

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

Complaint no. : 310 of 2024
Date of complaint : 23.01.2024
Date of Decision : 22.08.2025

Anil Kumar Arora
R/o: B-14, Kalkaji, South Delhi, Delhi-110019

Complainant

Versus

Wonder City Buildcon Pvt. Ltd.
Office at: 3rd Floor, Tower B, UM House, Plot no.
35, Sector-44, Gurugram, Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Jainder Kharb (Advocate)
Shri Himanshu Setia (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 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*.

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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 Aria", sector-79, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	14.59375 acres
4.	DTCP license no.	47 of 2013 dated 06.06.2013
5.	RERA Registered/ not registered	Registered vide no. 61 of 2017 issued on 17.08.2017 up to 28.02.2021 vide no. 90 of 2023 issued on 18.09.2023 up to 30.08.2028 vide no. 91 of 2023 issued on 18.09.2023 up to 30.08.2028
6.	Allotment Letter	25.03.2015 (page no. 18 of complaint)
7.	Apartment buyer's agreement	21.05.2015 (page no. 21 of complaint)
8.	Unit No.	B-1204, 12 th floor (page no. 23 of complaint)
9.	Unit admeasuring area	2289 sq. ft. of super area (page no. 23 of complaint)
10.	Possession clause	4. Completion of construction 4.2 The Developer shall endeavour to complete the construction of the

		Apartment within 48 months from the date of issuance of allotment letter, along with a grace period of 12 months over and above this 48 months period. (page 35 of complaint)
11.	Due date of possession	25.09.2020 (calculated from the date of allotment letter including grace period of 12 months plus 6 months grace period due to Covid-19)
12.	Total sale consideration	Rs. 1,34,31,711/- (BSP) Rs. 1,64,97,131/- (As alleged by both the parties)
13.	Total amount paid by the complainant	Rs. 42,39,885/- (As alleged by complainant at page 12 of complaint)
14.	Surrender request by complainant	02.07.2015 (page no. 58 of complaint)
15.	After surrender request payments were made by complainant	15.03.2016: ₹ 13,59,442/- , ₹ 59,732/-
16.	Payment plan	Construction linked payment plan
17.	Reminders by respondent	27.07.2016, 16.12.2016, 10.01.2017, 14.03.2017
18.	Pre termination	25.10.2017
19.	Final opportunity letter	13.11.2017
20.	Final reminder	31.07.2018
21.	Termination of allotment by respondent	28.10.2022 (page no. 59 of complaint)

22.	Occupation certificate	01.10.2019
23.	Offer Of possession	Not offered
24.	Legal notice by complainant for refund	07.10.2023 (Page 60 of complaint)

B. Facts of the complaint:

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

- I. That the complainant booked an apartment in the project namely Godrej Aria situated at sector 79, Gurugram. The complainant vide application dated 04.09.2014 was allotted unit bearing no. B-1204 with a super area measuring 2289 sq. ft. for a total sale consideration of Rs. 1,64,97,131/-
- II. That the letter of allotment was issued to the complainant on 25.03.2015 and the builder buyer agreement was executed on May 21, 2015. The complainant made subsequent payments as per the demand of the respondent.
- III. Within a year of booking a flat, the respondent raised almost 70% of the payment by projecting full swing progress in construction of the project on papers. The complainant visited the project site multiple times and found out that the construction had not even started and there was hardly any progress.
- IV. Thereafter, several efforts from the complainant were made to seek updates about the status of the construction work at the site, but due to the negligence of the respondent, there was no satisfactory response from their end. Unfortunately, the respondent did not properly utilise the complainant's hard earned money.



- V. After getting zero response from the respondent, the complainant again visited the construction site but were shocked and appalled to see that the project was at standstill. Thus, the complainant through email dated 02.07.2015 informed and surrendered his unit to the respondent and asked for refund of his amount paid to the respondent.
- VI. On multiple occasions, the complainant reached out to the respondent regarding the refund of his amount but the genuine demand of the complainant was ignored, blatantly, by the respondent. On November 2, 2022, the respondent informed the complainant about the cancellation/termination of the unit of the complainant and forfeited the entire amount paid by the complainant to the respondent.
- VII. Now, the respondent has created a third party charge on the unit of the complainant and sold the unit of the complainant to a third party, and has made immense profit and gains from the unit of the complainant. The respondent has further curbed the money of the complainant and gained undue enrichment.
- VIII. That the complainant herein is constrained and left with no option but to file this present complaint seeking the refund of his amount.

C. Relief sought by the complainant:

4. The complainant sought following relief(s).
- i. Direct the respondent to refund the amount of Rs. 42,39,885/- along with interest as per RERA Act.
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 vide reply dated 16.05.2024 contested the complaint on the following grounds: -
- I. That the respondent introduced a residential group housing complex project named "Godrej Aria" comprising of residential units, along with amenities, facilities, services, etc. and such other developments as may be permitted on a land admeasuring 7.01 acres situated at Sector – 79, Gurgaon.
 - II. That on 04.09.2014, the complainant submitted an application form agreeing to the terms and conditions specified therein. As desired by the complainant, he was allotted a residential unit of total approximate area 150.32 square meters and super buildup area of 213 square meters on the 12th floor of tower B of the said project via allotment letter dated 25.03.2015.
 - III. Consequently, on 21.05.2015 the complainant entered into an apartment buyer's agreement.
 - IV. As per the allotment letter, the total sale consideration for the said unit including the Government levied Taxes was Rs.16,497,131/-. At the time of submission of the application form, the complainant was required to deposit sum of Rs.6,28,533/- as part of the application money. Consequently, the complainant deposited the said amount in three parts.
 - V. In terms of the allotment letter, the complainant has so far deposited the amount of Rs.42,39,885/- out of the total amount payable by the complainant.
 - VI. That as per the payment plan the respondent raised invoices at the different stages of the construction of the said project. However, the complainant not only failed to deposit the amount raised in the invoices

within the stipulated time, but also made insufficient and delayed payments to the respondent. A similar invoice was sent by the respondent vide an email dated 19.01.2015, towards payment of 10% BSP (within 120 days of booking).

- VII. However, instead of depositing the said installment within time, the complainant requested the respondent to cancel the booking of the said unit and refund the amount deposited by the complainant towards the said booking.
- VIII. In response to the request for the cancellation by the complainant, the respondent reached out to the complainant on repeated intervals, with various plans to clear the due balance including relaxation in the outstanding interest. The respondent tried to explain the complainant that the cancellation would be a loss proposition for the complainant as the respondent would not be able to refund the earnest money along with service tax and interest on delayed payment (if any). Hence, the respondent suggested the complainant to re-consider their decision and to hold on to their unit.
- IX. That despite assistance and cooperation provided by the representatives of the respondent, the complainant miserably failed to deposit amount of the invoices raised at the further stages of the construction of the project.
- X. That the respondent being a consumer centric company gave various opportunities to the complainant to make the due payment along with the interest, sending various reminder letters dated 27.07.2016, 16.12.2016, 10.01.2017 and 14.03.2017 along with the regular telephonic conversations requesting to rectify the default and make the payment of the outstanding due.

- XI. Consequently, after continued non-payment of the outstanding dues and after receiving no response to the respondent's emails the respondent was constrained to issue a pre-termination letter dated 25.10.2017 to the complainant.
- XII. Pursuant thereto, the respondent vide its letter dated 13.11.2017, afforded final opportunity to the complainant to pay its outstanding dues. Subsequently, another letter dated 31.07.2018 was addressed by the respondent communicating the unequivocally that non-payment of the outstanding dues will result in termination of the allotment.
- XIII. However, despite various requests and reminders by the respondent no response was received from the complainant. Hence, upon receiving no response to the last reminder letter dated 31.07.2018 and the continued non-payment of the dues from the complainant's end the respondent issued a termination letter dated 28.10.2022 cancelling the allotment letter dated 25.03.2015.
6. 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 those undisputed documents and submissions made by the complainant.

E. Jurisdiction of the authority

7. The respondent in its reply has raised an objection that the Authority has no jurisdiction to adjudicate the matter. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

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.

F. Findings on the relief sought by the complainant.

- i. Direct the respondent to refund the amount of Rs. 42,39,885/- along with interest as per RERA Act.
11. In the present complaint, the complainant booked a unit in the project of respondent namely, 'Godrej Aria' situated at sector 79, Gurugram. The complainant applied for allotment of the unit and vide allotment

letter dated 25.03.2015 the complainant was allotted a unit bearing no. B-1204 on 12th Floor. Thereafter, the apartment buyer's agreement was executed between the complainant and the respondent on 21.05.2015 for the total sale consideration of was Rs.1,64,97,131/- and the complainant has made a payment of Rs.42,39,885/- against the same in all. As per clause 04 of the agreement, the respondent was required to hand over possession of the unit within a period of 48 months from the date of issuance of allotment letter, along with grace period of 12 months. The date of issuance of allotment letter is 25.03.2015. Therefore, the due date of possession comes out to be 25.03.2020 including grace period of 12 months. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. Hence, the due date of possession comes out to be 25.09.2020.*** The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 01.10.2019.

12. In the present complaint, the authority observes that the complainant submitted a request for surrender of the unit on 02.07.2015, thereby seeking a refund of the total amount paid by him. Subsequently, on 15.03.2016 the complainant made further payments amounting to Rs.13,59,442/- and Rs.59,732/-, purportedly with the intention to continue with the project. Thereafter, the respondent issued demands in accordance with the agreed payment plan. Upon failure of the complainant to comply with the said demands, the respondent issued several reminders dated 27.07.2016, 16.12.2016, 10.01.2017, and 14.03.2017. A pre-termination notice was issued on 25.10.2017, followed by a final opportunity letter dated 13.11.2017 and a final



reminder dated 31.07.2018. As there was no compliance from the complainant's end, the respondent eventually proceeded to terminate the allotment of the unit on 28.10.2022.

13. The complainant's contention is that he is entitled to a full refund of the entire amount paid by him, on the ground that there was no progress in the construction at the project site, which led to the discontinuation of payments. He also seeks interest on the refunded amount from the date of the surrender request.
14. The plea of the respondent is otherwise and stated that the demand were raised as per payment plan annexed with apartment buyer's agreement dated 21.05.2015 and the complainant has made payment of Rs.42,39,885/-. However, various reminder letters were issued and various opportunities such as pre termination letter, final opportunity letter, final reminder but despite repeated follow ups the complainant failed to act further and comply with their contractual obligations and therefore the unit of the complainant was finally terminated vide letter dated 28.10.2022.
15. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. The apartment buyer agreement was executed between the complainant and respondent on 21.05.2015. The sale consideration of the unit was Rs.1,64,97,131/- and the complainant has made a payment of Rs.42,39,885/- against the same in all. As per the payment plan annexed as Schedule VII in the agreement dated 21.05.2015 at page 56

of reply, the complainant was required to make payments as per the stage of construction. The complainant has taken the plea that they withheld payment on the ground that construction was not fully completed. However, this contention is not sustainable in light of the material available on record. The respondent has obtained the Occupation Certificate (OC) from the competent authority on 01.10.2019, which conclusively establishes that construction of the project has been duly completed.

16. Accordingly, in terms of the payment schedule agreed upon by the parties and the fact of completion evidenced by the OC, it was incumbent upon the complainant to honour the demand and make payment as per the agreed terms. The failure to do so amounts to a breach of contractual obligations.
17. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale dated 21.05.2015. The respondent after giving various reminders dated 27.07.2016, 16.12.2016, 10.01.2017, 14.03.2017 issued pre termination letter on 25.10.2017, final opportunity letter on 13.11.2017 and final reminder letter dated 31.07.2018 for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid numerous reminders, the complainant has failed to take possession and clearing the outstanding dues. Therefore, the respondent cancelled the unit on 28.10.2022.
18. Thus, the cancellation in respect of the subject unit is valid as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed

payment plan. In view of the aforesaid circumstances, refund can be granted to the complainant after certain deductions as prescribed under law.

19. Moreover, the complainant is also claiming interest from the date of surrender i.e., 02.07.2015. It is pertinent to note that, subsequent to the said surrender request, the complainant made payments on 15.03.2016 thereby signifying an intention to continue in the project. In view thereof, the authority is not inclined to grant interest from the date of surrender.
20. 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 Ors. 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 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."*

21. So, 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, and 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 complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (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 termination/cancellation 28.10.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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H. Directions of the authority

22. 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):
- i. The respondent/builder is directed to refund the deposited amount of Rs.42,39,885/- after deducting 10% of the sale consideration of Rs.1,34,31,711/- along with an interest @10.85% on such refundable amount, from the termination/cancellation 28.10.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
 - 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.
23. Complaint stands disposed of.
24. File be consigned to registry.


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

Dated: 22.08.2025