

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

Complaint no. : 3299 of 2023
Date of filing: 19.07.2023
Date of decision : 16.05.2025

Mr. Prateek Sharma
R/o: H. No: 34, Shalawal
Gurdaspur Pathankot, Punjab-143434

Complainant

Versus

M/S Godrej Projects Development Limited
Registered office: -U.M House, 3rd Floor,
Tower A, Plot No. 35, Sector-44,
Gurugram -122002
Magic info solutions Pvt. Ltd.
Address: - D-13, Defence Colony,
New Delhi-110024

Respondents

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Shri Partham
Shri Kapil Madan
None

Counsel for Complainant
Counsel for Respondents no. 1
Counsel for Respondents no. 2

ORDER

1. The present complaint dated 19.07.2023 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Godrej Summit", Sector-104, Gurugram.
2.	Nature of the project	Residential complex
3.	Project Area	22.12 acres
4.	DTCP license no.	License No.-102 of 2011 Dated-07.12.2011.
5.	HRERA Registered	Registered Vide no. 75 of 2017 dated- 21.08.2017 Valid upto-30.09.2018.
6.	Unit no.	904, 9 th Floor-16, Tower-H (7) (As on page no. 28 of complaint)
7.	Unit area	1283 sq.ft. [Super built-up area] (As on page no. 28 of complaint)
9.	Date of execution of Apartment Buyer's Agreement	24.06.2022 (Page 20 of complaint)
10.	Possession clause	4.2 <i>The apartment shall be ready for occupation within 36 months from the date of issuance of allotment letter Tentative Completion Date), however the developer is entitled to a grace period of 6 months over and above till 36 months period. Upon the apartment being ready for</i>

		<i>possession and occupation the developer shall issue the possession notice to the buyer of the apartment.</i>
11.	Due date of possession	24.12.2025 [calculated from the date of builder buyer agreement in absence of allotment letter]
12.	Total sales consideration	Rs.1,08,96,000/- (As per payment plan on page no. 64 of complaint)
13.	Total amount paid by the complainant	Rs.1,03,51,200/- (as alleged by the complainant at page 14 of complaint)
15.	Occupation certificate	N/A
16.	Offer of possession	N/A
17.	Surrender for refund by the complainant i.e.,	27.04.2023 (Page 90-92 of complaint)

B. Facts of the complaint

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

- i. That the complainant in 2022 was looking for an apartment for residential purposes in Gurugram, Haryana or its nearby localities, and for the same, the complainant posted his requirements on the internet. That in the year 2022, the respondent was in the process of constructing their group housing project named "Godrej Summit Village" situated at Gurgaon, Sector- 104, Type Residential District, Gurugram State, Haryana.
- ii. That the officials/ booking agents/ employees of the respondent got the contact details of the complainant and thereafter contacted the complainant with the request of purchasing an apartment in the abovementioned group housing project of the respondent.



- iii. That the officials/ employees booking agents of the respondent visited the complainant and thereafter appraised the complainant about the said group housing project of the respondent.
- iv. That the officials/ employees/ booking agents of the respondent further showed brochures of the said housing project to complainant and further requested the complainant to purchase an apartment in the said project of the respondent. That the officials/ employees/ booking agents of the respondent further assured the complainant that the construction of the project is going on in full swing and possession of the said project will be allotted to the complainant shortly. That before booking the flat in question, the officials of the respondent had told the complainant that the Bank of Baroda (hereinafter referred to as "bank") on their pretext is providing loan facilities at low-interest rates for the customers/ buyers to purchase the flat in the above project of the promoter.
- v. That the officials of the respondent further assured the complainant that if they purchase a flat with them and take a loan from the said financing institution for financing the loan for flat in question, then in that case, the respondent will make timely and regular payments of the EMI's of the flat to the said financial institution on behalf of the complainant till the possession is delivered to the complainant.
- vi. That at that time it was also assured by the officials of the respondent to the complainant that if the aforesaid flat complainant gets the loan sanctioned from Bank of Baroda then they have made such arrangement with the said financial institution that in the event of non-completion of the project in time or/ and non-allotment of flat in question, the respondent will be only and solely responsible for the default of loan amount and they will also be liable and responsible for



closing the loan account with the bank after making the payment of entire loan amount along with interest either by arranging the said amount themselves or by selling a flat.

- vii. That on the basis of aforesaid representation, the complainant desired to purchase a Residential Apartment and accordingly the complainant was allotted Flat No. H-904, 3BHK, in the project "Godrej Summit Village" situated at Gurgaon, Sector- 104, Type Residential District, Gurugram State, Haryana, vide allotment letter dated 24.06.2022 for a total sum of Rs. 1,08,96,000/-.
- viii. That thereafter the officials of the respondent introduced the complainant to officials of the bank for a housing loan of the property in question. That the said financing institution disbursed an amount to a tune of Rs. 78,51,200/- directly to the developer/builder in one shot without confirming the actual status of construction of the unit in question. That as per the Agreement between the parties, and the project being under the subvention scheme the builder/developer was to pay the EMIs to the Bank until possession of the unit in question however the same has not taken place as a result the bank has begun pressurizing the complainant to pay the EMI's towards unit in question. That more than 12 months have elapsed and yet there is no sign of delivery/ possession of the unit in question. That the builder continues to remain evasive by giving false commitment and differing the completion and delivery of the unit in question for the past 12 months.
- ix. That due to personal and financial difficulties the complainant was constrained to seek cancellation of the booking of the unit in question. That for the same the complainant on 27.04.2023 sent a cancellation/ surrender notice to the respondent and the bank, however despite the Receipt of the notice the unit has not been cancelled and the refund has

not been processed as a result the complaint is constrained to approach the Authority seeking refund and protection of it's rights.

- x. That at the time of booking/allotment of flat in question, it was clearly told to the complainant that since this is a group housing project, so he can anytime withdraw from the project and he would refund his money and only a small amount would be deducted towards the processing fee, but same has not taken place. That despite repeated requests and reminders to the developer, the developer has failed to handover the possession, that it is pertinent to mention herein that the bank continues to harass and humiliate the complainant for EMI and loan amount.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. Direct the respondent to refund the payment made by the complainant along with interest at the prescribed rate from the date of such payments.
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 no. 1 has contested the complaint on the following grounds.
- i. That the outset it is stated that the allegations leveled by the Complainant in the Complaint under reply, are deemed to have been denied except to the extent as may be specifically admitted the body of the present reply. All the allegations sought to be leveled against the answering Respondent No.1 are vexatious, false, frivolous, illegal, and

unwarranted and no claim is maintainable against the answering Respondent either as claimed or otherwise. It is submitted that the answering Respondent is filing a short reply at this stage and craves leave of this Authority to file a detailed reply if directed.

- ii. The present Complaint is a gross abuse of the process of law and has been filed with the sole intent of arm-twisting, harassing and coercing the Opposite Party into accepting the illegal, unfair and unethical demands of the Complainant. As such, the captioned Complaint is a glaring example of a Party to a contract, resorting to frivolous and vexatious litigation, in order to conceal its own defaults.
- iii. It is submitted that the instant Complaint is bad for misjoinder of parties in as much as the Respondent No. 1 in the instant project had entered contract with Joint Venture Partner of the Respondent No.2 i.e. Magic Info Solutions Private Limited. It is submitted that the Answering Respondent is the Joint Venture Partner with the Respondent No. 2 and has developed the project namely 'Godrej Summit' on an area share understanding.
- iv. It is submitted that the Complainant has booked an apartment Unit No. 904 in Tower H which comes under the area share (Apartment) of Respondent No.2 and consequently all acts pertaining to the transactions such as raising invoices towards due consideration / installments, issue of allotment letter, Application for Obtaining OC for Tower B, reminders apart from the other compliances, receiving amounts from the Complainant etc. were carried out by the Magic Info Solutions Private Limited. It is further important to mention here that even the consideration for the said apartment was received by Magic Info Solutions Private Limited.

- v. It is submitted that the answering Respondent dutifully explained the factum of that joint venture agreement between the Respondent No.1 and Magic Info Solutions Pvt. Ltd in the following documents:
- Apartment Buyer Agreement clearly mentions the supplementary agreement between the OP and Magic Info Solutions Pvt. Ltd.
 - Even the Allotment Letter has been issued on the letterhead of Respondent No.1.
- vi. It is pertinent to mention herein that vide agreement dated 17.01.2020 (hereinafter to be referred as "Amendment Agreement"), Respondent No. 1 and MISPL, spelled out in writing the details of the units falling in their share, the arrangement which was agreed between them from inception.
- vii. It is submitted that **Clause E** of the Amendment Agreement makes it categorically clear that for those units/spaces that come under the Area of the MISPL / Landowners, then MISPL/ Landowners shall only be responsible for all the liabilities/obligations/responsibilities arising out of those units/spaces.

Clause E of the Agreement is reproduced hereinbelow for ease of reference:

"The Project has been completed by the Developer and the units/spaces comprising each Party's share under the DA were handed over to the respective Party. Land Owners have been selling the units/spaces comprised in their share in the open market, and GPDL is signing the customer documents only in the limited capacity as developer confirming party, and all liabilities/ obligations/ responsibilities towards the customer/ allottee in relation to MISPL's Share and Individual Land Owners Share vests in Land Owners;"

- viii. It is further submitted that Amendment Agreement clearly highlights that the Apartment booked by the Complainant comes under the area share of the Land owners/MISPL and as such OP cannot not be held

responsible for any liability/responsibility/obligation arising out of such an Apartment.

- ix. It is submitted that this Hon'ble Authority while dealing with the identical issues arising in same project in ***Complaint bearing No.87 of 2019 titled "Dhiraj Chawla vs Godrej Projects Development Limited and Anr"*** directed MISPL vide order dated 20.06.2023 to refund the amount deposited after deducting 10% of the Basic Sale Price since the Complainant had entered into the contract with Respondent No1 and not Respondent No2.
- x. It is further submitted that similar observations were made by the Hon'ble **NCDRC** in CC/2877/2017 titled "*Vinamra Shyamji Sharma Vs. Three C Shelters Pvt. Ltd. and Ors.*" wherein it was held that if the **consideration** is received by the Landowner in area share management, then the Developer cannot be held jointly liable for the refund.
- xi. Without prejudice to the above submissions, it is reiterated that the Complainant is not **entitled** for any refund as alleged by the Complainant in the instant complaint as there is no deficiency or defect in the services.
7. 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:**
8. The authority 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 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

10. 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.

11. 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.

F Findings on the relief sought by the complainant.**F.1 Direct the respondent to refund the paid-up amount along with interest at prescribed rate.**

12. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building:-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. The Complainant was allotted Unit No. 904, 9th Floor-16, Tower-H (7), admeasuring 1283 sq. ft., in the project titled "Godrej Summit", located at Sector-104, Gurugram, by the Respondent/Builder, for a total sale consideration of ₹1,08,96,000/-. The Complainant has paid a sum of ₹1,03,51,200/-, which constitutes approximately 95% of the total sale consideration. A Buyer's Agreement dated 24.06.2022 was duly executed between the parties in respect of the said unit, wherein the Respondent undertook to complete the construction of the project and offer possession of the unit on or before 24.12.2025.

14. Thereafter, the Complainant surrendered the allotted unit to the Respondent on 27.04.2023 before the due date of possession. Although the Promoter was obligated to refund the amount to the Complainant after deducting 10% of the sale consideration in accordance with the applicable terms and conditions, the said refund has not been made to date. Since the Complainant has sought a refund of the entire amount paid, and the Promoter has failed to comply, the Authority hereby directs the Promoter to refund the amount paid by the Complainant after deducting 10% of the sale consideration. The refund shall be made from the date of the Complainant's request for surrender, i.e., 27.04.2023, along with interest at the prescribed rate as applicable under the relevant rules and regulations.
15. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter jointly and severally are directed to refund the paid-up amount of Rs. 1,03,51,200/- after deducting 10% of the sale consideration of Rs. 1,08,96,000/- being earnest money along with an interest @11.10% p.a. (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 on the refundable amount, from the date of surrender i.e., 27.04.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

16. 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 respondents/promoter is directed to refund the paid-up amount of Rs. 1,03,51,200/- after deducting 10% of the sale consideration of Rs.



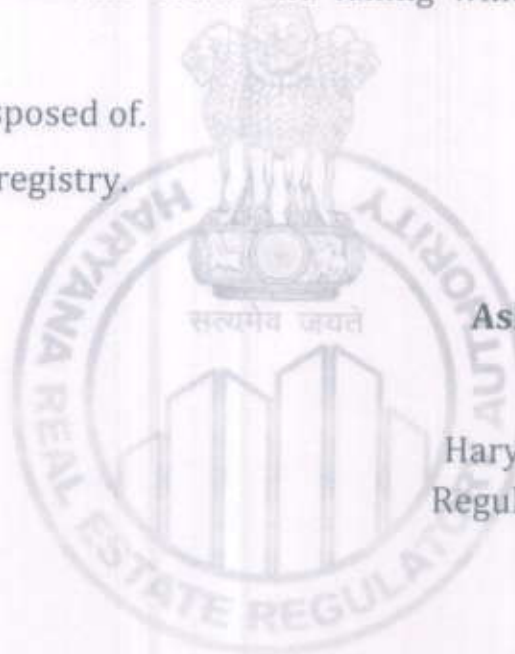
1,08,96,000/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 27.04.2023 till its realization.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

17. Complaint stands disposed of.

18. File be consigned to registry.

Dated: 16.05.2025



Ashok Sangwan
(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM