

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

Complaint no.	:	2134 of 2021
Date of decision	:	19.04.2024

Bhupinder Pal Singh R/O: D-1103, Vajram Tiara, Ahalhalli, Dodaballapur, Road, Banglore-560064 also at - D-204, Shispal Vihar, Sector -49, Gurugram, Haryana	Complainant
Versus	
1. M/s Godrej Premium Builders Pvt. 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:	
Shri Shailender Bahl Advocate	Complainant
Shri Saurabh Gaba Advocate	Respondents

ORDER

1. The present complaint dated 16.04.2021 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. N.	Particulars	Details
1.	Name of the project	"Godrej Summit", Sector 104, Gurugram, Haryana
2.	Project area	22.123 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	102 of 2011 dated 07.12.2011 valid up to 06.12.2019
5.	Name of licensee	Magic Info Solutions and 1 other
6.	RERA Registered/ not registered	Registered vide no. 75 OF 2017 DATED 21.08.2017 valid upto 30.09.2018
7.	Unit no.	D-0304, 3 rd floor, Tower/block- D (Page no. 50 of the complaint)
8.	Unit area admeasuring	1647 sq. ft. (Page no. 50 of the complaint)
9.	Allotment letter	04.02.2013 (As per on page 32 of complaint)

10.	Date of buyer agreement	06.05.2013 (Page no. 42 of the complaint)
11.	Possession clause	4.2 Possession The apartment shall be ready for occupation within 47 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 47 months period. Upon the apartment being ready for possession (Page 59 of the complaint).
12.	Due date of possession	04.07.2017 (Calculated from the date of allotment plus 6 months grace period as the clause for grace period being unconditional)
13.	Basic sale consideration	Rs.87,29,100/- (As per page 103 of complaint - schedule vi of agreement)
14.	Amount paid by the complainant	Rs.50,59,145/- (As per on page 11 of complaint)
15.	Occupation certificate	07.04.2017 (As per on page 120 reply)
16.	Offer of possession	Not offered
17.	Email seeking refund by the complainant to the	27.01.2015 (As per page 121 of complaint)



	respondent	
--	------------	--

B. Facts of the complaint:

- i. That respondent's in collaboration/joint venture, had launched a group housing colony/project named as "Godrej Summit" situated in Sector-104, Village Gurgaon Tehsil and District Gurugram, and vide application dated 11.09.2012, complainant got allotted residential flat/apartment/unit bearing No. D 0304, in Tower D, located on 03rd floor, measuring super area 1647 Sq.Fts. (153.06 Sq.Mtr.) in said project of the respondent at the total consideration amount of said unit is Rs.1,02,91,420/- including Car Parking, EDC & IDC, PLC, Club Membership etc and, had paid Rs.9,99,766/- on 27.09.2012.
- ii. That further the allotment letter dated 04.02.2013, and builder buyer agreement dated 06.05.2013 was also executed respectively between parties.
- iii. That further demand for Instalments has been raised by respondent company on various occasions mentioning note for delay payments attract penalty/interest @ 15% per annum, Keeping in view of above, till date, the complainant has deposited total amount of Rs.50,59,145/-
- iv. That it is the understanding made by the respondents that his unit would be ready within 47 months from the date of issuance of allotment letter with grace period of 6 months i.e. by 23.01.2017, and developer/respondent is obliged by time schedule for completion of construction and handover of possession of the apartment to the complainant, as the progress of said project is running in a snailing speed, vide an e-mail sent to respondent dated 27th January, 2015 for surrender of said allotted unit and refund as per agreement. But on

the contrary the respondent without any remorse and regret opted themselves to not to even reply for the same. And since then a number of e-mails were sent to accused, dated 10th February, 2015; 11th August 2015; 3rd October 2015; 13th October 2015; 16th October 2015; 20th October, 2015; 3rd November, 2015; 16th November 2015; 25th January 2016 and lastly on 17th January, 2019 and during the intervening period of January 2016, January 2019, complainant has been visiting the office of accused and was on regular intervals had been talking to officials of Respondent/s company but the same had resulted in a futile exercise and every efforts of complainant, goes in vain. That it is pertinent to mention here that after 27.01.2015, no payments were demanded by respondents as per agreements neither possession was offered till date.

- v. That further it is submitted in similar project Hon'ble authority in complaint no. 87 of 2019 decided on 26.05.2023 in the matter of "*Dhiraj Chawla and Sadhna Chawla V/s Godrej Properties Ltd & Ors*", stated that authority had considered the fact of delay in project and has directed the respondent to refund an amount paid after deducting 10% of earnest money of the sale consideration along with interest at the prescribed rate i.e. @10.70% on amount deposited on account of surrender of unit from the date of surrender.
- vi. It is further submitted present complaint is of same nature as the respondent has obtained the occupation certificate on 07.04.2017. Whereas, the offer of possession was not made yet However, it is pertinent to note that the complainant had already requested refund of the monies vide email dated 27.01.2015 which is prior to the receipt of occupation certificate.

C. Relief sought by the complainant:

3. The complainant has sought following relief(s):
- Direct the respondents to refund the amount along with interest at the prescribed rate.
 - 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:

4. The respondent no.1 and 2 contested the complaint by filing reply dated 04.05.2022 on the following grounds: -
5. That the complainant booked an apartment with the answering respondent in its project namely Godrej Summit situated at Sector 104, Gurgaon, Haryana vide an application form dated 11.09.2012 for a total consideration of Rs.1,02,91,420/-. It is submitted that the complainant opted for a construction-linked payment plan. It is submitted that the Clause 4.2 incorporated under the agreement signed between the parties clearly stated that the apartment shall be ready for possession within 47 months from the date of issuance of Allotment Letter i.e.04.02.2013 however the developer is entitled for a grace period of 6 months over and above such period. Therefore, the tentative date of completion of the apartment was 04.07.2017 as per the agreement duly executed by the him. It is submitted that the he has paid a total sum of Rs. 50,59,145/- against the sale consideration of the apartment and thereafter defaulted in making the payment of

balance consideration and as such committed a material breach of the agreement.

6. That instead of discharging the contractual obligations of making timely payments, he has communicated their inability to pay the amount towards the balance consideration and sought voluntary cancellation from the respondent despite there being any default on the part of the answering respondent. It is pertinent to mention that the respondent being a customer-centric organization even offered the complainant to refund the amount deposited after the deduction of the earnest money and other charges as set out and agreed as per the terms and conditions of the agreement but to no avail.
7. Therefore, this Authority after taking due cognizance of the preliminary submissions, which are taken in alternative and without prejudice to each other, stating clearly and unequivocally the grounds for the dismissal of the instant complaint, may dismiss the present complaint forthwith with exemplary costs.
8. All the averments made by the complainant are denied in toto.
9. 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:

10. 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 complainant at a later stage.

11. 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 complainant for refund:

F.I Direct to the respondent to refund an amount of Rs. 50,59,145/- along with interest.

12. The complainant was allotted a unit in the project of respondents "Godrej summit", in Sector 104, Gurugram vide allotment letter dated

04.02.2013 for a sum of Rs. 87,29,100/- Further a buyer's agreement was executed between the parties on 06.05.2013, and complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 50,59,145/-. On various occasions, the complainant sent emails to respondents regarding their concerns and issues w.r.t. status of the project vis a vis unit in question. The complainant was 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.

13. The complainant sent an email on 27.01.2015 for cancellation of the unit and seeking refund of the amount to which respondent replied that he is ready to refund the amount deposited after the deduction of the Earnest money and other charges as set out and agreed as per the terms and conditions of the Agreement but to no positive outcome has been achieved.
14. The counsel for R1(Godrej Premium Builders Pvt. Ltd) stated that they had moved an application under order 1 rule 10 CPC for exempting and deleting it name as the BBA was executed by Magic Info Solutions Pvt. Ltd and the payments were made to R2(Magic info solutions Pvt. Ltd.) only. The counsel further stated that in the same project a decision has already been taken by the authority in *CR No.87/2019* where Godrej Properties Ltd. was exempted and matter was proceeded against Magic Info Solutions Pvt. Ltd. and hence, requests that the same view should be taken in this matter also.
15. Vide proceeding dated 02.02.2024, the authority is of the view that Godrej Projects Development Pvt Ltd. be exempted from this

proceeding and the matter is being proceeded against Magic Info Solutions Pvt. Ltd.

16. It is evident from the above mentions facts that the complainant paid a sum of Rs. 50,59,145/- against sale consideration of Rs. 87,29,100/- of the unit allotted to them on 04.02.2013. The respondents failed to respond to any emails sent by the complainants. Subsequently an email dated 27.01.2015 has been placed in file wherein which the complainant stated that they want to surrender his unit and sought refund of the amount paid. To which authorized legal team of the respondent replied through email and stated that ^{he} is ready to refund the amount deposited after the deduction of the Earnest money and other charges as set out and agreed as per the terms and conditions of the Agreement but complainant was not ready for the same.
17. 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.**"*

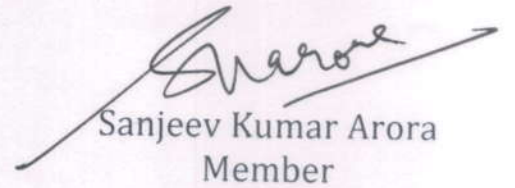
18. Keeping in view the aforesaid factual and legal provisions, the respondent no. 2 cannot retain more than 10% of the amount paid by the complainant against the allotted unit as the allotment and agreement was executed in the year of 2013 so it is unfair and unreasonable at this stage with the complainant 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., 27.01.2015 till the date of realization of payment within 90 days from the date of this order along with an interest @10.85 % p.a. on the refundable amount.

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

19. 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.

H. Directions of the Authority:

20. 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 complainant the paid-up amount of Rs. 50,59,145/- after deducting 10% as earnest money of the basic sale consideration of Rs. 87,29,100/- with interest at the prescribed rate i.e., 10.85% from the date of surrender i.e., 27.01.2015 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.
21. Complaint stands disposed of.
22. File be consigned to the registry.


Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.04.2024