

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

Date of filing :	24.01.2024
Order reserved on :	23.01.2025

Rohit Datta

R/o: 176, Sargodha Apartment, Plot No. 13, Sector 7, Amber Hai,
Dwarka, South West Delhi-110075

Complainant

Versus

1. Godrej Highview LLP

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

2. M/s. AUM Shri Hotels & Resorts Pvt. Ltd.

Regd. office: E-36 Model Town, New Delhi-110093

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sanjeev Kumar Sharma (Advocate)

Shri Kapil Madan (Advocate)

**Complainant
Respondents**

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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

A

2. The particulars of the project, the details of the sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Godrej Nature Plus", Phase- 1, Sector-33, Sohna, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	18.744 acres
4.	DTCP License	01 of 2014 dated 03.01.2014
5.	RERA Registered/ not registered	265 of 2018 dated 30.01.2018 valid up to 30.01.2028 18 of 2018 dated 15.06.2021
6.	Unit No.	J-1902, on 19 th Floor, Tower-J (Page no. 19 of complaint)
7.	Date of allotment	17.07.2020 (Page no. 46 of complaint)
8.	Date of registration of builder buyer agreement	11.09.2023 (Page 16 of complaint)
9.	Possession clause	7.1 Possession <i>The Promoter assures to hand over possession of the Apartment for Residential along with parking-- (if applicable) to the Allottee on or before 30th June 2023 unless there is delay or failure due to force majeure", war, flood, drought, fire, cyclone, earthquake, epidemic, pandemic or any other calamity caused by nature, reasons beyond the control of the Promoter, Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project (Force Majeure). If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment for Residential.</i> (Page 26 of complaint)
10.	Due date of possession	30.06.2023



		(As per possession clause of BBA at page 26 of the complaint)
11.	Basic Sale consideration	Rs.73,93,373/- (Page no. 20 of complaint)
12.	Total amount paid by the complainants	Rs. 11,70,000/- (As per SOA dated 16.04.2019 at page no. 46 of reply)
13.	Demand letters/ reminders dated	18.09.2023, 17.10.2023, 19.09.2023, 07.10.2023, 18.10.2023, 02.1.2023, 03.11.2023, 24.11.2023
14.	Occupation certificate	03.04.2023 (Page 68 of reply)
15.	Cancellation Letter	26.12.2023 (Page no. 82 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- a. M/s AUM Shri Hotels & Resorts (Pvt.) Ltd. is the owner of land admeasuring 75857.156 sq. meter i.e. 18.744 acres of land in Tehsil Sohna Distt. Gurugram which was earmarked for the purpose of building residential project and obtained license sanction no. 1 of 2014 from DGTCP Haryana by promoter M/s Godrej Highview LLP (a limited liability Partnership). Such residential project as described above was advertised and applications were invited from public from open market.
- b. Meanwhile the promoters obtained HRERA License No. RC/REP/HRERA/GGM/2018/18 dt. 15-06-2021 after the applications were invited from people like complainant Sh. Rohit Dutta S/o Sh. Pishori Lal aged 48 years R/o 176 Sargodha Apartment Plot No. 13, Sector 7 Amber Hai, Dwarka, South West Delhi-75 vide application No. 20/6/0054041 dated 30-06-2020.
- c. The promoter allotted apartment no. 1902 having carpet area of 86 sq. mt.

on the 19th floor in building No. J with 1 basement parking vide allotment letter dated 27-07-2020 against the payment through cheque. The initial payment @ 10% i.e. 11,70,000/- (clause 1.10) of the total sale consideration was made, which is Rs. 1,07,00,000 as per clause 1.2 of terms of agreement executed on 11-09-2023.

- d. The allottee made payment of Rs. 11,70,000/- at the time of allotment of apartment incidentally which is part of builder buyer's agreement executed and registered between the parties on 11-09-2023 after a lapse of almost 3 years and 3 months from the date of booking and allotment of apartment no. J/1902.
- e. The payment plan was agreed orally between the parties as per agreement to sale, where rest of the payment was supposed to be paid once agreement to sale is executed as per the norms of HARERA and application for obtaining occupancy certificate is made by the promoter to the statutory authority but the promoter started raising demands without registered agreement to sale, which was ultimately executed on 11-09-2023 on the pressures initiated by the allottee himself on promoter. Such demands on emails are attached for your scrutiny.
- f. Both allottee and promoter were under communication till Dec-26-2023 for remaining payments to be made where allottee was requesting for dispensation of illegal interest added in the due payments to be made to the promoter. On 26 December 2023, Tuesday the allottee received a mail where allotment application dated 30-06-2020 and allotment letter against flat no. J-1902 was terminated / cancelled by the promoter.
- g. On receipt of such cancellation letter on 26th Dec-2023 the allottee approached the promoter for withdrawing such cancellation letter till 15-01-2024 at least and to receive the pending amount till date. Threatened by the Modus operandi of promoter the allottee is hereby filing the complaint

u/s 11(5) of the RERA act immediately before the HRERA authority, Gurugram.

C. Relief sought by the Complainants:

4. The complainants have sought the following relief(s):

- i. To restrain the promoter for alienating the apartment to third-party till decision of the complaint.
 - ii. Direct the respondent to withdraw the cancellation and handover the physical possession of the unit against the installments said to be due immediately.
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) of the Act to plead guilty or not to plead guilty.

D. Reply by the Respondent:

6. The respondent had made the following submissions in the reply:

- a. The Complainant after doing its own independent research decided to book an unit bearing no.J-1902 in Tower J with the respondent in its project namely "GODREJ NATURE PLUS" situated at Sector 33, Gurugram, Haryana vide an application form dated 30.06.2020 and paid an amount of Rs. 5,00,000/-
- b. The complainant unequivocally agreed to make timely payments as per the payment plan provided in the application form. It was made clear to the complainant that timely payment will be the essence of the transaction. The respondent allotted unit bearing no. J-1902 on the 19th Floor in Tower No. J vide allotment letter dated 17.07.2020. The complainant agreed to make payments as per the payment plan incorporated under cost sheet and the annexure ii of the allotment letter.
- c. The respondent raised a payment invoice on 10.08.2020 for an amount of Rs. 5,70,000/- within 60 days from booking which was subsequently paid



by the complainant on 27.08.2020 after which the complainant had paid a total amount of Rs. 11,70,000/- to the respondent no.1 which was 10% of the total cost of the apartment. In addition to this, the respondent no.1 as a goodwill gesture had also given a timely rebate to the tune of Rs. 1,00,000/- to the complainant on 24.02.2021.

- d. A builder buyer agreement was entered into between the parties on 11.09.2023 in pursuance to which a demand was raised by the respondent on 18.09.2023 payable by 06.10.2023 but the same was not honored by the complainant.
- e. In pursuance to this, the respondent no.1 had again issued a letter titled as "DEMAND LETTER-1 TOWARDS PAYMENT OF MILESTONE- ON APPLICATION OF OC" dated 18.09.2023 to clear the amount of Rs. 89,95,000.17/- by 06.10.2023 without imposing any delayed payment interest failing which an interest will be charged on the due amount and the interest on the delayed payment would also attract an interest GST @18% Thereafter, the respondent again sent a reminder for the demand vide demand letter 2 dated 07.10.2023.
- f. It is submitted that clause 1.10 of the BBA categorically provided that 10% of the total sale price shall be treated as "booking amount" (earnest money). It is further submitted that clause 5 of the BBA clearly stated that the complainant shall abide by the payment schedule incorporated under the agreement. As per clause 7.5 of the BBA, it was agreed between the parties that where the complainant proposes to cancel/withdraw the allotment of unit, then the respondent is entitled to forfeit the booking amount and interest component on delayed payments.
- g. That clause 9.3 of the BBA elucidated the event of default on the part of the complainant and it was agreed that in case the complainant failed to make payments after notice from the respondent, then the respondent would be

A

entitled to terminate the allotment and refund the amount deposited after forfeiting the booking amount agreed as per the agreement.

- h. The complainant had only made a payment of Rs.10,70,000/- towards the balance consideration and post the execution of BBA the complainant has failed to make any further payments due as per the payment schedule despite repeated reminders and opportunities granted by the respondent.
- i. The respondent has strictly adhered to the agreement between the parties and raised invoices as per the payment schedule incorporated under the application form/allotment letter/BBA. The respondent has completed the project within the promised timelines and duly obtained the occupation certificate dated 03.04.2023 within the promised timelines.
- j. The complainant failed to make the payments and committed a default in terms of the Agreement. It is submitted that the complainant has failed to make payments towards the payment plan and as on 24.11.2023 a sum of Rs. 89,95,000/- as per the statement of accounts and Rs.1,31,109/- as per the statement of interest is outstanding and payable by the complainant.
- k. The complainant despite assuring to make full payment along with interest again failed to do so despite sending reminder letters and emails. Owing to a continuous default by the complainant, the respondent was constrained to issue the termination letter dated 26.12.2023 as per the terms of agreement.
- l. The respondent being a customer centric organisation granted one more opportunity to the complainant to make the balance payment along with the reinstatement charges and interest vide email dated 04.01.2024.
- m. It may not be out of place to state here that non-payment by the complainant resulted in considerable financial hardship on the respondent who had to ensure the progress of the construction without any interim agreed contribution from the complainant.



n. It is submitted that there is no violation of any of the provisions and as such the present complainant is liable to be dismissed. It is further submitted that the present complaint is wholly erroneous and misconceived. It is submitted that the present complaint is devoid of any cause of action as admittedly the respondents have raised the invoices as per the agreed timelines. Thus, the instant complaint is liable to be dismissed on account of concealment of material facts and documents, besides being vitiated on account of the false, vexatious and unsubstantiated allegations levelled by the complainant.

7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complainant can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority: सत्यमेव जयते

8. 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

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 the entire Gurugram District for all purposes 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the agreement for sale. Section 11(4)(a) is reproduced below

Section 11(4)(a)

R

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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

11. Hence, given 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.

F. Findings on relief sought by the complainants:

F.I Direct the respondent to withdraw the cancellation and handover the physical possession of the unit against the installments said to be due immediately.

F.II Direct restrain the promoter for alienating the apartment to third-party till decision of the complaint

12. The complainants were allotted a unit in the project of respondent "Godrej Nature Plus" at sector 33, Sohna, Gurgaon vide allotment letter dated 15.05.2018. The buyer's agreement was executed on 11.09.2023 itself and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 11,70,000/- against a basic sale consideration of Rs. 73,93,373/-.

13. The respondent vide letters dated 18.09.2023, 17.10.2023, 19.09.2023, 07.10.2023, 18.10.2023, 02.11.2023, 03.11.2023 and 24.11.2023, raised demand for due instalment which was due as per the milestone payment plan opted by the complainant. After issuing several reminders for payment of outstanding dues, the respondent finally terminated the allotment of the unit on 26.12.2023 on failure of payment of outstanding instalments.

14. The complainant -allottee are under an obligation to make payment of

outstanding dues as agreed between the parties vide agreement dated 11.09.2023. As per section 19(6) of the Act of 2016, every allottee who has entered into an agreement to take an apartment, plot or building under section 13 is responsible to make necessary payments in the manner and within the time as specified in the said agreement. In the present case, the complainant-allottee has not complied with the terms of the agreement as the complainant despite issuance of several reminders by the respondent had only remitted 11% of the sale consideration. The respondent obtained the occupation certificate on 03.04.2023. The termination of the unit was subsequently effected due to the complainant's default in failing to pay the outstanding dues associated with the unit. Consequently, the cancellation of the unit, dated 26.12.2023, is hereby stands valid.

15. The respondent in its reply contended that as the relief sought by the complainant in the complaint is not maintainable due to cancellation of the unit on 26.12.2023, however, no amount has been refunded till date.
16. Now when the complainant approached the Authority to seek delay possession charges and possession, it is observed that the unit was terminated due to default on part of the complainants, the Authority is of view that a promoter cannot retain the amount paid by the complainant after the unit got terminated and the complainant herein are entitled for refund after deduction of earnest money and the respondent-builder is entitled to forfeit the earnest money of the total sale consideration.
17. The issue with regard 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 Urs. 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 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 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."

18. 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. So, the respondent/builder is directed to refund the amount received from the

complainants i.e., Rs. 11,70,000/- after deducting 10% of the basic sale consideration and return the remaining amount 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 Development) Rules, 2017, from the date of cancellation i.e., 26.12.2023 till the actual date of refund of the amount within timelines given in rule 16 of the Haryana Rules 2017 ibid.

G. Directions issued by the Authority:


21. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with 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 is directed to refund the paid-up amount of Rs. 11,70,000/- after deducting the earnest money which shall not exceed the 10% of the basic sale consideration i.e. Rs.73,93,373/- along with the interest at the prescribed rate i.e., 11.10% on the such balance amount from date of cancellation till actual date of realization.
- II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

22. Complaint stands disposed of.

23. File to be consigned to the registry.

Dated: 06.02.2025


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