the respondent, cancelling the allotment of the plot made to the complainant, forfeiture of the earnest money of Rs. 10,65,206/- and threat to re-allot, sale, alienate and transfer the said plot to some other person.
  - iii. Direct the respondent to execute the agreement for sale (BBA) in respect of the Plot No.GRPA-B-27, measuring 149.63 sq.mtrs, approx. situated in the Project Godrej Retreat Symphony, Sector-



83, Faridabad, Haryana, in favour of the complainant, without any wrong, illegal, arbitrary and unconstitutional conditions.

- iv. Restrain the respondent from re-allotting, sale, alienation, transfer and part with possession of the Plot No.GRPA-B-27, measuring 149.63 sq.mtrs approx. situated in the Project Godrej Retreat Symphony, Sector-83, Faridabad, Haryana, to any other person and in case the respondent already succeeded, then the same may kindly be revoked/cancelled/quashed.
- v. Direct the respondent/opposite party to pay Rs.20,00,000/- for causing physical harassment caused to the complainant.
- vi. Direct the respondent/opposite party to handover 10% of the estimated cost of the real estate project to the complainant under Section 59 of the RERA Act, 2016.

**D. REPLY FILED BY RESPONDENT:**

Respondent filed its reply dated 30.07.2022 pleading therein:

9. That the complainant after due diligence and carefully reading and understanding all the terms and conditions, applied for allotment of plot No.GRPA-B27 in Godrej Retreat Symphony situated at Sector 83, Faridabad, Haryana, vide Application dated 08.11.2020 and made a payment of Rs.10,65,206/- towards booking amount and opted for construction linked payment plan.The plot in question was allotted in favour of complainant and her son vide allotment letter dated





21.01.2021 for total sale consideration of Rs.1,06,52,058.61 (One crore six lac fifty two thousand fifty rupees and sixty one paisa only).

10. That complainant has till date, i.e., in 21 months paid only 10% of the cost of the plot, i.e., Rs.10,65,206/- and not come forward to execute the buyer's agreement despite repeated reminders/pre-cancellation notices. Due to failure on part of the complainant to comply with the terms and conditions of application form specially signing of buyer's agreement, respondent was constrained to terminate the application for allotment vide termination letter dated 14/02/2022. Termination/cancellation of the application as well as allotment was strictly in terms of the application form submitted by complainant. Thus, there is no privity of contract between the parties
11. That the complainant had earlier filed a complaint No.874 of 2021 before this Authority against the demand of other charges, EDC/IDC, IFMS charges and the said complaint was disposed of vide order dated 23.11.2021 being not maintainable at that stage since no agreement was executed between the parties. In this order Authority observed that respondent/ promoter is duty bound to execute the agreement in accordance with the standard agreement provided in RERA Rules, 2017 and charge consideration as per mutual agreement to be arrived at between the parties. Respondent has further submitted that in view of observations in this order, respondent approached/contacted



complainant by way of emails etc. to come forward and execute the buyer's agreement.

12. That complainant is a speculative investor, intentionally delaying the whole process of execution of buyer's agreement to avoid making further payments as per agreed payment plan.
13. That it has completed the project in time bound manner and has duly obtained completion certificate bearing memo no.1657 dated 20.01.2022 from DTCP.

#### **E. ISSUES FOR ADJUDICATION**

14. From the pleadings of the parties, following issues arise for adjudication:-
  - i. Whether the developer has indulged in wrongful, mischievous, fraudulent and dishonest practice in wrongfully disobeying, violating and breaching the directions passed by this Hon'ble Authority in its order dated 23.11.2021 in Complaint No.874/2021 filed by the complainant against the respondent. In disobedience and disregard to the orders and directions passed by this Hon'ble Authority, the respondent has failed to execute the Agreement (BBA) in favour of the complainant and put condition to deposit the 80% of the cost of the plot amounting to ₹85,21,647/-, in addition to already deposited



10% of the cost, before execution of the Agreement for Sale (BBA), within 2 days.

- ii. Whether the developer has legally demanded the 80% of the cost of the plot, in addition to already deposited 10% of the cost, before execution of the Agreement for Sale (BBA).
- iii. Whether the developer has violated and breached the settled provisions of law of Section -13 of the RERA Act 2016, which specifically says *“13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”*
- iv. Whether the developer has violated and breached the directions of this Hon’ble Authority in its order dated 23.11.2021 passed in Complaint No.874/2021.
- v. Whether the developer has violated and breached the terms and conditions of the Agreement for Sale (BBA).
- vi. Whether the developer can cancel the allotment of the plot, forfeit the earnest money and re-allot, sale, alienate and transfer the allotted to some other person.



- vii. Whether the developer failed to discharge any other obligation imposed on them under this act or the rules or regulations made hereunder.
  - viii. Whether the litigation expenses of One Lac duly paid to the advocate be reimbursed from the pocket of the developer along with 12% interest as the complainant was compelled to file the present complaint under the peculiar facts and circumstances of the present case.
  - ix. Whether the developer is under a legal obligation to handover 10% of the estimated cost of the real estate project to the complainant under Section 59 of the RERA Act, 2016.
  - x. Whether the compensation of two lacs be granted to the complainant due to the defaults of the developer under the head of physical harassment, along with 12% interest.
15. It is necessary to mention that an application in the shape of written arguments, additional statement has been filed by the respondent on 23.01.2023 wherein, beside other pleas, it has been pleaded that in view of the orders of the Authority dated 23.11.2021, the respondent developer had tried to contact the complainant to negotiate the consideration amount but no response was received as such and offer was made to the complainant for purchasing the plot at a rate prevailing at the time of termination of allotment by respondent, i.e.,



₹1,29,94,298.20 via email instead of the current price of the plot which is more than ₹1.5 crores.

#### **F. OBSERVATIONS OF THE AUTHORITY**

16. All issues from (i) to (vii) are inter-connected and have been dealt with and decided by the Authority vide its interim order dated 12.08.2022. Relevant part of the order is reproduced herein below:

*“4. Authority has gone through the averments made by both parties. It has examined the documents placed on record. It observes and orders as follows:*

*i) Authority had earlier dismissed complaint No.874 of 2021 vide its order dated 23.11.2021 as being premature. A liberty was given to complainant to negotiate the consideration amount and accept the offer if found suitable. The sum and substance of the order was that both parties may negotiate terms and conditions of the contract and if found suitable to both sides, execute the agreement. Accordingly, complainant was well within its right to demand execution of agreement and the respondents were well within their rights to propose terms and conditions of agreement as per law.*

*ii) Complainants wishes to go ahead with purchase of plot. They fully complied with all requirements of respondents for execution of builder-buyer agreement. Complainant wished to change the allotment from joint*



name of the complainant and her son to only her name. Long correspondence took place between the complainant and respondents and eventually the name of her son was deleted.

iii) Respondents were fully aware that complainants are negotiating loan from bank. They had arranged amount of more than Rs.42 lacs for payment to the respondents. Complainants were even ready to arrange money by way of bank loan, but pre-condition of the bank for sanctioning loan is execution of builder-buyer agreement. Such agreement has to be hypothecated with the bank for getting the loan sanctioned. Rs.42,60,824/- along with the earnest money paid would amount to more than 50% of the agreed consideration. Seriousness of the complainant in purchasing this property was never in doubt.

iv) On the face of demand of Rs.85,21,647/- as a precondition for execution of builder-buyer agreement itself appears unreasonable. The correct course of action in this situation is that after receiving earnest money a builder-buyer agreement has to be executed in which balance consideration to be paid has to be clearly stipulated along with terms of payment. RERA Law does not provide for payment of almost entire consideration before execution of builder-buyer agreement. Section 13 of RERA Act provides that not more than 10% money can be demanded without execution of builder-buyer agreement. Section 13, therefore, entitles an allottee to demand execution of builder-buyer agreement in which



*terms of payment will be mutually settled and only thereafter the allottee is duty bound to make payment in accordance with such terms.*

*v) It is also observed that promoters have to follow a universal policy. They cannot make conditions particularly rigorous for any individual allottee compared with others. In any case, legal right of the complainant is to demand execution of builder-buyer agreement and then pay money as per terms and conditions settled in the agreement.*

*vi) In light of above provisions of law, pre-termination notice dated 09.02.2022 vide which payment of Rs.85,21,647/- has been demanded clearly proves that respondents have been demanding money over Rs.85 lacs without execution of builder-buyer agreement.*

*Such conduct on the part of respondents is misuse of their dominant position and clear violation of the provisions of Section 13 of the Act as well as violation of standard builder-buyer agreement provided for in HRERA Rules 2017.*

*vii) For foregoing reasons, termination letter dated 14.02.2022 vide which allotment of complainants has been terminated, is hereby quashed. Respondents are directed to execute proper builder-buyer agreement with the complainant strictly in accordance with the format provided in RERA Rules 2017. They may settle reasonable terms of payment in the agreement. Respondent should also help in facilitating sanction of bank loan to the complainant by signing the agreement.*



*Seriousness of the complainant for purchasing the plot is adequately proved because she is ready to make substantial payment immediately after signing of the agreement. Accordingly, respondents are directed to fix a fresh date with their mutual convenience within 30 days of passing of order for execution of builder-buyer agreement. It is reiterated that no money can be demanded before registering of the agreement. Further, terms of payment may be mutually settled in the agreement and both parties will remain bound by such terms and conditions stipulated in the agreement.*

*viii) Respondents are directed to comply with this order within 30 days, where-after further appropriate orders will be passed."*

17. The matter was only adjourned for compliance of the directions issued vide the said order dated 12.08.2022 within 30 days and for adjudication and appropriate directions with respect to issues nos. (viii), (ix) and (x).
18. However, it is observed that the respondent miserably failed to comply with the directions by executing a proper builder buyer agreement with the complainant strictly in accordance with the format provided in HRERA Rules, 2017 within the stipulated time of 30 days from the date of order dated 12.08.2022. Thereafter, the respondent on hearing dated 29.11.2022, admittedly, showed willingness to negotiate and settle the matter out of court and the Authority granted one last opportunity to the respondent to amicably settle the matter with the complainant before the

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next date of hearing i.e. by 17.01.2023. Nonetheless, now it has transpired vide email dated 16.01.2023, that the respondent in contravention to the terms of allotment (Annexure R-13) offered a new cost sheet for plot bearing no. GRPA-B27, quoting a price of ₹1,29,94,298.20/-. One completely fails to understand as to how, despite observations and directions of this Authority vide order dated 12.08.2022, the respondent in utter disregard could have raised/quoted this new price. It's conduct since beginning till last has been to subjugate the interest of the complainant by one way or the other. Such conduct of the respondent is a classic example of misuse of dominant position by the builders.

19. The Authority observes that the broad terms of allotment including the plot number, size and location were categorically enunciated in the allotment letter dated 21.01.2021 (Annexure R-3). The total sale price of ₹1,06,52,058.61 for the plot was also mentioned at condition no.2 of the allotment letter. Further, condition no.6 provided that the agreement for sale would provide for detailed terms and conditions of the sale of plot. Relying upon these terms and conditions only, the amount of 10%, as per Section-13 of the RERD Act, 2016 was admittedly paid by the complainant to the respondent. Once it is so, the respondent cannot be allowed to resile from its stand in its allotment letter. In the garb of a negotiation or settlement, it cannot be allowed to change its stand, rather



it cannot be allowed to give a death knell to the earlier order of this Authority.

20. Now, what remains to be done on part of the respondent is only to execute a proper plot buyer agreement, enunciating terms of agreement in detail as per RERD Act, 2016 and HRERA Rules, 201, but without altering/modifying/amending the price at which the unit had been allotted to the complainant. In view of the fact that the termination dated 14.02.2022 has been quashed by the Authority vide its order dated 12.08.2022 and there exists no plot buyer agreement, the terms enunciated in the allotment letter with respect to the price shall be binding upon the respondent. Under no circumstances, the respondent can univocally and arbitrarily be allowed to demand for a total sale price over and above what has been agreed in the allotment letter.
21. It is pertinent to mention here that the Authority vide its order dated 12.08.2022 had already adjudicated upon the entire controversy involved in the complaint including issues (i) to (vii), in detail, and passed appropriate directions therein. At this stage, a re-visit or re-adjudication on the same issues, i.e., (i) to (vii) is unwarranted as same shall only be a mere repetition of what had been held earlier. The view taken by the Authority with respect to inter-related issues, i.e., (i) to (vii) vide the said interim order dated 12.08.2022 stands affirmed in this final order. Accordingly, respondent is directed to execute a proper builder



buyer agreement within a period of 30 days, strictly in accordance with the model agreement for sale as provided at *Annexure A*, HRERA Rule, 2017 and at the price as agreed between the parties in the allotment letter dated 21.01.2021.

22. With regard to issue nos. (viii),( ix) & (x), it is observed that the same are neither the part of the pleadings nor were been argued upon by the complainant during the hearing proceedings. Further, issue no. (x), regarding compensation can be adjudicated upon by the adjudicating officer of the Authority, if a separate complaint in the prescribed format is filed before the Adjudicating officer of the Authority.
23. **Disposed of.** File be consigned to record room after uploading of orders on the website of the Authority.



.....  
**NADIM AKHTAR**  
[MEMBER]



.....  
**Dr. GEETA RATHEE SINGH**  
[MEMBER]