

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

<b>Complaint no.</b>	:	<b>5671 of 2022</b>
<b>Date of filing:</b>		<b>25.08.2022</b>
<b>Date of decision :</b>		<b>05.07.2024</b>

Yogesh Kochhar

**R/o:** Mission Road, Green Heavev Colony, Back Side  
Sukh Sadan Hospital, Pathankot, Punjab-145001

**Complainant**

Versus

1. M/s Godrej Premium Builders Pvt. Ltd.

**Office address:** Godrej One, 5<sup>th</sup> floor, Pirojshanagar  
Eastern Express Highway, Vikhroli (East), Mumbai-  
400079

2. Magic Info Solutions Pvt. Ltd.

3. Manoj S/o Ajit Singh

4. Rajhans S/o Baljeet Singh

5. Sheela Devi W/o Ajit Singh

6. Sukhbir Singh S/o Bhim Singh

**Address for respondent no. 2-6:** L-24/10, DLF Phase II,  
Gurgaon

**Respondents**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Ms. Ankur Berry (Advocate)

Sh. Saurabh Gaba (Advocate)

Complainant

Respondent

**ORDER**



1. The present complaint 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

2. The particulars of the project, the amount 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 tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	"Godrej Summit", sector-104, Gurgaon
2.	Nature of the project	Residential
3.	Project area	22.123 acres
4.	DTCP license no.	102 of 2011 dated 07.12.2011 Valid upto 06.12.2019
5.	RERA Registered/ not registered	75 of 2017 dated 21.08.2017 valid upto 07.09.2022
6.	Date of booking	13.02.2015

		(as alleged by complainant on page 7 of complaint)
7.	Unit allotted	D-305, 3 <sup>rd</sup> floor, Tower-D (page no. 37 of complaint)
8.	Unit admeasuring area	1446 sq. ft. (super area) (page no. 37 of complaint)
9.	Buyer builder agreement	Not Executed
10.	Possession clause	NA
11.	Due date of possession	13.02.2018 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
12.	Surrender (Request by complainant)	27.09.2019 (page no. 77 of complaint)
13.	Email by respondent for acceptance of surrender	06.11.2019 (page no. 77 of complaint)
14.	Total sale consideration	Rs.89,97,260/- (page no. 73 of complaint)
15.	Total amount paid by the complainant	Rs.41,30,122/- (page no. 77 of complaint)
16.	Occupation certificate	Not obtained

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

4. That the respondent is the promoter/developer of the real estate project, issued advertisements for project namely "Godrej Summit" situated at Sector-104, Gurugram, Haryana and on the assurances, allurements and inducements, regarding the above said project, the complainant applied for the allotment on 13.02.2015 in the said project and paid the earnest money towards booking of the unit.
5. That the complainant was allotted unit no. D-305, tower - D, third floor, ad-measuring 1446 sq. ft. at Sector-104, Gurugram, Haryana. The total consideration of the unit was decided at Rs. 89,97,260/- including all the charges and as per the demand by the respondent. The complainant in total has paid an amount Rs. 41,30,1221-.
6. That the complainant had requested the officials of the respondent multiple times to disclose the exact status of the completion of the construction of the said project but to no avail.
7. That the respondent was liable to fairly and transparently make available and disclose complete information to the complainant about the status of construction raised at the spot. However, the respondent has failed to do so for reasons best known to it.
8. That the complainant visited the site of the said project in order to ascertain the status of construction of the same. However, the complainant was completely shocked and bewildered at the state of affairs prevailing at the site. The construction of the unit is far from completion.
9. That the complainant followed up for many months but even after many enquiries and requests, the possession was not offered to him and



- thereafter the intent to live in the property was frustrated since it was clear with the actions of the respondent that they were just misleading the complainant on some pretext or the other.
10. That on 27 September 2019, the complainant requested for refund of the entire amount with additional appropriate interest, but the same was refused and was offered only meagre amount of Rs. 25,97,482/- after the deduction of about 20% of the Basic Sale Price, i.e. 15,32,640/- as per the email dated 06 November 2019.
  11. That in the said email, the respondent mentioned that the refund of, Rs. 25,97,482/- will be done in 6 (six) installments and the complainant will receive 6 (six) postdated cheques.
  12. That the complainant regularly followed up with the respondent for more than a year and requested for the refund but the respondent has failed to make the payment. Further, they have stopped even entertaining his enquiries and telephone calls.
  13. That the complainant on 22 September 2020, after the discussion with the respondent, provisionally accepted the deducted refund amount i.e., Rs. 25,97,482/- because of complainant's financial urgency and on the condition that the respondent will process his Refund within 60 days of the email dated 22.09.2020.
  14. That on 23 September 2020, the complainant received a surprising email from Sanya Group stating that they have further reduced the refund amount from Rs. 25,97,482/- to only Rs. 25,00,000/- without any justification for the delay or for the reduced amount. From the same email it came to the complainant's knowledge that some housing loan



have been approved in favor of a third party in regard to the unit which the complainant had booked and was in his name. Furthermore, the complainant got to know that he will only receive the refund after the respondent receives the money from the housing loan which was initiated by the third party and requested for complainant's confirmation.

15. That the complainant questioned the respondent that if he has not signed the relevant documents, how can they transfer the unit allotted to him to a third party without clearing his dues, which they chose to be silent about.
16. That thereafter on 3 December, 2020, the complainant received an email from Sanya Group informing him that they have transferred only Rs. 5,00,000 to his account on 01 December 2020 via RTGS (UTR no. HDFC52020120260843589) and stated that the rest of the refund will be settled in due course of time.
17. Therefore, the said complaint is filed and the complainant is hereby refund of the total amount paid by him.

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

18. The complainant has sought following relief(s):
  - a. Direct the respondent no. 2 to refund the amount paid by the complainant till date towards the sale consideration for the unit the respondent along with the prescribed interest from the date of request for refund till the date of realization of payment.
19. On the date of hearing, the authority explained to the respondent/promoters about the contraventions 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 no. 1.**

20. The respondent by way of written reply made the following submissions:
21. That the instant complaint is bad for misjoinder of parties in as much as the complainant in the instant project had entered into contract with joint venture partner of the respondent i.e. Magic Info Solutions Private Limited(hereinafter to be referred as "MISPL.").
22. That the answering opposite party is the joint venture partner with the MISPL and has developed the project namely 'Godrej Summit' on an area share understanding.
23. That the complainant has booked an apartment unit no. D-305 on the 3rd floor in tower D which comes under the area share (Apartment) of MISPL and consequently all acts pertaining to the transactions such as raising invoices towards due consideration / installments, issue of allotment letter, application for obtaining OC for tower D, reminders apart from the other compliances, receiving amounts from the complainant etc. were carried out by the MISPL. Even the consideration for the said apartment was received by MISPL.
24. That the even the consideration for the said apartment was received by MISPL. It is further submitted that all the transaction took place between Magic Info Solutions Pvt. Ltd. and the complainant and OP had no or any role in any transactions and all the amount was received by Magic Info Solutions Pvt. Ltd.

25. In consideration of the grant of Development rights, OP and land owners agreed to share the built up residential apartments of the said project. In view of the area sharing arrangements between the parties, the premises under dispute i.e., said apartment has been allocated to the share of land owners amongst the other apartments. Accordingly, the said apartment was later allotted to the complainant by Magic Info Solutions Pvt. Ltd.
26. That clause E of the amendment agreement makes it categorically clear that for those units/spaces that come under the area of the MISPL / landowners, then MISPL/ landowners shall only be responsible for all the liabilities/obligations/responsibilities arising out of those units/spaces.
27. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.
28. The counsel on behalf of respondent no. 2 to 5 neither appeared nor filed the reply in the complaint. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the defense of the respondent no. 2 to 5 was struck off vide proceeding dated 03.05.2024.

**E. Jurisdiction of the authority**





29. 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**

30. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

31. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

32. 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. Findings on the objections raised by respondent no. 1.**

**F.I Objection regarding claim against the respondent no.1 (Godrej Premium Builders Pvt. Ltd.) as Magic Info Solutions Pvt. Ltd. is a necessary and main party.**

33. The respondent no. 1 i.e., Godrej Premium Builders Pvt. Ltd has raised an objection and stated that the Magic Info Solutions Pvt. Ltd. i.e., respondent no.2 is solely responsible for the refund of the amount paid by the complainant-allottee. It stated that there is no privity of contract between the Godrej Premium Builders Pvt. Ltd and the complainant allottee. The authority observes that there is a joint venture between the Godrej premium Builders Pvt. Ltd. and the Magic Info Solutions Pvt. Ltd. for which collaboration agreement was executed between them on 17.02.2011. Moreover all the payments were received by the Magic Info Solutions Pvt. Ltd. Hence the respondent no. 2 is liable to refund the amount paid by them.

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

**F.I. Direct the respondent no. 2 to refund the amount paid by the complainant till date towards the sale consideration for the unit the respondent along with the prescribed interest from the date of request for refund till the date of realization of payment.**

34. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

35. However, in the present matter no BBA has been executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***

*"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the*



*facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."*

36. Accordingly, the due date of possession is calculated as 3 years from the date of booking i.e., 13.02.2015. Therefore, the due date of possession comes out to be 13.02.2018.
37. In the present complaint the complainant booked a unit on 13.02.2015 for a total sale consideration of Rs. 89,97,260/- out of which it has paid an amount of Rs. 41,30,122/-. The builder buyer agreement was not executed between the parties. Therefore, the due date of possession comes out to be 13.02.2018. On various occasions, the complainant sent emails to respondent regarding his concern and issues w.r.t status of the project vis a vis unit in question but there were no response from the respondent. Thereafter the complainant-allottee has requested the respondent for withdrawal from the project and refund of the paid amount vide email dated 27.09.2019 due to non-completion of project.
38. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.**, civil appeal no. 5785 of 2019, decided on 11.01.2021.



*".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

39. 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) RCR (c), 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, it was 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."*

40. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy



available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

41. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

42. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

43. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

44. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on



date i.e., 05.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.

45. The authority hereby directs the respondent no. 2 to return the amount received by them i.e., Rs.41,30,122/- with interest at the rate of 10.95% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

46. The complainant has stated that they have already received an amount of Rs. 5,00,000/- vide RTGS (UTR no. HDFC52020120260843589). Hence the authority observes that while refunding the amount paid by the complainant, the said amount shall be adjusted.

#### **H. Directions of the authority**

47. 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 function entrusted to the authority under section 34(f):

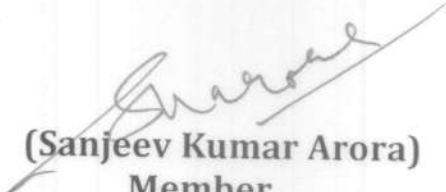
- a. The respondent no. 2 is directed to refund the amount i.e., Rs.41,30,122/- received by it from the complainant along with interest at the rate of 10.95% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- b. The amount already paid to the complainant be adjusted.



**HARERA**  
**GURUGRAM**

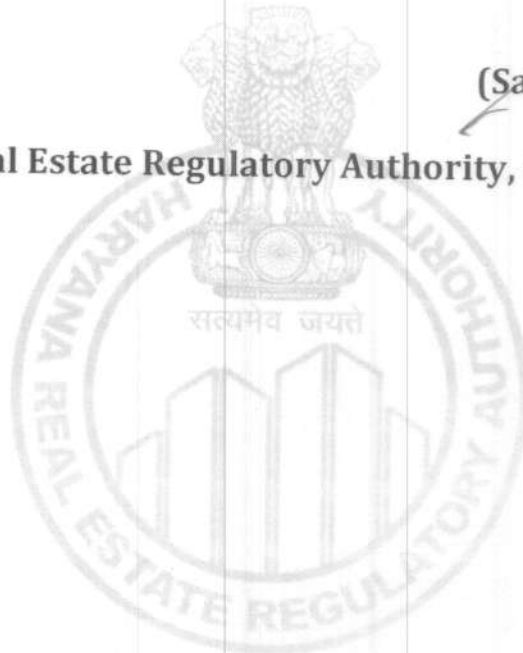
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- c. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
48. The complaint stands disposed of.
49. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Date: 05.07.2024**



**HARERA**  
**GURUGRAM**