

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

Complaint no. : 5355 of 2023
Date of decision : 28.05.2025

Col Rattan Singh Suhag
R/o: - 615, Sectro-15, Part-I,
Gurugram-122001.

Complainant**Versus**

M/s. Godrej Real View Developers Private Limited
Having office at: - For-3rd, UM House,
Plot no. 35, Sector-44, Gurugram-122002.

Respondent**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Madan Lal (Advocate)
Himanshu Satija (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 to the allottee as per the agreement for sale executed *inter se* them.

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	"Godrej Meridien"
2.	Location of the project	Sector-106, Gurugram.
3.	Nature of the project	Residential
4.	DTCP License	18 of 2008 (15.02.2020)
5.	RERA Registered	Registered Registration No.05 of 2018 for Phase-I Registration no. 06 of 2018 for Phase-II
6.	Welcome letter	09.03.2020 (As on page no. 17 of complaint)
7.	Unit no.	GODMET4-0302/Godrej Meridien Rower-4 (As on page no. 47 of reply)
8.	Unit Area	153.96 sq.mtrs [Carpet Area] (As on page no. 47 of reply)
9.	Buyer's Agreement	Not Executed
10.	Possession clause	Not available
11.	Due date of possession	09.09.2023 [09.03.2023 + 6 months on account of Covid]

12.	Request letter for refund	20.04.2020 (As on page no. 20 of complaint) 11.05.2020 (As on page no. 23 of complaint)\ 23.06.2020 (As on page no. 24 of complaint) 03.07.2020 (As on page no. 30 of complaint) 19.02.2021 (As on page no. 32 of complaint)
13.	Total sale consideration	Rs.2,30,37,896/- (As on page no. 21 of reply)
14.	Amount paid	Rs.5,00,000/-

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant is a respectable and law abiding army veteran and super senior citizen residing at 615, Sector -15, Part-1, Gurugram Haryana -122001. The respondent is a company, M/s Godrej Real View Deplorers Pvt Ltd, a Limited company incorporated under company Act 1956 and is *inter alia* engaged in the business of providing real estate services.
- II. That somewhere in February 2020, Channel partner representative of the respondent approached the complainant to book a flat in its news project namely "Godrej Meridien", located in Sector-106, Gurugram. The said representative of the respondent asked the complainant to



give a cheque as a booking amount. The complainant told the channel partner of the company that he owe an amount of Rs. Three Crore from National Aluminium Company Limited (NALCO) which is likely to be released soon, and the complainant would only give the cheque once the said amount is released from NALCO.

- III. However the representative of the respondent pressurised the complainant to give the cheque and assured that the cheque would be presented only after verbal/telephonic consent of the complainant and if any financial issue with NALCO regarding release of payment arises, the complainant could approach the respondent and the cheque will be returned to the complainant un-actioned.
- IV. On believing the false assurances and misleading representations of the respondent, the complainant issued a cheque for booking of a residential unit bearing no. 302, Tower 4, of the aforesaid project for which the complainant paid an amount of Rs.5,00,000/- on 18.02.2020. That it is pertinent to mention here that next day the complainant informed the respondent not to present the said booking amount Cheque as he came to know that the payment which he owed to NALCO is held up, as NALCO has decided to appeal against the judgement of Arbitrator.
- V. That thereafter, infectious Covid-19 spread worldwide causing severe acute respiratory syndrome. The outcomes of the COVID-19 affected the finance and health of the complainant. The complainant again conveyed his helplessness due to financial hardship and deteriorating health condition and asked the respondent to return the cheque, however to the utter shock of the complainant, the respondent told that they have already presented/encashed the said cheque.

- VI. The fact of presenting the cheques to the Bank was neither informed to complainant nor any permission was sought for the same. On the contrary when the complainant came to know about said activity, the complainant again approached the respondent for refund, but no concrete and satisfactory reply was given, instead the respondent started to show rosy pictures of the project making tall claims and representing that the project will be a picture perfect and is an abode with excellent amenities.
- VII. That thereafter, the complainants kept making calls, e-mails to the respondent and visiting their office requesting them to refund back his hard-earned money so retained but the respondent have taken time on different plea, one pretext to another for not making such payment and finally unabashedly declared that they would never refund the money no matter what happens.
- VIII. That throughout the period from booking till date, the complainant showed utmost faith in the respondent despite false assurances , misleading representations and fraudulent acts on the part of the respondent, however the respondent miserably failed in making the refund of the booking amount,
- IX. That the present complaint has been filed in order to seek refund of the booking amount of Rs.5,00,000/- paid by the complainants along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the date of receipt of payment till the date of refund, along with compensation for the mental stress and torture as well as financial and physical loss suffered by the complainants due to the fraudulent acts of the respondent. Hence, this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondent to refund the total amount of Rs.5,00,000/- received by the respondent to the complainant along with interest from the date of actual payment by the complainant till the date of refund of the entire amount as per provision of the Act of 2016.
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 present complaint has been moved by the complainant with the sole intention to cover up his own admitted defaults in payment of the amount as per the agreed and undisputed terms between the parties. That, the respondent introduced a group housing complex project named "Godrej Meridien" situated at Sector - 106, Gurugram, on a land admeasuring 14.793 acres (59865.147 square meters approximately).
 - II. That the respondent has launched three phases of the project which are duly registered with the Authority. The complainant approached the respondent evincing his interest in allotment of a 4BHK residential unit in finished condition in the project.
 - III. Consequently, on 05.03.2020, the complainant submitted a Application Form, agreeing to the terms and conditions specified therein. The complainant was allotted a 4BHK residential unit of an approximate

area 188.30 square meters (including carpet area 152.96 square meters and exclusive area 34 square meters) in Tower – 4A.

- IV. That the fact of the complainant signing the said application form and agreeing to the terms and conditions mentioned therein, is intentionally suppressed in the present complaint. In fact, the complainant has not even annexed and/or mentioned any details about the said application form in his complaint.
- V. That as per the Application Form, the total sale consideration for the allotment of the said unit is Rs.2,80,37,897/-. Further, as per the terms and conditions of the Application Form, the complainant paid an amount of Rs.5,00,000/- as an application money (forming part of the Booking Amount) via cheque dated 18.02.2020.
- VI. It is denied that the complainant gave any instruction to any representative of the respondent to not deposit the cheque for application money of Rs.5,00,000/-. The contention of the complainant that the respondent/Channel partner's representative was instructed not to deposit the cheque is without any basis and supporting document.
- VII. The Application Form further clearly stated that in case the allottee opts for the cancellation of the unit for reason not attributable to the developer's default, then the developer shall be entitled to forfeit the booking amount. The relevant clause of the terms and conditions of the Application form is reproduced hereunder:
- "13. The Applicant(s) further agrees that in the event this Application Form is withdrawn/cancelled by the Applicant(s) for the reasons not attributable to the Developers default, then the Developer shall be entitled to forfeit the Booking Amount and Non-Refundable Amounts."*
- VIII. Thereafter, the respondent issued a welcome letter dated 09.03.2020 to the complainant, expressing the immense pleasure and warmth for



choosing the said project as their home and provided the necessary information and details regarding the booking of the said unit

- IX. That as per the payment plan, the complainant was supposed to deposit the amount of Rs.23,03,790/- as the remaining part of the booking amount (equals to 10% of total consideration) on or before 03.04.2020. It is important to note here that till this time, the Complainant had raised no objection whatsoever to the allotment of the said unit, either in writing or orally.
- X. However, instead of depositing the said amount within time, the complainant vide letter dated 20.04.2020 requested the respondent for the cancellation of booking of the said unit and to refund the Application money i.e. Rs.5,00,000/-. In response to the request for the refund, the respondent with the intention to help, reached out to the complainant via Email dated 14.05.2020, requesting the complainant to furnish further details of the grievance to evaluate the case in totality.
- XI. That the complainant gave no response and continued to delay the payment of Rs.23,03,790/- to be paid as booking amount. Further the complainant sent various letters consecutively to the respondent with the same demand of refunding the Application Money.
- XII. That, while responding to the complainant's letter dated 19.02.2021 the respondent via letter dated 21.02.2021 tried to explain the complainant that the cancellation would be a loss proposition for the complainant, as the respondents would not be able to refund the Application money as per the terms and conditions of the Application Form. The Application Form, clearly states that in case the allottee opts for the cancellation of the unit for reason not attributable to the developer's default, then the developer shall be entitled to forfeit the booking



amount. The relevant clause of the terms and conditions of the Application form is reproduced here as:

13. The Applicant(s) further agrees that in the event this Application Form is withdrawn/cancelled by the Applicant(s) for the reasons not attributable to the Developers default, then the Developer shall be entitled to forfeit the Booking Amount and Non-Refundable Amounts

XIII. That, even on getting continuous silence from the side of complainant regarding the amicable redressal of the issue, the respondent being a consumer centric company gave another opportunity to the complainant explaining the consequences of the cancellation of the unit and asked to rectify the default and make the required payment. The respondent further explained that otherwise the said unit, would be considered deemed cancelled in the system as of 11.08.2022. However, no response was received from the side of the complainant to the said letter.

XIV. That it is most humbly submitted that the Prayer made in the present complaint may kindly be denied in totality and the complaint may kindly be dismissed in the interest of justice.

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 as well as the written submission of the complainant.

E. Jurisdiction of the authority

The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

8. 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.

E.II Subject matter jurisdiction

9. 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.

10. 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters**



and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

F.1 Direct the respondent to refund the total amount of Rs.5,00,000/- received by the respondent to the complainant along with interest from the date of actual payment by the complainant till the date of refund of the entire amount as per provision of the Act of 2016.

13. The complainant has submitted that he paid a sum of Rs.5,00,000/- via cheque dated 18.02.2020 to the respondent through one of the respondent's channel partners, towards the booking of a residential unit in the project "Godrej Meridien," located at Sector-106, Gurugram.



The respondent acknowledged the payment by issuing a receipt dated 06.03.2020. Subsequently, on 09.03.2020, the respondent issued a Welcome Letter to the complainant regarding Unit No. GODMET4-0302 in Tower-4 of the said project, having a carpet area of 153.96 sq. ft., with the total sale consideration stated as Rs.1,96,99,261/-.

14. The complainant further stated that he had instructed the respondent's channel partner not to deposit the cheque immediately, as the complainant was expecting the release of certain dues from his previous employer, National Aluminium Company Limited (NALCO). It was mutually understood that the cheque would be presented only upon the complainant's verbal or telephonic confirmation. The channel partner allegedly assured the complainant that, in case of financial constraints due to delay in payment from NALCO, the cheque would be returned unrepresented and without action.
15. The complainant contends that he informed the respondent not to present the said cheque, as the expected amount from NALCO was withheld following an appeal filed by NALCO against the arbitral award. Despite several communications requesting a refund of the Rs.5,00,000/- paid, including letters dated 20.04.2020, 11.05.2020, 23.06.2020, 03.07.2020, and 19.02.2021, the respondent, vide email dated 21.02.2021, refused to refund the amount. The respondent stated that since the complainant was seeking cancellation for reasons not attributable to any fault of the developer, the booking amount was liable to be forfeited. Subsequently, the complainant filed an application to the Secretary, Haryana Real Estate Regulatory Authority (HRERA), Gurugram, asserting that he had been pressured by the respondent's





agents to issue a cheque under the assurance that it would only be presented upon his consent. He also claimed that despite subsequent requests to the respondent's representative to return the cheque, no action was taken. Vide email dated 20.09.2021, the Secretary, HRERA advised the complainant to file a formal complaint under Section 31 read with Rule 28(1), in Form "CRA" of the Real Estate (Regulation and Development) Act, 2016.

16. The respondent stated in its reply that the complainant did not interacted through any channel partner and claimed that the complainant directly approached the respondent and applied for the booking of the said unit through an application form dated 05.03.2020. A receipt dated 06.03.2020 was issued, followed by a Welcome Letter on 09.03.2020. The respondent has contended that since the complainant is seeking withdrawal from the project in the absence of any fault on part of the respondent, the developer is entitled to forfeit 10% of the total sale consideration, thereby justifying the forfeiture of the booking amount of Rs.5,00,000/-.
17. Upon examination of the records, the Authority is of the view that the respondent's contentions are unsustainable for the following reasons: Firstly, the payment of Rs.5,00,000/- made by the complainant towards booking has been admitted by the respondent, who also issued a receipt acknowledging the same. However, the respondent has not issued any allotment letter to the complainant, nor has it provided any explanation for the same. Secondly, it is observed that no Builder Buyer Agreement

(BBA) has been executed between the parties, nor has any draft agreement been shared with the complainant. It is unreasonable and contrary to fair business practices for the respondent to forfeit the booking amount in the absence of any executed BBA or allotment letter.

18. The respondent's denial regarding the involvement of a channel partner is contradicted by the documents on record. The application form dated 05.03.2020 lacks the signature or seal of the respondent, while the cheque issued by the complainant was dated i.e., 18.02.2020 i.e., earlier to the application form (05.03.2020). Furthermore, the respondent's own reply (at page 18) indicates that the booking was made through a channel partner named PROP-TIGER, with an individual named Arjun identified as the concerned representative. This undermines the respondent's claim of no channel partner involvement. It is evident from the records that the complainant has been consistently requesting a refund of the booking amount of Rs.5,00,000/-, which the respondent has failed to address. No allotment letter has been issued, nor has the respondent taken any steps towards execution of the Buyer's Agreement.

19. 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.**"*

20. 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. Thus, the complainant is entitled to get refund of the entire amount paid by her. 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 this order.

G. Directions of the authority

21. 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):
- The respondent/promoter is directed to refund the paid up amount of Rs.5,00,000/- received by it from the complainant within 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.
22. Complaint stands disposed of.



HARERA
GURUGRAM

Complaint No. 5355 of 2023

23. File be consigned to registry.

Dated: 28.05.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM