

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

Complaint no.: 969 of 2023
Order reserved on: 25.01.2024
Order pronounced on: 07.03.2024

1. Mr. Mahesh Chaudhary
2. Mrs. Choudhary Kiran Mahesh

Both RR/o: - Flat No. 501, Tower-17, Northclose
Nirvana Country, Sector-50, Gurugram-122018

Complainant

Versus

Godrej Properties Ltd.

Regd. office: 3rd Floor, UM House, Tower A, Plot no.
35, Gate No.1, Sector-44, Gurugram, Haryana-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Saurav Sachdeva (Advocate)

Shri Saurav Gauba (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 to the allottee as per the agreement for sale executed inter-se them.

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, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	"Godrej Habitat", sector-3, Gurgaon
2.	Nature of the project	Group housing colony
3.	Project area	7.46 acres
4.	DTCP license no.	18 of 2018 dated 26.02.2018 valid up to 25.02.2028
5.	RERA Registered/ not registered	11 of 2019 dated 11.03.2019 valid up to 25.02.2023
6.	Date of allotment	16.07.2019 (Page no. 24 of complaint)
7.	Unit allotted	Tower-3-0706, Tower-3, 7 th floor (Page no. 40 of complaint)
8.	Unit admeasuring area	139.05 sq. mt. (Page no. 40 of complaint)
9.	Date of builder buyer agreement	06.08.2019 (Page no. 30 of complaint)
10.	Possession clause	<p>7. POSSESSION OF THE UNIT</p> <p>7.1 Schedule for possession of the said unit</p> <p><i>"The Developer agrees and understands that timely delivery of possession of the Unit along with Car Park Space (if applicable) to the Allottee(s) and the Common Areas and Facilities and the Limited Common Areas and Facilities to the Association of Allottees or the Competent Authority, as the case may be, as provided under Rule 2(1) (f) of Rules, is the essence of the Agreement.</i></p>

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		<p><i>The Developer shall offer possession of the units falling in the Project on or before February 25, 2023 with additional grace period of up to 12 (twelve) months as may be approved by Real Estate Regulatory Authority ("RERA") or such extended period as may be granted by RERA ("Completion Time Period") as per agreed terms and conditions unless there is delay due to Force Majeure Event, Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project, reasons beyond the control of the Developer and/or its agents, due to non-compliance on the part of the Allottee(s) including on account of any default on the part of the Allottee(s). If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Developer shall be entitled to the extension of time for delivery of possession of the Unit".</i></p> <p>(Page no. 36 of the complaint)</p>
11.	Grace period	<p>The respondent/promoter has sought the grace period of 12 months as may be approved by the Real Estate Regulatory Authority. However, as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, the Authority allowed the grace period of 6 months only being unqualified.]</p>
12.	Due date of possession	25.08.2023

13.	Total sale consideration	Rs.1,47,18,731/- (Page no. 80 of complaint)
14.	Total amount paid by the complainants	Rs.44,15,746/- (As per SOA dated 03.10.2022 at page no. 88 of complaint)
15.	Termination Letter	23.02.2023 (Page no. 92 of complaint)
16.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the complainants submit that the respondent is the promoter /seller/builder of said unit in a residential group housing project over the land marketed under the name, "Godrej Habitat", and has acquired and purchased lands admeasuring 7.46875 acres situated in Sector-3 Tehsil and District Gurugram and was sufficiently entitled to develop, sell and deal with the units/flats proposed to be constructed on the said land in respect of which DTCP, Haryana, has issued licenses bearing no. 18 of 2018 for developing a group housing project thereon in the name and style of "GODREJ Habitat", Sector-03, Gurugram, Haryana.
- II. That the representatives of the respondent approached the complainants and claimed that the respondent's company is dealing in the real estate sector and is one of the best real estate developers of the country and explained the complainants about the project. The complainants got impressed by the words of the representatives of respondent and decided to book one unit in the said project and

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respondent allotted a unit bearing no. 0706, 7th floor, Tower-03 vide allotment letter dated 16.07.2019, in the said project.

- III. That on 06.08.2019 a builder buyer agreement for said unit in said project was executed between the parties and the complainants paid as and when demanded by the respondent, as per schedule VI of the agreement i.e., payment plan, a sum of Rs.44,15,746/- till October 2022, out of total consideration of Rs.1,47,18,731/-.
- IV. That the respondent company in furtherance of the agreement demanded Rs.58,87,365/- regarding completion of super structure for the said unit. The complainants being an allottees of the project requested the respondent to kindly provide the copy of quarterly progress report regarding completion of super structure of their tower and allowed them to physically visit in the project but the respondent neither provide QPR and nor allowed them for physically visit in the project.
- V. That pursuant to the above, complainants on 19.11.2022 filed an RTI under RTI Act, 2005 to this Authority for seeking the information related to QPR and completion of super structure of complainants tower and on 06.12.2022 and the SPIO of HRERA Gurugram gave an information to complainants on their RTI and clearly said that after 2019 no QPR has been filed by the builder for which complainants personally visited HRERA Gurugram and does not found any status of the project related to completion of super structure of their tower.
- VI. That the complainants being ready and willing buyers of said unit made numerous request to the respondent to provide the status report in regard to completion of super structure so that they will pay the amount as per payment plan, of their tower but the respondent never

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paid any heed towards the genuine request of the complainants for which complainants send a legal notice to the respondent for the same through their counsel Shri Saurabh Sachdeva, Advocate but instead of providing QPR and allow them to visit project, the respondent send termination letter of the unit to the complainant which is totally illegal and unethical as the complainants have all right to know about the status of the project and stage wise construction details as per the provisions of the act, 2016.

- VII. That this authority has pecuniary jurisdiction and territorial jurisdiction to adjudicate and try this complaint as the subject matter property is within the territorial limits of this Authority. That the the cause of action is continuing as the respondents has still not provide the stage wise construction report of the said unit till date.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
- I. Direct the respondent to set aside the termination/cancellation of allotment of the allotted unit of the complainant.
 - II. Direct the respondent to provide the QPR and CA/Architech report in regard to completion of superstructure of Tower-3.
 - III. Direct the respondent to allow the physical visit to the complainants of the said project site.
 - IV. Direct the respondent to waive off the interest charged in the form of delayed payment.
5. On the date of hearing, the authority explained to the respondent/promoter 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.

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D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds: -
- I. That the complainants booked an apartment with the respondent in their project namely "Godrej Habitat" situated at Sector-03, Gurugram, Haryana vide an application form dated 31.03.2019.
 - II. That pursuant to the said application, the complainants were allotted an apartment unit bearing no.0706 on the 7th in Tower-3, of the said project vide an allotment letter dated 16.07.2019. Thereafter, the apartment buyer's agreement was executed between the parties on 06.08.2019 the complainants after going through and understanding the terms and conditions and payment schedule duly executed the application form/allotment letter/BBA.
 - III. That the application form (clause 4)/allotment letter/BBA clearly stipulated and defined the booking amount (earnest money) to be 10% of the sale consideration ("earnest money") which was meant to ensure performance, compliance and fulfilment of obligations and responsibilities of the buyer/complainant. It is further submitted that the 10% earnest money was a genuine pre-estimate of damages and was not in the nature of penalty. The complainants did not raise any objections w.r.t to the terms and conditions before or at the time of executing the contractual documents
 - IV. That the entire premise of the instant complaint is that the respondent has arbitrarily raised invoices and has not uploaded the QPR. The respondent has strictly adhered to the terms and conditions of the payment schedule and raised invoices in compliance of the agreement.

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- V. That the complainants themselves in their complaint annexed the architect certificate which clearly depicts that the construction-related milestones were achieved in a timely-manner.
- VI. That the grievance with respect to updating of QPR was already being adjudicated by this Authority in said project (RERA-GRG-163-2019) wherein the respondent had duly filed its reply and on the adjudication of the same. This Authority has granted extension for submission of QPR and the same was duly uploaded on the website of HARERA.
- VII. That the respondent had sent several reminder letters and granted opportunities vide letters dated 22.10.2022, 29.10.2022, 01.11.2022, 12.12.2022 & 18.01.2023 to come forward and make the payments as per the agreed payment plans, however the complainants failed to pay any attention to such reminders.
- VIII. That, as on 22.02.2023, the complainants are liable to pay a sum of Rs.58,87,365/- which is exclusive of interest calculated in accordance with the terms agreed between the parties towards the payment of the unit as per the agreed payment plan. They have not approached the Authority with clean hands as much as the complainants are trying to take advantage of their own wrong. It is reiterated that the complainants have committed a material breach of their obligations under the agreement and has filed the present complaint in a mala fide & vexatious manner.
- IX. That the complainants have tried to mischievously seek relief of reinstatement of the unit despite the fact that it is the complainants who have committed material breach of agreement by not making timely payments which was the essence of the contract.

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- X. That despite repeated reminders, the complainants paid no heed to the same and as such the respondent had no other option but to terminate the unit in terms of the agreement and duly intimated the complainant about the calculation of forfeiture of earnest money which was the legal entitlement of the respondent.
- XI. That the complainants now at this stage cannot be allowed to take the plea of reinstatement of the unit in as much as the Hon'ble Authority cannot be compelled to rewrite the terms and conditions of the contract.
- XII. That the application form clearly stipulated and defined the booking amount (earnest money) to be 10% of the sale consideration ("earnest money") which was meant to ensure performance, compliance and fulfilment of obligations and responsibilities of the buyer/complainant. It is further submitted that the 10% earnest money was a genuine pre-estimate of damages and was not in the nature of penalty.
- XIII. That in the present case, the parties clearly agreed and understood that the earnest money shall be 10 percent of the basic sale price and since it was a security for due performance of obligations by the complainants.
- XIV. That the complainants neither at the time of signing the agreement nor filing the instant complaint has challenged the correctness and the legality of the earnest money clause.
- XV. That it is more than evident that the complainants have committed a default and is now mischievously exiting from the project on account of fall in the market prices and as such the respondent is entitled to forfeiture of the amount as per the agreement. That the complainants

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only concocted a fictitious story to avoid timely payments and accrued interest on delayed payments.

7. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

9. 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 absolute territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

10. 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;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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11. So, in view of the provisions of the Act of 2016 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 complainants at a later stage.

F. Findings regarding relief sought by the complainant.

F.I Direct the respondent to set aside the termination/cancellation of allotment of the above-mentioned unit.

12. The complainants submits that they have allotted a unit bearing no. 0706 at 7th floor in Tower-3 vide allotment letter dated 16.07.2019, under possession linked payment plan. Thereafter, an agreement to sell was executed between the parties on 06.08.2019, vide which a unit bearing no. 0706 at 7th floor in Tower-3 admeasuring 139.05 sq. metrs was allotted to them. The complainants paid an amount of Rs.44,15,746/- against the total sale consideration of Rs.1,47,18,731/-. As per clause 7 of the agreement, the respondent was required to hand over possession of the unit was to be delivered within stipulated time i.e. by 25.02.2023 with a grace period of 12 months. However, the respondent/ promoter has sought grace period of 12 months as may be approved by this Authority. As per HARERA notification no. 9/3-2020 dated 26.05.2020, for the projects having completion date on or after 23.05.2020, the authority allowed grace period of 6 months only. Hence, actual due date of possession comes out to be 25.08.2023.
13. The respondent has issued various reminder cum demand letters to the complainants and requested to pay the outstanding dues, but the complainants has failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide letter dated

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23.02.2023 vide which the respondent also informed the complainant to forfeit the entire amount paid by them.

14. The respondent submitted that the complainant is a defaulter and has failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 23.02.2023. Accordingly, the complainants failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

Now, the question before the authority is whether this cancellation is valid or not?

15. It is matter of record that the complainant booked the aforesaid unit under the above-mentioned payment plan and paid an amount of Rs.44,15,746/- towards total consideration of Rs.1,47,18,731/- which constitutes 30% of the total sale consideration. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per builder buyer agreement dated 06.08.2019. The respondent after giving reminders dated 03.10.2022, 22.10.2022, 29.10.2022, 01.11.2022, 12.12.2022, 18.01.2023 for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid numerous reminders, the complainant has failed to take possession and clearing the outstanding dues. The respondent has given sufficient opportunity to the complainants before proceeding with termination of allotted unit. Thereafter, the respondent cancelled the unit of the complainant vide termination letter dated 23.02.2023 after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and

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the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.

16. Now, another question arises before the authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainant has not sought the relief of the refund of the entire paid-up amount while filing of the instant complaint or during proceeding. It is pertinent to note here that there is nothing on record to show that the balance amount after deduction as per relevant clause of agreement has been refunded back to the complainant. The authority observed that rule 28(2) of the rules provides that the authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The authority will not go into these technicalities as the authority follows the summary procedure and principal of natural justice as provided under section 38 of the Act of 2016, therefore the rules of evidence are not followed in letter and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under: -

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of

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plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

17. From the above, the intention of the legislature it is quite clear that the Act of 2016 has been enacted to protect the interests of the consumer in real estate sector and to provide a mechanism for a speedy dispute redressal system. It is also pertinent to note that the present Act is in addition to another law in force and not in derogation. In view of the same, the authority has power to issue direction as per documents and submissions made by both the parties.
18. The issue pertaining to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the

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Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"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."

19. So, keeping in view the law laid down by the Hon'ble Apex Court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (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 termination/cancellation 23.02.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Direct the respondent to provide the QPR and CA/Architech report in regard to completion of superstructure of Tower-3.

F.III Direct the respondent to allow the physical visit to the complainants of the said project site.

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F.IV Direct the respondent to waive off the interest charged in the form of delayed payment.

20. In view of the findings detailed above on issues no. 1, the above said relief become redundant as the complete amount paid by the complainants is being refunded back.

G. Directions of the Authority

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- I. The respondent is directed to refund the paid-up amount of Rs.44,15,746/- after deducting 10% of the sale consideration of Rs.1,47,18,731/- being earnest money along with interest at the rate of 10.85% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, on the refundable amount, from the date of termination/cancellation i.e., 23.02.2023 till its realization.
 - II. 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.
22. Complaint stands disposed of.
23. File be consigned to registry.

Dated: 07.03.2024

V.1-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram