

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

Complaint no. : 5790 of 2022
Date of filing of : 26.08.2022
complaint:
Date of decision : 27.05.2025

Yogendra Kumar Gupta

R/o: N-108, Panchsheel Park, Sector-106, Gurgaon.

Complainant

Versus

M/s Godrej Real View Developers Pvt. Ltd.

Unit no. 3rd Floor, UM House, Plot No. 35, Sector-44,
Gurugram-122002,

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Khush Kakra
Sh. Saurabh Gaba

Counsel for Complainant
Counsel for 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 there under or to the allottees 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. N.	Particulars	Details
1.	Name and location of the project	"Godrej Grandeur", Dwarka Expreesway, Sector-106, Gurugram
2.	Allotment Letter	NA
3.	Unit no.	0004, Tower-6 (As alleged by the complainant)
4.	Unit area admeasuring (super area)	NA
5.	Date of builder buyer agreement	NA
6.	Application Form	Undated and unexecuted
7..	Possession clause	NA
8..	Due date of possession	NA
9.	Total sale consideration	NA
10.	Amount paid by the complainant	1,00,000/-
11.	Occupation certificate	NA

12.	Offer of possession	NA
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B. Facts of the complaint

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

- I. That the complainant in the year 2022 was looking to purchase a residential property, and was approached by the authorized/sales representative of the respondent for purchasing a unit in the residential project being developed by the respondent named 'Godrej Grandeur at Godrej Meridian' situated at Dwarka Expressway, Sector- 106, Gurugram, Haryana [hereinafter referred to as the "**Project**"]. That based on the various representations made by the authorized/sales representative of the respondent that the project comprises of best of services/amenities and that the payment plan is 10:90, the complainant booked a unit in the project of the respondent. At the time of the booking it was specifically assured by the authorized/sales representative of the respondent that the payment plan will remain the same i.e., 10:90 and will not be changed further, which essentially meant that the complainant has to pay 10 percent of the total consideration of the unit at the time of the booking and the remaining 90 percent was to be paid by the complainant only at the time of the handover of the possession of the unit, irrespective of when possession is offered.
- II. That the complainant only after the confirmation by the authorized/sales representative of the respondent and based on the several assurances/promises that the payment plan is 10:90 and that the

payment plan will not be changed any further, paid a booking amount of Rs. 1,00,000/- towards booking of the unit in the project on 27.03.2022.

In furtherance of the same, the complainant submitted a booking application form to the authorized/sales representative of the respondent on 27.03.2022 for the booking of a unit bearing unit no. 0004, in Tower 6 of the project being developed by the respondent.

III. That upon agreeing to pay the booking amount, the authorized/sales representative of the respondent brought the booking forms and other documentation to be duly signed by the complainant. It is pertinent to mention that the documentation brought by the authorized/sales representative of the respondent contained a page which was a TDS declaration certificate mentioning that the complainant had to deduct 1 percent of the total amount which was being paid to the respondent as the purchase price of the unit booked. Also, there was another page which was a TDS declaration certificate mentioning that the complainant had to deduct 1 percent of the total amount which was being paid to M/s Godrej properties limited as the purchase price of the unit.

IV. That after the complainant had paid the booking amount of Rs. 1,00,000/- towards the Unit, even after a period of 15 (fifteen) days, the respondent had completely failed to issue/execute any allotment letter/agreement or any other agreement with respect to the unit booked in favour of the complainant. It is further submitted that after the period of 15 days the authorized/sales representative of the respondent had called the complainant over his mobile phone and had informed the

complainant that the booking of the unit has been cancelled by the respondent as the respondent had not approved of the 10:90 payment plan.

- V. That the complainant was completely shocked to see the fraudulent behaviour of the respondent. The complainant was assured and promised at the time of the booking that the payment plan will not be changed and the complainant had already started to arrange the funds to pay the remaining 90 percent of the total consideration at the time of handover of possession so as to avoid taking any loan(s) and defaulting or delay any payments.
- VI. That the complainant pursued with the representatives of the respondent through several phone calls and meetings requesting them to provide any reason as to why the booking has been cancelled and why the 10:90 payment plan has not been approved. It is stated that based on the assurance that the payment plan will be 10:90, had the complainant booked the unit in the project. It is stated that the complainant was induced to make the booking by the authorized/sales representative of the respondent who had made completely false assurances/representations.
- VII. That the unit was booked solely on the basis of the assurances and promises made by the authorized/sales representative of the respondent. It is stated that after the respondent had cancelled the booking of the complainant stating that the 10:90 payment plan has not been approved. That on being aggrieved by the non-approval of the

payment plan the complainant served a legal notice dated 19.05.2022 to the respondent stating their grievances against the one sided-arbitrary cancellation of the unit booked by the complainant, further asking the respondent to restore the booking of the complainant on the same plan as it was promised at the time of booking i.e., 10:90 payment plan.

VIII. It is pertinent to mention that the respondent has completely failed to issue/execute any allotment letter/agreements in the favour of the complainant till date, and further the respondent is not accepting any payment or raising any demand to the complainant as well and has malafidely cancelled the booking of the unit even after when the complainant is willing to make subsequent payments towards the Unit booked. It is stated that as per the provisions of the Real Estate (Regulation and Development) Act, 2016, the Respondent is under an obligation to register an agreement and execute the same in favour of the complainant since the complainant had already paid 10 percent of the total consideration of the unit, i.e., Rs. 1,00,000/- at the time of the booking.

IX. That the respondent has not only failed to issue/execute any allotment letter/agreement but has also failed to refund the amount after the cancellation of the unit booked of the complainant. The main grievance of the complainant is that the unit booked by the complainant based on the false promises/assurances of authorized/sales representative of the respondent has been fraudulently cancelled by the respondent even after the complainant had paid the booking amount, and that the booking

amount that has already been paid to the respondent has also not returned by the respondent.

- X. It is stated that the complainant had booked the unit in the project in the year 2022 and is eagerly awaiting possession of his unit. Therefore, despite the inordinate delay that has been caused by the Respondent, the complainants seek execution of the necessary agreements with respect to the unit booked and handover of the possession of the unit within the stipulated time period as per the agreement. It is stated that the project, "Godrej Grandeur at Godrej Meridian" is registered with this Hon'ble Authority and hence the present complaint is within the jurisdiction of the Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to handover possession of the unit to the complainant, complete in all respects and in conformity with the buyer's agreement and for the consideration mentioned therein, with all additional facilities, warranties and as per the quality standards promised and to execute all necessary and required documents in respect of the unit in favor of the complainant immediately upon this complaint being filed before the authority.
 - II. Direct the respondent to pay interest @ 10 % per annum on the amount deposited by the complainant with the respondent with effect from the date of delivery of the unit promised in the buyer's agreement till the date the actual possession is handed over by the respondent along with all the necessary documents and common areas and facilities as promised at the time of booking being made by the complainant.

III. Direct the respondent, to pay a sum of Rs. 2,00,000/- to the complainant towards litigation costs.

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 that the complainant has mischievously concealed the application form as the bare perusal of the same would reveal that the complainant after going through and understanding the payment schedule duly executed the application form out of her own free will and consent.
- ii. That according to the application form, it was clearly stated that the booking amount for the villa would be 5,00,000/-. However, it is important to note that the complainants have only deposited a mere amount of Rs. 1,00,000/- Therefore, it cannot be claimed that the Complainant has fully booked the villa at this stage.
- iii. That that the complainant, through cleverly drafted statements, is attempting to shift the responsibility for their inability to fulfil their payment obligations onto the opposite party. It is essential to highlight that the complainant has only made a partial payment of Rs. 1,00,000/- and is now demanding complete possession of the unit. This demand arises due to the complainant's failure to adhere to the mutually agreed terms and conditions stated in the application form.

iv. The present reply is being filed without prejudice to the rights of the respondent to file a separate application, therein seeking the dismissal of the captioned complaint, for being frivolous and vexatious as well as for the want of a cause of action, as well as availing such other remedy under law.

7. All other averments made in the complaint 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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) 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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F Findings on the relief sought by the complainant.

- I. Direct the respondent to handover possession of the unit to the complainant, complete in all respects and in conformity with the buyer's agreement and for the consideration mentioned therein, with all additional facilities, warranties and as per the quality standards promised and to execute all necessary and required documents in respect of the unit in favor of the complainant immediately upon this complaint being filed before the authority.
- II. Direct the respondent to pay interest @ 10 % per annum on the amount deposited by the complainant with the respondent with effect from the date of delivery of the unit promised in the buyer's agreement till the date the actual possession is handed over by the respondent along with all the necessary documents and common areas and facilities as promised at the time of booking being made by the complainant.

I. Direct the respondent, to pay a sum of Rs. 2,00,000/- to the complainant towards litigation costs.

13. The above mentioned reliefs no. F.I and F.II and F.III as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
14. The present complaint was earlier dismissed by the Authority vide order dated 22.09.2023, on the ground that there was no proof of payment, no receipt, no application form, or any allotment document on record.
15. Further, the complainant challenged the said order before the Hon'ble Appellate Tribunal by filing Appeal No. 176 of 2024. It was contended that the impugned order was short, cryptic in nature and prayed that the matter be sent back to the Authority for a fresh decision. The Hon'ble Appellate Tribunal, upon considering the submissions, passed an order dated 04.04.2025, observing as under:

*"We are of the considered view that the order appears to have been passed in haste. It neither narrates the relevant facts nor provides detailed reasons for dismissal. Such an order cannot be sustained. Accordingly, it is set aside, and the matter is remitted to the same Authority for a fresh decision after providing an opportunity of hearing to both parties. The parties are directed to appear before the Authority on **01.05.2025**.*

16. As per the complaint already on record, complainant submits that in the year 2022 complainant booked a residential unit in the "Godrej Grandeur at Godrej meridian, Dwarka Sector 106, Gurugram wherein it was agreed by

the representative of the respondent that there would be a 10:90 payment plan. Accordingly, the complainant paid an amount of Rs.1,00,000/- on 27.03.2022 and submitted a booking application form to the sale representative of the respondent. However, later the respondent failed to execute/ issue any allotment letter and cancelled the unit stating that payment plan was not approved. Further, the complainant sent a legal notice on 19.05.2022 to the respondent to restore the unit on the same payment plan. Now the complainant is willing to pay remaining 90% amount at the time of handover of the possession.

17. The respondent filed the reply on 11.08.2023 and submitted that the complainant has only paid Rs.1,00,000/- only and as per the application form it was agreed that the booking amount for the villa would be Rs.5,00,000/- and denied other submissions made by respondent.
18. After consideration of the facts and circumstances, Authority is of view that in the absence of any documentary proof of allotment or contractual relationship between the complainant and the promoter, the complainant does not fall within the definition of an 'allottee' under Section 2(d) of the Act. Therefore, the present relief sought by the complainant is not maintainable under section 31 of the Real Estate (Regulation and Development) Act, 2016. Further, it is admitted by both the parties that the complainant paid a booking amount of Rs. 1,00,000/- which has not been refunded by the respondent-promoter to date. Therefore, the amount of Rs. 1,00,000/- deposited is liable to be refunded to the complainant within a

period of 90 days, failing which the respondent shall be liable to pay interest of 11.10% p.a. till its date of realisation.

19. Complaint stands disposed of.
20. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025

HARERA
GURUGRAM