

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

Complaint no. : 3311 of 2023  
Date of complaint : 12.07.2023  
Order reserved on : 08.05.2025

Ravinder Kumar

**R/o:** FW 10-05A, Fairway West, M3M Golf Estate, Golf  
Estate Road, Golf Course Extension Road, Sector-65,  
Gurugram, Haryana-122018.

**Complainant**

Versus

M/s Orris Infrastructure Pvt. Ltd.

**Regd. Office at:** - Orris HQ, J-10/9, DLF Phase-II, M.G.  
Road, Gurugram, Haryana-122002.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Nipun Rao (Advocate)

Ms. Charu Rustagi (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 provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, 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. No.	Particulars	Details
1.	Name of the project	"ORRIS GATEWAY"
2.	Location of the project	Sector 82 A, Gurugram, Haryana
3.	Nature of the project	Commercial
4.	Project area	9.46875 acres
5.	DTCP license no. and validity status	82 of 2021 dated 18.10.2021 Valid up to 17.10.2026
6.	RERA Registered/ not registered	<b>Registered</b> 85 of 2021 dated 20.12.2021 Valid up to 31.12.2024
7.	Unit no.	SCO Plot no. 95, (As per page no. 4, 14 & 17 of the complaint)
8.	Unit area admeasuring	104.74 sq. yds. (super area) (As per page no. 4, 14 & 17 of the complaint)
9.	Date of booking	16.05.2023 (As per page no.15 of the complaint)
10.	Email by respondent (W.r.t receipt of booking form for plot no. 95 and for discount of Rs.5 lacs)	20.05.2023 (at page 17 of complaint)
11.	Allotment Letter	Not issued
12.	Date of execution of BBA	Not executed
13.	Possession clause	Not provided
14.	Due date of possession	Cannot be ascertained
15.	Total sale consideration [including BSP, EDC, IDC & other charges]	<b>Rs.3,61,35,300/-</b> [Rs.3,45,000/- X 104.74 sq. yds.] (As per email dated 20.05.2023 at page no.17 of complaint)

16.	Amount paid by the complainants	Rs.5,00,000/- (as per bank detail at page no.15-16 of complaint)
17.	Payment Plan	Not provided
18.	Occupation certificate	Not provided
19.	Offer of possession	Not available

**B. Facts of the complaint**

3. The complainant has made the following submission: -

- I. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "Orris Gateway, Sector 82A, Gurugram", promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, the complainant booked a unit measuring 104.74 sq. yards in aforesaid project of the respondent for total sale consideration is Rs.3,61,35,300/-.
- II. That the complainant made payment of Rs.10,00,000/- to the respondent vide cheque and cash, the respondent duly accepted the payments. That respondent agreed to allot shop admeasuring 104.74 sq. yards in sector 82A, Gurugram to the complainant. That on 16.05.2023 the complainant made a payment of Rs.5,00,000/- through his cheque as the and Rs. 5,00,00/- through cash. The cash payment made by the complainant of Rs. 5,00,000/- was adjusted as a discounted amount and acknowledgment of the same was given by way of email dated 21.05.2023. The acknowledgement of the booking of the said unit was also given by the way of email from the company's email address dated 20.05.2023. At the time of booking of the aforesaid unit and after the payment, the respondent had agreed to execute the builder buyer agreement within 30-45 days from the date of booking.

The complainant regularly followed up the respondent for execution of the builder buyer agreement, but the respondent evaded the matter on one pretext or other. The respondent kept assuring the complainant that the possession of the unit would be handed over soon as the complainant had made the amount. However, for the reason best known to the respondent they never delivered executed the builder buyer agreement till date.

- III. That the complainant used to telephonically ask the respondent about the progress of the registration process of the BBA and the respondent always gave false impression that the registration process of the builder buyer agreement is going in full mode and the execution of the BBA will be done in few days. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the unit without entering into any agreement. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant.
- IV. That repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to execute the builder buyer agreement of the allotted shop to the complainant within stipulated period. The process of registration was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the respondent was to extract money from the innocent people.
- V. That due to this omission on the part of the respondent the complainant has been suffering from disruption on his financial arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondent had executed the builder buyer agreement of the unit on time.



- VI. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to execute the builder buyer agreement of the unit in question and the complainant is ready to pay the balance amount of the sale consideration as per the terms agreed between the parties in the email, but respondent has flatly refused to do so.
- VII. That the compliant may kindly be allowed and necessary direction as mentioned in relief sought may kindly be issued against the respondent and also direct the respondent to execute the builder buyer agreement in favor of complainant. According to the relief claimed by the complainant, this Authority only has jurisdiction to try the present complaint. The complainant reserves the right to seek compensation from the promoter for which he shall make a separate application before the Adjudicating Officer, if required.
- VIII. That no other compliant, suit, is pending or decided by any other Court or Forum between the same parties on same cause of action. Hence, the cause of action has been arising to the complainant to file the present complaint before the Authority

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

4. The complainant has sought following relief(s):
- Direct the respondent to execute the builder buyer agreement and restrain the respondent from allotting or selling the subject unit to any other party.
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 on the following grounds: -

- i. That the respondent denies each and every statement, submissions and contentions set forth in the complaint to the extent the same are contrary to and inconsistent with the true and complete facts of the case and the submissions made on behalf of the respondent in the present reply. That the averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.
- ii. That the complainant has approached this Authority with unclean hands and have tried to mislead this Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of *suppressio very suggestion falsi*. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
- iii. That the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the threshold.
- iv. That it is reiterated that the issue so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the respondent into succumbing to the pressure so created by the complainant in filing this frivolous complaint before this Forum and seeking the reliefs which the complainant is not entitled to as against the respondent.
- v. That the complainant herein in the present complaint does not fall under the category of "allottee" as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. As per the definition an allottee, someone to whom a property has been allotted, sold or transferred by the promoter,

wherein, in the present case the complainant has failed to produce even a single document which is executed in favor of the complainant pertaining to the alleged unit. Therefore, this complaint is liable to get dismissed prima facie on this ground itself.

- vi. That furthermore, the complainant cannot hold respondent liable for anything as per doctrine of privity of a contract as there is no agreement between the complainant and the respondent. That the respondent has neither issued any allotment letter to the complainant nor executed any agreement.
- vii. That in the complainant approached the brokers for a booking of a unit in the aforementioned project, after a discussion at length the complainant showed their interest by making a payment of Rs.5,00,000/- in the project in question vide cheque bearing no. 700205 drawn on 15.05.2023 from Yes Bank, Navi Mumbai branch.
- viii. That the complainant had executed an application form to make the booking in the aforesaid project and the said form along with cheque was received by the respondent only on 16.05.2023. Subsequent to which the sales executive of the respondent had informed the complainant regarding the negotiations taking place in the company qua the booking made by the complainant which was resolved by providing a discount to the complaint amounting to Rs.5,00,000/- provided at the time of execution of the agreement.
- ix. That at the time when the complainant was making the booking in the project in question, the complainant was informed to complete the 10% towards booking, however, despite assuring the complainant about the discount provided to him, the complainant miserably failed to complete the 10% of the booking amount.

- x. That the complainant in their complaint raising baseless allegation and putting completely false story before this Authority to extort illegal gains and harass the respondent.
  - xi. That the application form (annexed by the complaint) bears no signature/ stamp of the respondent and also the details mentioned therein has not been filled by the respondent.
  - xii. That there is no agreement, allotment, etc. executed between the complainant and respondent, neither a signed/ stamped application form.
  - xiii. That the respondent without deducting any charges, is ready to refund back the amount paid by the complainant since the respondent is in no position to allot any unit in the project in question to the complainant.
  - xiv. That having regard to the foregoing submissions the answering respondent submits the para wise reply to the complaint filed by the complainant which may be read along with the preliminary submissions made by the respondent in this reply.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Written submission made by both the parties:**

8. The complainant has filed the written submission on 08.05.2025 and the respondent has filed the written submission on 20.05.2025 & 21.05.2025. No additional facts apart from the complaint and submissions has been stated in the written submission.

**F. Jurisdiction of the authority**

9. 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**

10. 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**

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

12. 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.

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

**G. I Direct the respondent to execute the builder buyer agreement and restrain the respondent from allotting or selling the subject unit to any other party.**

13. In the present complaint, the complainant contended that on 16.05.2023, he had submitted an application form for allotment of a commercial unit/plot bearing no. SCO plot no.95, having admeasuring area 104.74 sq. yds. in

project "Orris Gateway" at Sector-82A, Gurugram and paid an amount of Rs.5,00,000/- on 16.05.2023 through cheque to the respondent/promoter. Further vide email dated 20.05.2023, the respondent confirms that it has received a booking form of Gateway 82, of SCO Plot No.95. Despite receipt of payment of Rs.5,00,000/-, the respondent has neither issued any allotment letter nor executed any buyer's agreement with him. Therefore, in the present complaint, the complainant intends to continue with the project and is seeking directions to the respondent to execute the builder buyer's agreement and restrain the respondent from allotting the subject unit to any other party.

14. The respondent has contended that the application for does not bear any signature or stamp of the respondent and all the details are filled in application form are hand written, which can be filled easily by anyone. Further submitted that the said application form does not contain any sale consideration and only details are provided that an application for was received for a unit as mentioned in application form. However, the same is not confirm allotted to the complainant. Moreover, during the proceedings dated 08.05.2025, the counsel for the respondent stated that no unit is available in the project.
15. Upon consideration of documents available on record and submissions made by both the parties. The Authority observes that the application form annexed with the complaint (page 13-14 of complaint) does not pertain any stamp, signature or symbol/logo of the respondent/promoter. However, it is an admitted fact that on 16.05.2023, an amount of Rs.5,00,000/- was paid by the complainant to the respondent herein. Further during the proceedings dated 08.05.2025, the counsel for the respondent stated that neither any allotment letter has been issued nor booking is confirmed, due to non-

payment of booking amount, further stated that no unit is available in the project. In view of the above, the Authority observes that the complainant is not entitled for the reliefs being sought under the present complaint. Therefore, the respondent is not entitled to keep the money paid by the complainant with it and the respondent is under obligation to return the paid-up amount and in its reply the respondent has contended that the respondent is ready to refund the amount paid by the complainant without any deduction.

16. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

*"In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."*

17. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amounts received from the complainant. The Authority hereby directs the respondent/promoter to

return the amount received by it i.e., Rs.5,00,000/- within a period of 90 days from the date of this order.

**H. Directions of the Authority: -**

18. 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 functions entrusted to the authority under sec 34(f) of the Act: -
- i. The respondent/promoter is directed to refund the paid-up amount of Rs.5,00,000/- paid by the complainant within a period of 90 days from the date of this order. Failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.
19. Complaint stands disposed of.
20. File be consigned to the registry.

V.I.   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 08.05.2025**

**HARERA**  
GURUGRAM