

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

**Complaint no.:** 636 of 2024  
**Date of complaint:** 05.03.2024  
**Order pronounced on:** 23.01.2025

Rajneesh Tandon

**R/o:** - C-103, NPSC CGHS Ltd., Plot no.5, Sector-2,  
Dwarka, New Delhi-110075

**Complainant**

Versus

Wonder City Buildcon Pvt. Ltd.

**Regd. office at:** 3<sup>rd</sup> floor, UM House, Plot no.35-P,  
Sector 44, Gurugram, Haryana

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Sunil Kumar Verma (Advocate)

Shri Saurabh Gauba (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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

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### A. Unit and project related details.

2. The particulars of unit details, 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.no.	Particulars	Details
1.	Name of the project	"Godrej Aria", Sector 79 Gurugram
2.	Nature of project	Residential
3.	Unit no.	GODARF 0202, 2 <sup>nd</sup> floor, tower-F (page 53 of complaint)
	Unit admeasuring	955 sq. ft. (carpet area) 1351 sq. ft. (super area) (page 52 of complaint)
4.	Application form	29.08.2014 (page 42 of reply) <i>(*Note: Inadvertently date was recorded as 02.09.2014 during proceedings dated 23.01.2025)</i>
5.	Allotment letter	20.03.2015 (page 52 of complaint)
6.	Date of flat buyer agreement	Annexed but unexecuted
7.	Possession clause	NA
8.	Total sale consideration	Rs.1,00,34,754/- (as per application form page 35 of reply)
9.	Total amount paid by the complainant	Rs. 25,90,170/- (as per SOA dated 28.04.2017 page 43 of complaint)
10.	Reminder for payment	19.02.2015, 16.03.2016, 27.07.2016, 23.02.2017 (page 115-118 of complaint)
11.	Reminder for execution of agreement	05.10.2016, 05.06.2017, 23.12.2016, 06.03.2017, 26.10.2016 (page 51-54 of reply)
12.	Pre-Termination Letter	25.10.2017 (page 93 of reply)
13.	Termination Letter	29.06.2018 (page 94 of reply)
14.	Occupation Certificate	01.10.2019 (page 61 of reply)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- I. That the respondent through its authorized representative and executives approached the complainant and informed that they are working as a real estate developer and own huge land and all requisite permission(s) and inclined to construct a residential complex namely "Godrej Aria" situated at in the Revenue Estate of Sector-79, Gurugram, Tehsil & District Gurugram, Haryana. The authorized representative of the respondent informed the complainant that the above-mentioned project is in pre-launch stage and lured the complainant to book the unit in project by trapping the complainant by using lucrative claims viz purported project.
- II. That the respondent induced the complainant and lured him to book a residential unit in the respondent's residential project. That in good faith and interest upon, the complainant showed interest in the proposal and booked a residential unit. The total consideration of the unit admeasuring 1351 sq. ft. and built-up area 126 sq. mtr., having Carpet area (including balcony area) of 88.72 sq. mtr., equivalent to 955 sq. fts. in the Tower-F being Rs.1,00,34,754/- vide an application dated 12.09.2014. The complainant paid Rs.25,90,170/- in total till date from the date of booking. In this regard an apartment buyer's agreement was executed on 24.02.2015 between the parties.
- III. That the complainant booked the unit in the above-mentioned project on 12.09.2014 and respondent failed to execute the buyer-seller agreement since then. The complainant approached the respondent many a time during the year 2014 to 2023 but the respondent was reluctant to execute the agreement to sell/purchase.
- IV. That in the year 2017 when the complainant visited the site of the project where he has booked the unit, was shocked when he came to know that the

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respondent has sold the said unit to some other person. Thereafter the complainant asked the respondent as to why the respondent has sold the said unit to some other person, the respondent did not give any satisfactory reply, to which the complainant asked the respondent to refund his money of Rs.25,90,170/-, the respondent started avoiding the complainant on one pretext or the other.

- V. That by illegally selling the unit to some other person without the consent and knowledge of the complainant and not returning the money, the complainant has been subjected to unethical/unfair trade practice as well as subjected to mental and physical harassment in the guise of a biased. The above said acts and conducts of the respondent clearly reveals that the respondent with prejudice has been indulging in unfair trade practices and has also been providing gross deficiency in services and thereby causing deficiency in services. All such act and omission on the part of the respondent has caused an immeasurable mental stress and agony to the complainant. That by having intentionally and knowingly induced and having falsely misrepresented to the complainant and thereby making him to act in accordance to its misrepresentations, and intentionally and deliberately terminating the unit due to non-payment of balance 70% amount are liable to make as being requisitioned/claimed by the complainant. Thereafter the complainant sent a letter on dated 24.12.2021 and also sent several mails to the respondent to return his amount.

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

4. The complainant has sought following relief:

- I. Direct the respondent to refund the total paid-up amount along with interest.

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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.

**D. Reply by the respondent.**

6. The respondent has contested the complaint by filing reply on the following grounds: -

- i. That the complainant made an application to purchase a flat in the project "Godrej Aria" admeasuring 1351 Sq. feet and build-up area 126 sq. meter, having a carpet area of 955 Sq. Feet for a total consideration of Rs.1,00,34,754/- vide application form dated 12.09.2014. Pursuant to the application, the complainant was allotted an apartment bearing no. F0201 in the respondent's project, Godrej Aria vide allotment letter dated 20.03.2015.
- ii. Thereafter, the respondent on 20.03.2015 sent BBA to the complainant for its execution however the complainant despite the repeated reminder failed to execute the same. The complainant signed the application form fully aware that he shall be liable to make the payments as per the progress of construction opted by the complainant. The complainant opted for a construction linked plan and unconditionally undertook to make payment as per the schedule of construction mentioned in the payment plan schedule III incorporated under the application form.
- iii. Further, clause 14 of the application form categorically provided that the complainant post the allotment of unit shall come forward and execute the builder buyer agreement failing which the respondent shall be entitled to cancel the unit and forfeit the earnest money as defined under the application form/allotment letter. Clause 15 clearly stipulated and defined the booking amount to be 20% of the total basic sale price that was to be treated as earnest money.

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- iv. That as per clause 18 of the application form, the complainant agreed that in event of failure on part of complainant to make payments of the instalments due as set out in the application form or allotment letter, the respondent shall be entitled to cancel/terminate the transaction and forfeit the booking amount and non-refundable amounts due from the complainant.
- v. That the complainant has till date made a payment of Rs.25,90,170/- towards the total sale consideration of the Unit i.e. Rs.1,00,34,000/- and thereafter failed to come forward and execute BBA and make balance payments as demanded as per the agreed payment schedule incorporated under the contractual documents.
- vi. That the respondent has strictly adhered to the terms and conditions of the contractual documents and raised invoices as per the agreed payments schedule incorporated under the contractual documents. The respondent has completed the project with all the basic amenities within the promised timelines. The respondent has ensured that all the progress made in the construction of the project are as per the timelines agreed to between the parties. The respondent informed to the complainant via e-mails about the progress and duly raised invoices for the same in the name of the complainant as per the payment plan agreed between the parties.
- vii. That the complainant is in flagrant violation of the obligations as envisaged in the application form and allotment letter in as much as the complainant failed to make the payments and committed a default in terms of clause 18 of the application form. The complainant has failed to make payments towards the construction linked invoices and as on 29.06.2018 a sum of Rs.71,72,190/- is the principal outstanding towards the total consideration of the apartment. That as on 29.06.2018, a sum of

Rs.12,23,197/- is pending towards the interest as agreed to be payable by the complainant.

- viii. That the complainant agreed and undertook to pay all amounts due to the respondent as per the payment plan opted by the complainant. That in adherence of the payment plan, the respondent had raised a demand letter dated 12.05.2016 on the completion of the ground floor and requested the complainant to clear the outstanding dues by 30.05.2016 to avoid the accrual of any interest/penal consequences. Since the complainant from the inception had not honoured the payment of the outstanding dues raised by the respondent, the respondent was constrained to issue reminder letters dated 19.02.2015, 16.03.2016, 27.07.2016, 22.12.2016, 11.01.2017 and 23.02.2017. The complainant was also under the obligation to come forward and execute the builder buyer agreement however despite the repeated reminders vide reminder letter dated 05.10.2016, 26.10.2016, 23.12.2016, 06.03.2017 and 05.06.2017, neither the respondent came forward to execute the BBA nor made any payment towards the balance consideration.
- ix. That the complainant stopped making payments in the year 2016 and chose to ignore all the reminder letters and calls from the respondent. Owing to continuous default on the part of the complainant to clear his outstandings, the respondent was constrained to issue a pre-termination letter vide dated 25.10.2017 thereby granting a final opportunity to the complainant to come forward and clear his outstanding dues as per invoices which were raised in accordance with the payment plan agreed to between the parties.
- x. That despite various communications made by the respondent to the complainant, thereby calling upon the complainant to come forward and clear his outstanding dues, no heed or attention was paid by the

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complainant, which led to an event default on the part of the complainant. The respondent was left with no option but to terminate the unit allotted to the complainant. The respondent was constrained to issue a termination letter dated 29.06.2018 thereby terminating the unit allotted to the complainant. That the complainant has not approached the Authority with clean hands as much as the complainant is trying to take advantage of its own wrong.

- xi. That it is the complainant who has committed a material breach of its obligations under the agreement and has filed the present complaint in a mala fide manner. That, the parties clearly agreed and understood that the earnest money shall be 20 percent of the basic sale price and since it was a security for due performance of obligations by the complainant. The complainant 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.
- xii. That admittedly it is the complainant who has committed an event of default by not adhering to the payment plan as per the terms and conditions of the agreement despite the same being ready in all aspects. That the complainant has intentionally breached the terms and conditions of the agreement thereby causing continuous financial losses to the respondent.

7. All other averments made by the complainant were denied in toto.

8. 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 those undisputed documents and oral as well as written submissions made by the parties.

#### **E. Objection raised by respondent.**

**E.I Objection regarding complaint being barred by limitation.**

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9. The respondent contends that the complaint is not maintainable as it is barred by limitation, citing that the unit of the complainant was terminated vide termination letter dated 29.06.2018 and the complainant filed the complaint in the year 2024.

10. Further, as per clause 18 of the application form, the respondent /promoter is entitled to forfeit the earnest money or the entire amount paid by the applicant, whichever is less on cancellation/termination of the unit on non-payment of the outstanding amount against the unit. Clause 18 of the application form is reproduced as under for ready reference:

***“18. If there is any delay in payment of any installment due from the Applicants), then the Applicant shall be liable to pay simple interest on such delayed payments at the rate of 15% per annum from the due date till the date of such payment is actually received by the Company. In case of Applicants) fails to pay the due installment together with interest payable thereon within a period of 60 days from the payment due date, the same shall be construed as default and the Company may, at its sole discretion, cancel the allotment and/or terminate the apartment buyer's agreement and be entitled to forfeit the Earnest Money or the entire amount paid by the Applicants to the Company till that date, whichever is less, and balance money (if any) will be refunded by the Company, after deducting / adjusting the interest on overdue payments calculated at the rate of 15% per annum, without any interest or any compensation for any consequences thereof, and the Applicants) shall have no other claim whatsoever against the Company.”***

11. Clause 15 of the application form dated 29.08.2014 defines earnest money to be 20% of the basic sale price of the unit allotted to the complainant. Clause 15 of the application form is reproduced as under for ready reference:

***“15. It is understood by the applicant(s) that 20% of the total basic sale price (as mentioned in section F herein before) shall be construed, considered and treated as “Earnest Money”, to ensure the performance, compliance and fulfilment of his/her obligations under this application and allotment letter.”***

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12. The Authority notes that the clauses in the application form regarding the deduction of 20% of the basic sale price by the promoter are one-sided and indicate a dominant position. Even if the deduction clause is considered valid, the basic sale price of the unit, as stated in Section F (Details of Pricing) of the application form dated 29.08.2014 (Annexure R2), is Rs.84,42,399/-. Accordingly, after deducting 20% as earnest money being less, the respondent was obligated to refund at least the balance amount i.e. Rs.9,01,690/- (Rs.25,90,170/- minus Rs.16,88,480/-) to the complainant. However, instead of deducting only the earnest money, the respondent forfeited the entire amount of Rs.25,90,170/- as per the termination letter dated 29.06.2018. This action directly violates the terms of the application form itself by not refunding the balance amount after deducting the earnest money. Therefore, the cause of action remains ongoing, and the complaint cannot be considered time-barred.

**F. Jurisdiction of the authority.**

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.I Territorial jurisdiction**

14. 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.

**F.II Subject matter jurisdiction**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:



**Section 11.....(4) The promoter shall-**

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

16. 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 complainants at a later stage.

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

**G.I Direct the respondent to refund the total paid-up amount along with interest.**

17. The complainant vide application form dated 02.09.2014 applied for a residential unit in the project of the respondent. Thereafter, a unit no. GODARF 0202, 2<sup>nd</sup> floor, tower-F admeasuring 955 sq. ft. carpet area was allotted to the complainant in the project "Godrej Aria", situated at Sector 79 Gurugram. The complainant has paid Rs.25,90,170/- against the subject unit.
18. The respondent submitted that the subject unit was cancelled due to non-payment by the complainant as no payment was made after 2015. Also, a copy of agreement was sent to the complainant but was never returned and complainant never came forward for refund of the deposited amount.
19. On consideration of documents available on record and submissions made by both the parties the Authority is of view that on the basis of provisions of the allotment, the complainant was allotted above mentioned unit for a total sale consideration of Rs.1,00,34,754/-. The complainant paid a sum of Rs.25,90,170/- to the respondent against the allotted unit. However, no BBA was executed in this regard.



21. Upon examining the documents submitted by both parties, the Authority observes that the various reminders were sent by the respondent to the complainant before cancelling the unit to clear the outstanding dues and to execute the buyer's agreement. However, the complainant neither cleared the outstanding dues nor executed the agreement.
22. It is observed that as per Section 19(6) & (7) of the Act, 2016, the allottee was under an obligation to make timely payment as per the payment plan towards consideration of the allotted unit. The respondent sent demand/reminder letters dated 19.02.2015, 16.03.2016 and 27.07.2016 to the complainant regarding payment of outstanding dues towards the subject unit. However, the complainant did not pay the outstanding dues. Further, the respondent issued a termination letter dated 29.06.2018 and forfeited the entire paid-up amount.
23. In view of the above findings the Authority observes that the unit of the complainant was cancelled by the respondent after issuing proper reminders to pay outstanding dues and execute the buyer's agreement. Therefore, the termination letter dated 29.06.2018 is hereby held to be valid in the eyes of law. However, in the present complaint, the complainant is not challenging the termination of the unit but is instead seeking a refund of the amount paid. Notably, the respondent has failed to comply with the agreed terms regarding the deduction of earnest money upon cancellation, as it has not refunded the remaining balance amount, as deliberated in the objection (E.I) above. Accordingly, the cause of action remains ongoing.
24. However, Hon'ble Apex court of the land in ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Ors., (2015) 4 SCC 136***, has 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 a 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 Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was formed 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"*

25. 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, the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus, keeping in view the aforesaid factual and legal provisions the respondent is directed to refund the paid-up amount of Rs.25,90,170/- after deducting the earnest money which shall not exceed the 10% of the sale consideration along with interest at the rate of 11.10% (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

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Development) Rules, 2017, from the date of termination letter i.e. 29.06.2018 (*\*Note: Inadvertently date was recorded as 27.06.2018 during proceedings dated 23.01.2025*) till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**H.Directions of the Authority.**


26. 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):

- I. The respondent is directed to refund the paid-up amount i.e. Rs.25,90,170/- to the complainant after deducting 10% of the sale consideration being earnest money along with interest at the rate of 11.10% p.a. on such balance amount from the date of termination letter i.e. 29.06.2018 till its realization.
- II. A period of 90 days is given to the respondent to comply with the direction given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.

**Dated: 23.01.2025**

  
**Vijay Kumar Goyal**  
**Member**  
(Haryana Real Estate Regulatory  
Authority, Gurugram)