

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

<b>Complaint no.</b>	<b>:</b>	<b>6333 of 2022</b>
<b>First date of hearing:</b>		<b>16.02.2023</b>
<b>Order Reserve On:</b>		<b>12.04.2024</b>
<b>Order Pronounced On:</b>		<b>31.05.2024</b>

Neeraj Singh Bhadouria Shalaka Rathore Address: - R/o: H. no. 2626, 4 <sup>th</sup> floor, Sector-23, Gurugram	<b>Complainants</b>
Versus	
M/s Godrej Developers and Properties LLP Registered Office at: - 5 <sup>th</sup> floor, Godrej One, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai-400079, Maharashtra	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Abhay Jain	Advocate for the complainant
Sh. Rohan Malik	Advocate for the respondent

**ORDER**

1. The present complaint dated 11.10.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 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 unit details, 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 tabular form:

S. No.	Particulars	Details
1.	Project name and location	Godrej Air, Sector 85, Gurugram
2.	Project area	10.043 acres
3.	Nature of project	Group Housing Complex
4.	RERA registered/not registered	Registered in 3 phases <b>Phase I:</b> 32 of 2018 dated 07.12.2018 valid upto 31.12.2023 <b>Phase II:</b> 33 of 2018 dated 07.12.2018 valid upto 31.05.2023 <b>Phase III:</b> 34 of 2018 dated 07.12.2018 valid upto 30.09.2023 <b>Phase IV:</b> 32 of 2018 dated 07.12.2018 valid upto 31.12.2022
5.	Details of phases	<b>Phase I:</b> Tower A3 and A4 <b>Phase II:</b> Tower A5 <b>Phase III:</b> Tower A1 and A2 <b>Phase IV:</b> 0 towers having 0 residential units, 0 EWS units and 7

		commercial units/shops and 1 nursery school
6.	DTCP License no.	115 of 2012 issued on 16.11.2012 valid upto 15.11.2023
	Name of Licensee	Orris Infrastructure Pvt. Ltd. and 7 others
7.	Date of execution of buyer agreement	Not executed
8.	Date of application	20.06.2019 (page no. 28 of reply)
9.	Welcome Letter	04.07.2019 (Page no. 50 of reply)
10.	Unit No.	2401, 24 <sup>th</sup> floor, Tower A5 (Page no. 34 of complaint)
11.	Unit area admeasuring	127.30 sq. ft. (Page no 34 of complaint)
12.	Email for refund by complainant	07.03.2020 (Page no. 61 of complaint)
13.	Reminder by complainant for refund	28.03.2020 (page no. 62 of complaint)
14.	Cancellation email by respondent	14.06.2022 (Page no. 69 of complaint)
15.	Possession clause	<b>Not mentioned</b>
16.	Due date of Possession	16.06.2022  Calculated as 3 years from the date of application
17.	Total consideration	Rs. 1,42,92,072/-

		(as per payment plan on page no. 52 of reply)
18.	Total amount paid by the complainant	Rs. 5,00,000/- (as per receipts on page no. 54 and 55 of complaint)
19.	Offer of Possession	NA
20.	Occupation Certificate	NA

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
4. That the complainants were approached by the sale representatives of the respondent, who made tall claims about the project 'Godrej Air' describing it as the world class project. The respondent presented and marketed the project in the name of 'Godrej Air' which suggested the complainants that the project is developed by reputed builder, godrej group. The complainants were impressed by their statements, oral representations and promises and ultimately lured to book a 3 BHK apartment no. A5-2401 in tower A5, having a carpet area of 107.42 square meter and exclusive area of 19.88 square meter, thus a total area of 127.30 square meter along with one (1) covered parking space in the project 'Godrej Air' via application form dated 16<sup>th</sup> June, 2019. The complainants paid Rs.5,00,000/- as token money for booking of the apartment on 17<sup>th</sup> June, 2019 of Rs.1,00,000/- and cheque no. 309753 dated 20<sup>th</sup> June, 2019 amounting Rs.4,00,000/, to the respondent.
5. That the respondent issued welcome letter dated 4<sup>th</sup> July, 2019 to the complainants for booking apartment no. A5-2401 in tower A5 measuring a carpet area of 107.42 square meter and exclusive area of 19.88 square

meter, thus a total area of 127.3 square meter in the project 'Godrej Air'.  
The total consideration of the apartment is Rs.1,42,92,073/-.

6. That till this stage the complainants were not aware about the collaboration of Godrej Properties Limited with the builder, Orris Infrastructure Private Limited for the project 'Godrej Air'. The complainants always got the impression and understanding that the project is developed and marketed by Godrej Group based on the representations made by the respondent. The complainants were misled because (1) there was no mention about the builder, orris infrastructure private limited in the application form, (2) the cheque for the token money was taken in the name of 'godrej air-ii' which suggested that the project is developed and marketed by godrej group, (3) the name of orris infrastructure private limited was not mentioned on the receipts issued by the respondent, (4) the welcome letter issued by the respondent did not mention anything about orris infrastructure private limited but made tall claims about godrej properties and (5) the name of the project 'godrej air' clearly suggests that the project is developed and marketed by godrej group. The respondent never mentioned, wrote or informed the complainants about its collaboration with Orris Infrastructure Private Limited for the project.
7. That the respondent violated Section 12 of the Real Estate (Regulation and Development) Act, 2016 by misrepresenting information and concealment of material facts about the residential project. The complainants invite attention of the Hon'ble Chairman of the Haryana Real Estate Regulatory Authority, Gurugram to Section 12 of the Act, 2016.

8. That the complainants found out that the project 'Godrej Air' is a collaboration venture between Godrej Properties Limited and Orris Infrastructure Private Limited. The complainants informed the respondent via email dated 7<sup>th</sup> March, 2020 that they don't want to continue with the apartment due to bad reputation and track record of the Developer, Orris Infrastructure Private Limited and demanded full refund of the token money deposited by them. The relevant part of the email is reproduced below -

*"...Towards the expression of interest, I have deposited 5 Lakh INR to Godrej properties. I came to know a few days ago that Godrej Air is a venture between Godrej and ORRIS Developer and as per track record of the developer and due to some personal commitment, I don't want to continue with the property.*

*Request you to please help and refund the full amount.."*

9. That the complainants sent a reminder email dated 28<sup>th</sup> March, 2020 where the complainants resented to the actions of the respondent and want to withdraw from the project and thus, demanded refund of entire amount of Rs.5,00,000/- from the respondent. The relevant part of the email dated 28<sup>th</sup> March, 2020 is reproduced below -

*"...I am highly disappointed when you sell your property with the name of Godrej and associate with the disrepute builder and give false promises.*

*I don't want to continue with this project, it's my humble request to please process the refund, in case of negative response I will escalate this matter to RERA and consumer court..."*

10. The respondent via email dated 30<sup>th</sup> March, 2020, invited the complainants to their regional/ site office to meet the site head to resolve the issue once lockdown and things get smooth in the country.
11. That for more than two (2) years, the respondent didn't bother and take no action on the request made by the complainants to refund of token money of Rs. 5,00,000/-. Then ultimately in February, 2022, the complainants being aggrieved and tired of waiting for refund of their token money, were called for the meeting with the representatives of the respondent where they convinced complainants to continue with the project.
12. That after more than two (2) years and three (3) months from the request for refund made by the complainants via email dated 7<sup>th</sup> March, 2020, the respondent sent cancellation notice of the apartment to the complainants on 14<sup>th</sup> June, 2022 and forfeited the entire amount of Rs.5,00,000/- deposited by the complainants as token money for the apartment, towards cancellation. The cancellation notice via email dated 14<sup>th</sup> June, 2022 stated -

*"We refer to your discussion with us and your email dated 07-03-2020 requesting us to cancel the booking of your Unit No. GODAIRA-2401, at Godrej Air, at sector 85, Gurgaon.*

*We have accepted the said request....*

*G. ...an amount of INR 500000/- (Rupees Five Lakhs Only) towards cancellation as per terms of the Application Form dated 20<sup>th</sup> June, 2019 executed by you shall stand forfeited and that you shall not dispute the same..."*

13. That the complainants objected the cancellation notice dated 14<sup>th</sup> June, 2022 sent by the respondent. The complainants were convinced by the

representatives of the respondent in meeting at their site office to continue with the project and now the respondent had sent them the cancellation notice and forfeited the entire amount. The complainants sent emails dated 13<sup>th</sup> August, 2022 and 19<sup>th</sup> August, 2022 to the respondent requesting not to cancel the apartment and provide information for further payment process.

14. That the respondent did not bother and take no action on the request for refund made by the complainants via email dated 7<sup>th</sup> March, 2020 for more than two (2) years and three (3) months and then sent cancellation notice on 14<sup>th</sup> June, 2022 to the complainants and forfeited the entire amount of Rs.5,00,000/- deposited by the complainants as token money for the apartment. There was no legal agreement executed between the respondent and the complainants, yet the respondent forfeited the entire token money.
15. That the respondent kept harassing the complainants by withholding their token money for more than two (2) years and three (3) months. The complainants regret believing the representations made by the respondent and agreeing to continue with the project. The respondent misrepresented information and concealed material facts about Orris Infrastructure Private Limited from the complainants. The intention of the respondent was to cheat and befool the complainants, and, that was why, the respondent sent the cancellation notice of the apartment on 14<sup>th</sup> June, 2022 and forfeited the token money of Rs.5,00,000/- towards cancellation without any legal agreement between them. The complainants have no faith left in the respondent and that is why the complainants now seek refund of their token money of Rs.5,00,000/- with interest from dates of deposit, from the respondent for its failure to



comply with its obligations from the beginning in 2019 and harassing the complainants, as per Section 12 of the Act, 2016.

16. That the complainants approached the respondent and requested the refund of their deposited amount with interest on numerous occasions but to no avail.
17. That the complainants intend to withdraw from the project. The complainants seek the complete refund of their deposited amount as per Section 12 of the Act, 2016, along with interest at the prescribed rate for the failure of the respondent to comply with its obligations and concealing the facts about its partnership with the developer, Orris Infrastructure Private Limited in the project.

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

18. The complainant has sought following relief(s)
  - I. Direct the respondent to refund as per section 12 of the Act, 2016 full amount of Rs. 5,00,000/- with interest from the date of deposit till the entire amount is returned to the complainants at the rate prescribed by the Act, 2016.
  - II. Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by complainants for filing and pursuing the instant case.
19. On the date of hearing, the authority explained to the respondent /promoter on the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

20. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

21. That the respondent is in the process of developing a project by the name of "Godrej Air" ("the Project") on a land measuring 10.043 acres approx. in Village Badha, situated at Sector 85, Gurugram, Haryana. The project comprises of residential units and EWS units along with amenities, facilities, services etc. The respondent has registered the project with this Hon'ble Authority under the provisions of The Real Estate (Regulation and Development) Act 2016 ("**the Act**").
22. That the complainants have failed to discharge their obligations under the contract, wherein they were required to make the payment towards the agreed total sale consideration of the unit in question. After payment of part booking amount, the complainants realising their incapability to pay for the agreed consideration sought unilaterally cancellation (without the default of Developer) of the allotment in question. Now, as an afterthought, the complainants have filed the present complaint in order to abuse the process and mislead this Hon'ble Authority into granting full refund of the part booking amount paid by them.
23. That the main allegation in the complaint is that they were misled into booking of the unit in question as they were not informed about Orris Infrastructures Pvt. Ltd. being a partner in the respondent LLP. The allegation is not only baseless and immaterial but also false and incorrect. The complainants were aware about the aforesaid since the very beginning i.e., even before the signing of the application form. In fact, the application form on the very first page captures "Joint Venture Partner Orris Infrastructure". However, neither the complainants have filed the entire application form, nor they have filed the brochure that they seek to rely upon in the present complaint.

24. That the complainants vide application form dated 20.06.2019 applied for allotment of a residential unit bearing no. A5-2401 in the phase - II of the project for a total sale consideration of Rs. 1,43,04,072/-. In terms of the opted payment plan, the complainants paid an amount of Rs. 5,00,000/- being part booking amount.
25. It is relevant to note that vide clause 3 of Annexure A of the application form, the complainant 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.
26. Further, vide clause 4 of annexure A of the application form, the complainant agreed that the 10% of the cost of property shall be construed as "booking amount", to ensure the performance, compliance, and fulfilment of their obligations.
27. That in terms of clauses 9 and 10 the complainant agreed that if he fail or neglect to (i) make payments for two consecutive demands made by the developer as per the payment plan opted by the complainants; (ii) comply with the obligations as set out in the application form and fail to rectify the default in the period of 30 days, the developer (Respondent herein) shall be entitled to terminate the application form and forfeit the booking amount along with the non-refundable amount. The complainants also agreed that in the event the application form is withdrawn/cancelled by the applicant(s) (Complainants herein) for reasons not attributable to developer's default, then the developer shall be entitled to forfeit the booking amount and non-refundable amount.
28. That the complainants were allotted the unit vide welcome letter/allotment letter dated 04.07.2019.

29. That in furtherance of the opted payment plan i.e., within 30 days from the date of booking, the respondent raised an invoice for an amount of Rs. 9,29,207.26/- on 13.07.2019. The due date for payment of the said invoice was 19.07.2019.
30. Subsequently, i.e. after two months of signing the application form and agreeing to the opted payment plan, the complainants realising their incapacity to make payments, vide email dated 04.08.2019 requested the respondent for additional time to fulfil their financial obligations. In response to the same, vide email dated 04.08.2019 the respondent took up the matter internally and the complainants' request was forwarded to the concern department. The complainants again vide email dated 17.08.2019 informed the respondent that they are in some financial difficulty and will not be able to arrange funds to meet their financial obligations in terms of the opted payment plan.
31. Even then, the respondent being a customer centric organisation raked up the issue internally and the same was informed to the complainants vide email dated 18.08.2019. Further, the respondent also invited the complainants to visit their office during office hours on any weekday to discuss the new payment plan. Thereafter, as desired and requested by the complainants, the respondent issued a credit note and reversed the invoice dated 13.07.2019 and informed the same to the complainants vide email dated 30.08.2020.
32. Upon the reversal of the invoice dated 13.07.2019, the complainants never responded or communicated to the email dated 18.08.2019 and 30.08.2019. Further, the complainants never visited the office of the respondent to discuss the new payment plan and from the aforesaid it

became clear that the complainants only wanted to delay/circumvent their financial obligations.

33. However the complainants vide email dated 07.03.2020 started making frivolous excuses that they have been misled into booking the unit. Further, in order to seek arbitrary exit from the project without any consequence, the complainants incorrectly stated that they got to know that the respondent is working with Orris Infrastructure Pvt. Ltd. and while alleging bad reputation of Orris, they sought complete refund of the part booking amount paid to the respondent. The said allegation is not only an afterthought but also far from reality. The complainants were always aware that Orris was the joint venture partner for the project.
34. That upon receipt of the aforesaid email seeking unilateral cancelation, the respondent promptly responded to the same vide email dated 09.03.2020. In the said email, the respondent informed the complainants that as per their own request for unilateral cancelation, the part booking amount paid by them will be forfeited in terms of the application form.
35. That the complainants vide email dated 28.03.2020 questioned the respondent regarding forfeiture of part booking amount. That since the complainants were facing difficulty, the respondent vide email dated 30.03.2020 asked them to visit the office of the respondent to resolve the issue once lockdown is lifted (by this time first lockdown was in force). However, it is to be noted that the Respondent in previous email dated 09.03.2020 had already clarified that the amount was liable to be forfeited "*as per the terms and conditions of the Application Form signed by you*".
36. However, since the complainants were not making payments since 2019 and were simultaneously asking for unilateral cancelation of booking, the

respondent vide email dated 14.06.2022 sent a "voluntarily cancellation acceptance form" to the complainants. Vide the said form, all the conditions of the cancellation were again brought to the attention of the complainants.

37. In response, the complainants vide email dated 13.08.2022 again stated that they want to continue with the project as the loan eligibility of the complainants "now" have been approved. Even this email goes to show that the complainants had been maligning the image of Orris Infrastructure Pvt. Ltd. by resorting to a lie, to hide their financial capacity to keep pace with the opted payment plan. However, it is pertinent to note that the Complainants till date have failed to provide any document which even suggests that their loan was approved by the bank.
38. Moreover, 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 have lost out on time and opportunity to sell the said unit to some other person who would have adhered with the terms and conditions of the application form which would not have hindered the progress of the project.
39. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

40. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground

of jurisdiction stands rejected. 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**

41. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana 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**

42. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the relief sought by the complainant.**

I. Direct the respondent to refund as per section 12 of the Act, 2016 full amount of Rs. 5,00,000/- with interest from the date of deposit till the entire amount is returned to the complainants at the rate prescribed by the Act, 2016.

43. In the present complaint the complainant booked a unit bearing no. 2401, 24<sup>th</sup> floor, Tower A5 admeasuring 127.30 sq. ft. in the project of the respondent namely, Godrej Air, situated at Sector-85, Gurugram on

16.06.2019 and paid an amount of ₹5,00,000/- against the total sale consideration of ₹ 1,42,92,072/-.

44. The complainants has stated that they were unaware of the collaboration between Godrej Properties Limited and Orris Infrastructure Pvt. Ltd. for the project 'Godrej Air' at the time of booking their unit. Due to this lack of information, they requested a refund via email on March 7, 2020, and followed up with a reminder email on March 28, 2020. However, despite their efforts, the respondent cancelled the unit on June 14, 2022, more than two years later, and forfeited the entire amount paid by the complainants. This appears to be a case of misrepresentation and hence seeking refund under section 12 of the Act, 2016.
45. The respondent counters the complainants' allegations, asserting that the complainants were indeed aware of the project at the time of booking. They claim that necessary disclosures regarding the involvement of Orris Infrastructure Pvt. Ltd. were provided in both the application form and the brochure. According to the respondent, the complainants had full knowledge of the project and its collaborators at the time of their booking, thus refuting the claim of misrepresentation.
46. The complainants are seeking refund under section 12 of the Real Estate (Regulation and Development) Act, 2016. The Section 12 of the Act, 2016 is reproduced hereunder for ready reference:

***12. Obligation of promoter regarding veracity of the advertisement or prospectus:***

*Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall*



*be compensated by the promoter in manner as provided under this Act:*

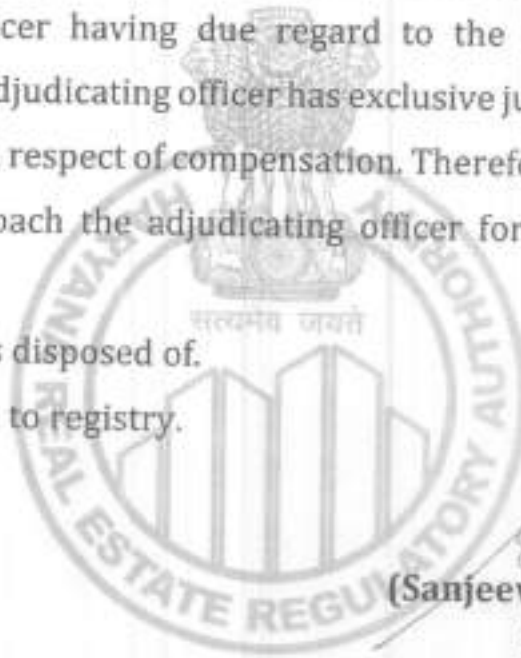
*Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.*

47. Based on the documents held on record, the authority observes that the application form was signed by the complainants on June 20, 2019. Additionally, it was found that on the very first page of both the application form and brochure of the project, there was a clear mention of 'Joint Venture Partner Orris Infrastructure'. Furthermore, it was highlighted that the project in question is registered with the Haryana Real Estate Regulatory Authority (RERA) Gurugram Authority, and the registration numbers were properly indicated on the application form.
48. It's also noted that projects registered under RERA are required to have their registration details available on the authority's website, as mandated by Section 5 read with Rule 14 of the Real Estate (Regulation and Development) Act, 2016. All the details w.r.t the said project is in public domain & available online. Hence, the allegation of the complainants w.r.t the misrepresentation by the respondent regarding the collaboration of Godrej Properties Limited and Orris Infrastructure Pvt. Ltd. is hereby denied by the authority. Hence, no case for refund is made out.
- II. Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by complainants for filing and pursuing the instant case.**

49. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has 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 is advised to approach the adjudicating officer for seeking the relief of compensation

50. Complaint stands disposed of.

51. File be consigned to registry.



  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 31.05.2024

**HARERA**  
**GURUGRAM**