BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**2880 of 2024**
Date of complaint	:	**20.06.2024**
Date of order	:	**08.08.2025**

Dhiraj Kumar Gupta
Both R/o: - Village Rambha, Dist.
P.O. – Rambha, Karnal , Haryana- 132166 **Complainant**

Versus

Godrej projects Developments Pvt. Ltd.
Regd. Office at: U.M.House, 3rd floor,
Tower -A, Plot No. 35 Sector-44, Gurugram. **Respondent No. 1**

Magic Info. Solutions Pvt. Ltd.
Regd. Office at: D-155, Basement ,
Defence Colony, South Delhi, New Delhi
122002 **Respondent No. 2**

CORAM:
Arun Kumar **Chairman**

APPEARANCE:
Sukhbir Yadav (Advocate) Complainant
Saurabh Yadav (Advocate) Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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. Project and unit related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 of the project	'Godrej Summit'Sector-104, Gurugram, Haryana	
2.	Project area	22.123 acres	
3.	Nature of the project	Group housing colony	
4.	RERA registered/not registered	75 of 2017 dated 21.08.2017	
5.	DTPC License no.	102 of 2011	Dated 07.12.2011
6.	Allotment letter 1.	23.01.2013 [letter issued by Godrej on page 20]	
7.	Allotment letter 2.	18.02.2013[letter issued by Godrej on page 20] [letter by issued by MISPL pg. 19 of complaint]	
8.	Date of execution of Buyers agreement	11.05.2013 [Page 29 of complaint]	
9.	Unit no.	1704 on the 17th floor, tower G [Pg. 37 of complaint]	
10.	Unit admeasuring	1269 sq. ft. (super area) [Page 37 of complaint]	
11.	Total sale consideration	Rs.77,05,060/- [Page 24 of the complaint]	
12.	Amount paid by the complainant	Rs.44,28,192/-	

		[As per receipts annexed on page 82,83,84,85,86,87 of the complaint]
13.	Offer of possession	02.10.2017 [on page 88 of complaint]
14.	Refund request by the complainant	15.09.2022 [on page 91 pf complaint]
15.	Declaration cum indemnity bond	12.01.2023 [on page 92 of complaint] - (between complainant and magic info solutions pvt. Ltd.)
16.	Development agreement	05.08.2011 [on page 12 of reply]
17.	Supplementary cum amendment agreement	15.10.2019 [on page 83 of reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

   a. That the complainant Dhiraj Kumar Gupta alias Dheeraj Kumar is a law-abiding and peace-loving citizen and resident of Village Rambha, District P.O - Rambha, Karnal, Haryana – 132116.

   b. That the respondent's Magic Info Solutions Pvt. Ltd. is a company incorporated under the Companies Act, 1956 having a registered office on the D-155, Basement, Defence Colony, South Delhi, New Delhi – 110024 & Godrej Premium Builders Pvt. Ltd. having a registered office on the Godrej One, 5th floor, Pirojshanagar Eastern Express Highway, Vikhroli, Mumbai City, Mumbai, Maharashtra – 400079, and the project in question is known as "GODREJ SUMMIT", Sector – 104, Gurugram.

   c. That both the respondents are jointly and severally liable towards the Authority and the complainant. On August 2012, complainant, Dhiraj Kumar Gupta alias Dheeraj Kumar received a marketing call from a real estate agent, who represented himself as an authorized agent of the respondent company and marketed a residential project namely

"GODREJ SUMMIT" situated at Sector – 104, Gurugram. The complainant along with the real estate agent visited the Gurugram office and project site of the respondent/Builder with his family members. There the complainant consultant with the marketing staff of builder and got information about the project. The marketing staff of the respondent assured that possession of the flat would be handed over within 36 months from the date of booking.

d. That believing on representation and assurance of the respondent's, the complainant Dhiraj Kumar Gupta alias Dheeraj Kumar, booked one apartment bearing No. 1704, 17th floor in Tower - G, & signed a pre-printed application form dated 11-09-2012. The apartment was purchased under the construction-linked payment plan for a basic sale consideration of Rs. 67,25,700/-.

e. That on 23.01.2013, Respondent No. 2 issued an intimation of allotment, and respondent no.1, issued an allotment letter dated 18.02.2013 of apartment no 1704, 17th floor in Tower-G in favour of the complainant.

f. That after a long follow-up on 11.05.2013, an arbitrary, one-sided apartment buyer's agreement was executed between the parties. It is pertinent to mention here that there was no firm date of possession of the apartment in the said ABA. It is further pertinent to mention here that the project of the respondents is registered with HARERA vide registration No. 75 of 2017 dated 21.08.2017 and was registered for a period up to 30.09.2018. It is again pertinent to mention here that the reasonable period for completion of a residential project is 3 years from the date of allotment/execution of BBA. In the case in hand, allotment was made on 18.02.2013 and BBA was executed on 11.05.2013; therefore, the due date of possession was 11.05.2016.

g. That till 30.03.2015, the complainant paid Rs. 49,25,305/- i.e., 73.23% of the basic sale consideration. From May 2016, the complainant was following up with the respondent for physical possession of the flat, but all went in vain. Thereafter, in April 2018, the complainant asked the respondents to refund the paid amount along with interest, but the respondents refused for the same stating that due to financial crises in the company, they could not refund the paid amount and requested the complainant to wait for some time.

h. That on 02.10.2017, respondent No. 1 issued an offer of possession for the flat and asked for a payment of Rs. 34,85,452/- under different heads. On 15.09.2022, the complainant submitted a letter to respondent No.1 and asked for a refund of the paid amount. Contents of the letter are produced below for reference- " *This has reference to the booking of above said flat/unit in your project Godrej Summit, Sector – 104, Gurgaon; Due to some unavoidable circumstances, we wish to cancel/surrender my booking. You are hereby requested to kindly cancel the above-mentioned booking/allotment and refund my investment after deduction of as per mutual agreement. It is requested that considering the current market situation I would request for waiver off other deductions (if any)*". It is pertinent to mention here that the respondent asked for an indemnity with said cancellation and under the compelling circumstances, the complainants submitted the said undertaking-cum-indemnity bond dated 12.01.2023.

i. That after the regular follow-up with the respondent when the complainant gets nothing, he sends a legal notice dated 22.08.2023 through his advocate on the respondent No. 1 and its directors and asks for the refund of the paid amount along with interest.

j. Thereafter, since September 2022 the complainant has regularly contacted the office bearers of the respondent's and made efforts to get the refund without interest, but despite several visits by the complainant the respondent has never paid any heed to the complainant's demands.

k. That the main grievance of the complainant in the present complaint is that despite the complainant having paid more than 73% but the respondent failed to hand over the physical possession of the flat within the committed time. Moreover, respondent No. 1 is threatening the complainant to cancel the allotment and forfeit the entire paid amount.

l. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondents and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent's which makes them liable to answer this authority.

m. That for the first time cause of action for the present complaint arose in May 2013, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on the complainant. The cause of action further arose in May 2015, when the respondent failed to hand over the physical possession of the unit and thereafter, the cause of action arose in March 2016, when the respondent failed to refund the paid amount. The cause of action further arose in a) October 2017, b) January 2018, c) Feb. 2019, D) September 2022, and e) August 2023, and many more times when the complainant asked for a refund of paid amount along with interest the cause of action is alive and continuing and will continue to subsist till such time, as this authority restrains the respondent's by an order of injunction and/or passes the necessary orders.

n. It is pertinent to mention here that since the beginning the respondent acted in an unprofessional manner and used low-quality construction material, as a result, some of the towers of the project in question have been declared unsafe for habitation by the competent authority.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):

   I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

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

i. It is submitted that the instant complaint is bad for misjoinder of parties in as much as the respondent no. 2 in the instant project had entered contract with joint venture partner of the respondent no.1 i.e. Magic Info Solutions Private Limited.

ii. It is submitted that the answering respondent is the joint venture partner with the respondent no.1 and has developed the project namely 'Godrej Summit on an area share understanding and executed the development agreement for the same.

iii. It is submitted that the complainant has booked an apartment unit no. 1704 in Tower G which comes under the area share of respondent no.1 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 G, reminders apart from the other compliances, receiving amounts from the Complainant etc. were carried out by the Magic Info Solutions Pvt. Ltd.. It is further important to mention here that even the consideration for the said apartment was received by Magic Info Solutions Pvt. Ltd.

iv. It is submitted that the answering, respondent dutifully explained the factum of that joint venture agreement between the respondent no.2 and Magic Info Solutions Pvt. Ltd in the apartment buyer agreement 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. Even the Possession intimation letter has been issued on the letterhead of Respondent No.1.

v. It is pertinent to mention herein that vide agreement dated 15.10.2019 and 16.10.2019, Respondent No. 2 and MISPL, spelled out in writing the details of the units falling in their share, the arrangement which was agreed between them from inception.

vi. 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.

vii. It is further submitted that the annexure A of the 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.

viii. That in view of the facts narrated above and the contentions raised by the Opposite Party it is evident that the Complainant has not disclosed any ground much less any cogent ground for the grant of reliefs qua the Opposite Party No.2 as claimed and the Complaint under reply deserves to be dismissed with costs.

6. 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 complainants.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as 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, 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 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.

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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund the paid-up amount along-with interest.

11. The complainant was allotted a residential unit bearing no. 1704, situated on the 17th floor of Tower G, admeasuring 1269 sq. ft. (super area) in the project titled "Godrej Summit", located at Sector-104, Gurugram, Haryana. The total sale consideration for the said unit was ₹77,05,060/-, out of which the complainant has paid a sum of ₹49,25,305/- to the respondents. The complainant has sought refund of the said amount along with interest at the rate prescribed under the Haryana Real Estate (Regulation and Development) Rules, 2017.

12. The record reveals that the complainant was issued two separate allotment letters in respect of the said unit—one dated 23.01.2013 issued by Godrej Properties Limited, and the other dated 18.02.2013 issued by Magic Info Solutions Private Limited. Subsequently, an Apartment Buyer's Agreement dated 11.05.2013 was executed, wherein both entities, Godrej Properties Limited and Magic Info Solutions Private Limited, are mentioned as parties in the "Second Party" column. This

makes it clear that both respondents were involved jointly in the promotion, marketing, and sale of the project.

13. The complainant has annexed a refund letter dated 15.09.2022 , which shall be taken as the date from which the calculation of interest is to be made till the date of actual realization.

14. On examination of the documents available on record, it is observed that Godrej Properties Limited and Magic Info Solutions Private Limited entered into a Development Agreement under which both entities shared rights and obligations pertaining to development, marketing, and collection of payments from the allottees. Clause 5.2 of the said Development Agreement provides for an escrow mechanism, whereby all collections from the purchasers were to be made through two separate accounts—Account-I operated solely by Godrej Properties Limited and Account-II jointly operated by both entities under an escrow arrangement. This structure establishes the financial and operational interdependence between the two promoters and confirms that both acted in concert, deriving commercial benefits from the project and thereby fulfilling the definition of "promoter" as provided under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. Relevant portion on the section has been reproduced hereunder:

2. (zk) promoter" means, -

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

15. The Authority further notes that the Buyer's Agreement bears the signature of Magic Info Solutions Private Limited, whereas the stamp or

signature of Godrej Properties Limited is missing. However, the absence of such a signature does not negate the substantive legal relationship or the obligations flowing from it. The issuance of dual allotment letters, the existence of a shared escrow arrangement, and the joint mention of both entities in the Buyer's Agreement clearly establish that both respondents acted jointly in promoting and developing the project and are, therefore, equally responsible for its outcome.

16. The *Hon'ble Supreme Court in DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda (Civil Appeal Nos. 3864–3875 of 2020, decided on 23.03.2021)* has held that when multiple entities jointly participate in the development and marketing of a real estate project, and share the proceeds of such development, they shall be deemed to be co-promoters for the purposes of the Act. The court has further observed that liability under the Act arises from the actual participation in promotion and development of the project rather than from the mere formal execution of documents.

17. Applying the aforesaid principle to the present matter, the Authority is of the view that Godrej Properties Limited and Magic Info Solutions Private Limited were not acting independently but were co-promoters functioning as part of a single project framework. The responsibilities of both entities are intertwined in such a manner that neither can be absolved of its liability under the Act.

18. In the absence of a specific possession date stipulated in the Buyer's Agreement, the Authority considers three years from the date of execution of the said Agreement, i.e., 11.05.2013, as the reasonable period for handing over of possession. Therefore, the due date of possession is determined to be 11.05.2016, in consonance with established practice and judicial precedent. The respondents have not produced any material

evidence to justify the delay in completion or possession on account of any force majeure event.

19. Having failed to deliver possession within the stipulated period or to refund the amount within the statutory timeframe, the respondents are liable to refund the paid-up amount along with interest at the prescribed rate as provided under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., the State Bank of India's highest marginal cost of lending rate (MCLR) plus two percent, which presently stands at 10.90% per annum. The said interest shall be payable from 15.09.2022, being the date of the refund letter, till the date of actual realization. Rule 15 has been reproduced as under:

> ***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

20. Accordingly, the Authority holds Godrej Properties Limited and Magic Info Solutions Private Limited to be co-promoters within the meaning of Section 2(zk) of the Act, and therefore, jointly and severally liable for refunding the complainant's paid-up amount along with the prescribed rate of interest.

21. In light of the above findings, the complainant is entitled to refund of ₹49,25,305/- along with interest at the rate of 10.90% per annum from 15.09.2022 till the date of actual realization.

G. Directions of the authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

    i. The respondents are directed to refund the entire paid-up amount 44,28,192/-, along with prescribed rate of interest i.e., @10.90% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of request of refund i.e.15.09.2022 till the actual realization of the amount.

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

    iii. The respondents is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

23. The complaints stand disposed of.

24. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.08.2025