

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

**Complaint no. : 3017 of 2024**  
**Date of complaint : 17.07.2024**  
**Date of order : 27.01.2026**

Vivek Kumar,

**R/o:** H.No. D2/18, 4<sup>th</sup> floor, Ardee City, near Ardee School, Sector52,  
Gurugram, Haryana

**Complainant**

Versus

M/s Godrej Premium Builders Private Limited  
**Regd. Office at:** 3<sup>rd</sup> Floor, UM House, Plot No.35-P, Sector-44,  
Gurrugram, Haryana.

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman**  
**Member**

**APPEARANCE:**

Darshan Sharma (Advocate)  
Saurabh Gaba (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 thereunder or to the allottee 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. No.	Heads	Information
1.	Project name and location	"Godrej Summit", Sector-104, Gurugram
2.	Project area	22.123 acres
3.	Nature of the project	Residential Project
4.	DTCP license no. and validity status	102 of 2011 dated 07.12.2011
5.	Application form	28.12.2014 [As mentioned in BBA at page 45 of complaint]
6.	Allotment Letter	02.04.2015 [Page 32 of complaint]
7.	Unit no.	L1-604, 15 <sup>th</sup> Floor, Tower-L [Page no. 32 of complaint]
8.	Unit measuring	1283 sq. ft. [Page no.32 of complaint]
9.	Date of execution of flat buyer agreement	13.05.2015 [Page no. 37 of the complaint]
10.	Possession Clause	<b>4.2</b> <i>The Developer shall endeavour to complete the construction of the Apartment <b>within 33 months from the date of issuance of Allotment letter, along with a grace of 6</b></i>

		<i>months over and above this 33 months period...xxx.</i> [Page no. 55 of the complaint]
11.	Due date of delivery of possession	02.07.2018 [As per possession clause of BBA, calculated 33 months from the date of allotment + 6months of grace period is allowed being unconditional]
12.	Payment Plan	Construction Linked [Page 78 of complaint]
12.	Sales consideration	Rs.1,40,19,745/- [As per details of pricing at page no. 77 of complaint]
13.	Total amount paid by the complainant	Rs.21,02,962/- [As per SOA at page 105 of reply]
14.	Reminders/ Demand Letters	17.08.2015, 06.11.2015, 12.01.2016, 12.02.2016, 04.11.2016 [As mentioned in termination letter at page 87 of complaint]
15.	Pre-Termination	04.11.2016 [Page 86 of complaint]
1.	Termination letter	25.11.2016 [Page 87 of complaint]
18.	Occupation Certificate	26.12.2018 (as per DTCP)
19.	Offer of possession	26.09.2019 [Alleged by the respondent at page 02 of reply.]

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

I. That the complainant booked the flat on 23.12.2014, the respondent

issued the allotment letter dated 02.04.2015 and allotted the flat bearing No. L 1604 on the 15<sup>th</sup> floor having carpet area including balcony area of 119.19 square meter which is equitant to 1283 Square feet in the said Project (hereinafter referred to as the "Unit") and paid a sum of Rs.21,02,962/- to the respondent and vide agreement dated 15<sup>th</sup> June 2015, That the respondent executed a printed one sided buyer's agreement in favour of the complainant on 15.06.2015. The agreement is contrary to the provisions of the Real Estate (Regulation and Development) Act. 2016. It is not out of place to mention that all the expenses toward execution of buyer's agreement was borne by the complainant. The respondent has charged more amount from the complainant than actual expenses incurred for registration.

- II. That the complainant has also received a letter dated 4<sup>th</sup> November 2016 in respect of the over dues but before receiving this letter, the complainant was in regularly in touch and apprised the officials of the respondent about his personal difficulties/problems and also requested them to kindly change his plan from CLP to PLP requested via e-mail dated 07.02.2016 but no reply has been given from the respondent side, therefore, the complainant has again requested and asked the respondent about his requested dated 07.02.2016 via mail dated 08.04.2016, 15.05.2016 and 17.08.2016 but instead of taking into the consideration the request of the complainant, via mail dated 17.08.2016, the respondent has demanded the outstanding amount from the complainant.
- III. That via mail dated 04.11.2016, the complainant again apprised about his conditions/situations that he had met with an

accident in the month of September 2016 and undergo a surgery of his shoulder and also attached the medical documents for the satisfaction of the respondent but instead of his help, vide letter dated 25.11.2016, the respondent have forfeited the amount paid by the complainant to the respondent in respect of the Unit No. GODSUML1604, consequently the respondent have itself violated the terms and conditions of the agreement dated 15.06.2015 which is not acceptable in the eyes of law.

- IV. That after receipt of email dated 25.11.2016, the complainant requested the respondent to refund his money or to change the plan from CLP to PLP several times but the respondent have not given any heed to the requests of the complainant, hence the applicant got served a legal notice dated 09.01.2017 (post on 10.01.2017) upon the respondent.
- V. That when the respondent did not given any heed to the requests and demand of the complainant, the complainant filed a complaint before the Permanent Lok Adalat PLA(PUS); GGM against the respondent vide complaint No. 1302/2017 but the Hon'ble Chairman PLA(PUS) GGM has stated that the aggregate value of the flat is more than one Crore and they have no jurisdiction to entertain/decide the present complaint, consequently the complainant with the complaint with liberty to file a fresh complaint before the appropriate form/authority having the jurisdiction to decide the present complaint.
- VI. That the complainant has already paid a sum of Rs. 21,02,962/- to the respondent at the time of booking the aforesaid flat.

- VII. That due to non-performance of its obligations and duties the complainant is going through mental pain and agony as the respondents have already re-allocate the flat in question to any other allottee and hold the amount of the complainant without any reason from the last 8 years.
- VIII. That the entire *sequential* of events leading to the instant complaint establish the malafide intentions of the respondent to defraud the complainant of his hard-earned money. In this hue, it is reverentially submitted that such conduct on the part of the respondent is tantamount to breach of the contractual obligations of the agreement. Ergo, the complainant is entitled to exercise its right conferred by the Real Estate (Regulation & Development) Act, 2016 under section 31 read with section 19(3) read with section 18 or in alternative section 19(4) read with section 18 of the Act.
- IX. That due to the acts of the above and terms and conditions of the agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of aforesaid act of unfair trade practice. There are clear unfair trade practices and breach of contract and deficiency in services of the Respondent and much more a smell of playing fraud with the Complainant and is prima facie clear on the part of the Respondent which makes them liable under the provisions of the RERA Act, therefore, the complainant seeking the relief of refund of his money i.e. Rs. 21,02,962/- with upto date interest as per the prevailing market rate of interest.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):

- I. To direct the respondent to refund the money of the complainant i.e. Rs.21,02,962/- with upto date interest as per market prevailing rate of interest as per the provisions of the RERA Act, 2016.

**D. Reply by respondent:**

5. The respondent vide reply and written submissions dated 04.03.2025 contested the complaint on the following grounds:

- i. That the project "Godrej Summit", wherein the complainants have booked flat no L 1604 on the 15th floor, is now being developed by Godrej Projects Development Pvt. Ltd. w.e.f. 21st August 2015 in terms of order dated 03.07.2015 of Hon'ble High Court of Bombay in the company petition no. 154/2015 titled as Godrej Premium Builders Pvt. Ltd. vs. Godrej Projects Development Pvt. Ltd.
- ii. That the respondent is developing the project "Godrej Summit " in sector - 104, Gurgaon ("Project"). The complainant had applied for booking of apartment in the said project, vide an application form dated 28.12.2014 ("Application Form"), after having carefully read and having understood the terms and conditions contained therein, for a total consideration of Rs. 1,40,19,745/- excluding taxes.
- iii. It is further submitted that the complainant opted for comfy payment plan and demands towards part sale consideration of said apartment have been raised in consonance with the payment plan opted by the complainant. Thereafter, the complainant was allotted an **Apartment No. 1604 in Tower "L"** in the said project.
- iv. That accordingly thereafter an apartment buyer's agreement dated 15.06.2016 ("**Agreement**") was executed between the complainant

and the respondent. it is pertinent to mention herein that the said agreement has been admitted by the complainant herein and is also being relied upon by him.

- v. That the application form (Clause 13), allotment letter and builder buyer agreement (Clause 2.6) inter-alia stipulated that earnest money for the purposes of the said application shall be 15% of the sale consideration of the apartment which was to ensure compliance on the part of the complainant.
  - vi. That the complainants have paid a total sum of Rs.21,02,967/- against the sale consideration of the apartment and thereafter defaulted in making the payment of balance consideration and as such committed a material breach of the agreement.
  - vii. That the OPs had sent several reminder letters dated 17.08.2015, 06.11.2015, 12.01.2016 and 12.02.2016 to the complainant to clear its outstanding, however the complainant has failed to pay any attention to such reminders.
  - viii. Thereafter, the respondent vide letter dated 04.11.2016 sent a **Pre-Termination Letter** calling upon the complainant to clear the balance consideration of the apartment. Thus, there was a total outstanding of Rs. 78,61,747/- as on 04.11.2016.
  - ix. That the respondent thereafter again granted an opportunity to the complainant to clear its outstanding as per the opted payment plan but to no avail. Owing to a continuous default by the complainant, the OP was constrained to issue the termination letter dated 25.11.2016 as per the terms of agreement.
6. All other averments made in the complaint were denied in toto.

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 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**

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 allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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.

**F. Findings on the relief sought by the complainant:**

**F.I To direct the respondent to refund the money of the complainant i.e. Rs.21,02,962/- with upto date interest as per market prevailing rate of interest as per the provisions of the RERA Act, 2016.**

12. The complainant was allotted a unit bearing no. L1-604, 15<sup>th</sup> Floor, Tower-L in the project of the respondent named "Godrej Summit" at Sector-104, Gurugram vide buyer's agreement dated 13.05.2015 for a sale consideration of Rs. 1,40,19,745/-. Out of the said sale consideration, the complainant has paid an amount of Rs. 21,02,962/- in all against the said allotment.

13. The counsel for the respondent states at bar on 04.09.2025 that unit was terminated in the year 2016 due to nonpayment as per agreement executed prior to RERA, the respondent was entitled to deduct 20% amount as earnest money and according to no amount was refunded and hence, the complaint is not maintainable.

14. On the contrary, the complainant states that earlier complaints were filed before Permanent Lok Adalat in the year 2017. The application before the Lok Adalat was dismissed as withdrawn vide order dated 20.05.2024 with liberty to file a fresh application in appropriate forum of competent Jurisdiction as per law. Accordingly, the complaint for refund has been filed before the Authority on 17.07.2024.

15. Upon consideration of the pleadings, record and submissions of both parties, it is evident that the allotment of the unit was cancelled by the respondent on 25.11.2016 on the ground of alleged non-payment, much prior to the due date of possession i.e. 02.07.2018. The respondent has

relied upon the terms of the Builder Buyer Agreement executed prior to the enforcement of the RERA Act 2016 to justify termination and forfeiture of earnest money. However, it is well settled that Section 3 of the Act, 2016 mandates registration only of those real estate projects that fall within its scope, while expressly exempting projects for which a completion certificate or occupation certificate had been obtained before the commencement of the Act or the notified State Rules. The project in question being an ongoing project and the possession admittedly not having been delivered within the stipulated period.

16. Further, the conduct of the respondent in allegedly offering possession on 26.09.2019, long after issuing the termination letter dated 25.11.2016, clearly renders the said cancellation self-contradictory and legally unsustainable. Once the allotment stood terminated due to alleged non-payment, there could be no occasion for the respondent to offer possession of the same unit unless the termination was treated as non-est or waived by the respondent itself. Therefore, the cancellation made by the complainant is invalid in the eyes of law (***Vide proceeding dated 27.01.2026, the cancellation was inadvertently recorded to be "Valid" instead of being written as "Invalid cancellation" same is a mistake of fact apparent on record, therefore, in the proceeding dated 27.01.2026, it must be read "Cancellation is Invalid"***).
17. The authority has observed that the respondent-builder has offered possession to the complainant on 26.09.2019 but the complainant wants to surrender the unit and refund the amount paid by him. Keeping in view the aforesaid circumstances, the respondent builder has already offered the possession of the allotted unit and judgment of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil***

**appeal no. 5785 of 2019 decided on 11.01.202**, it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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"*

18. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the amount paid by the complainant after deducting 10% of the sale consideration being earnest money along with an interest @ 10.80% 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 filing of this complaint i.e., 17.07.2024 requesting for refund of the amount till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions of the Authority:**

19. 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/promoter is directed to refund the paid-up amount of Rs. 21,02,962/- after deducting 10% of the sale consideration of Rs. 1,40,19,745/- being earnest money along with an interest @10.80% 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 filing of this complaint i.e., 17.07.2024 (requesting for refund of the amount) 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.
20. The complaints stand disposed of.
21. Files be consigned to the registry.



Phool Singh Saini  
**Member**



Arun Kumar  
**Chairman**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2026