

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

Complaint no: 6015 of 2024
Date of Order: 12.12.2025

Ruchi Suri
R/o: 67-C, Block-L, Phase 1, New
Palam Vihar, Gurugram

Complainant

Versus

Godrej Properties Limited
Regd. Office at: 3rd floor, UM House,
Tower A, Plot no. 35,
Sector 44, Gurugram-122002

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Vaibhav Anand (Advocate)
Shri Rohan Malik (Advocate)

Complainant
Respondent

ORDER

1. This order shall dispose of complaint titled as above before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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 and location of the project	"Godrej Aristocrat", Sector 49, Gurugram
2.	Nature	Residential unit
3.	Project area	9.56 acres
	DTCP License	147 of 2023 dated 02.02.2008 valid upto 01.02.2030
	RERA registered/ not registered	Registered 111 of 2023 dated 04.12.2023 valid upto 31.12.2030
	Unit no.	GODACT5-1903 (As per page 25 of complaint)
4.	Unit area admeasuring (carpet area)	160.83 sq. m.
5.	Allotment letter	06.01.2024 (page 22 of complaint)
6.	Date of agreement for sale	NOT EXECUTED
7.	Possession Clause	Not available
8.	Due date of possession	06.01.2027 (3 years from the allotment letter)

9.	Total sale consideration	Rs. 7,49,51,263/- (page 29 of complaint)
10.	Amount paid	Rs.74,75,943/- (as stated by complainant)
11.	Email for executing AFS (by respondent)	17.01.2023, 14.02.2024, 19.02.2024, 24.02.2024
12.	Final reminder and pre-termination letter	14.03.2024 (page 61 of reply)
13.	Termination letter	24.03.2024 (page 63 of reply)
14.	offer of possession	not offered
15.	Occupation certificate	N/A

B. Facts of the complaint.

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

- i. That the representatives from the respondent company approached the complainant, promoting their project known as "Godrej Aristocrat" in Sector-49, Gurugram. They claimed that the project would feature advanced technologies and infrastructure. Attracted by these promises and the company's strong market reputation, the complainant expressed interest in purchasing a residential unit within the project.
- ii. It is noteworthy that at the time of booking, the company misrepresented that a 24-meter road within the licensed land would be developed by them, with the assurance that land acquisition would be carried out, although no specific timeline was provided. It is evident from the site map plan that the aforesaid road within the licensed area was to be developed by the respondent company.

- iii. The total earnest money paid amounts to 10% of the base value of the overall sale consideration of ₹7,49,51,263.73, in favor of the respondent company.
- iv. That on 06.01.2024, the respondent company issued an allotment letter for the said unit, acknowledging the aforesaid payments made by the complainant.
- v. That the complainant consistently contacted the respondent company, both by phone and through office visits, to inquire about the status of the 24-meter road acquisition. However, the company failed to provide any concrete or actionable assurances. To date, no land has been acquired to develop the promised road.
- vi. That frustrated by the company's non-responsiveness and uncertain assurances and termination of the unit in question by the respondent company, the complainant decided to withdraw from the booking and requested a refund of the amount already paid to the respondent company.
- vii. That consequently, the respondent company has clearly demonstrated a deficiency in service and violated statutory provisions, warranting legal penalties as provided by law.
- viii. That the respondent company has failed to fulfill its obligations under the application form and allotment letter of the said unit. The respondent's conduct reflects an abuse of their dominant market position and necessitates legal action.
- ix. That by breaching the terms of the application form and the allotment letter, the respondent company has acted arbitrarily and in bad faith. The complainant has endured considerable mental agony and harassment due to the company's misrepresentation regarding the land acquisition. It is respectfully submitted that the complainant should be compensated for the

emotional distress, as well as for litigation expenses incurred in pursuing this avoidable legal action.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
 1. Direct the respondent to refund Rs. 74,75,943/- along with interest from the date of actual payment till realization.
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. The respondent seeks to state the following brief facts before raising objections to the present complaint. That the complainant being the educated person, after satisfying herself with the project, vide application form dated 17.12.2023 applied for the allotment of T5-1903 in the project for a total consideration of Rs. 7,49,51,263.73/-. Further, the complainant paid an amount of Rs. 74,75,943/- as booking amount.
 - ii. That pursuant to the receipt of the aforesaid amount, the respondent vide email dated 04.01.2024 issued a welcome letter outlining the particulars of the unit, opted payment plan and agreed terms and conditions, including a directive for execution of the AFS within a stipulated timeframe.
 - iii. Subsequently, the respondent issued an allotment letter dated 06.01.2024 in favour of the complainant. It is respectfully submitted that the said allotment letter clearly enumerated all the terms and conditions, including the requirement for execution of the AFS within a stipulated timeframe.

- iv. Thereafter, the respondent to comply with the mandate of Section 13 of the Act sent an email dated 17.01.2024 to the complainant, thereby requesting her to come forward and execute the AFS. This was necessary to raise further demands as per the agreed payment plan. However, the complainant deliberately ignored the said communication and took no steps to execute the AFS.
- v. It is pertinent to note that despite the respondent's earlier request, the complainant failed to respond or take any steps towards execution of the AFS. Further, the respondent in good faith and being a customer centric organization issued follow-up reminders vide emails dated 27.01.2024, 14.02.2024 and 19.02.2024, requesting the complainant to come forward for the execution of the AFS. However, all the efforts of the respondent went into vain and the complainant wilfully abstained from executing the AFS, thereby stalling the transaction without any justifiable cause.
- vi. Subsequently, vide email dated 24.02.2024, the respondent once again requested the complainant to come forward and execute the AFS and further intimating the complainant that in the event of her failure to do so, the respondent would be constrained to take appropriate action in accordance with the provisions of the Act, the application form, and the allotment letter. For the sake of transparency and to afford the complainant an opportunity to peruse and satisfy herself with the proposed terms and conditions, the respondent also annexed a copy of the draft AFS along with the said email.
- vii. At this juncture, it is pertinent to mention that the respondent being a customer-centric organization was diligently undertaking the timely development of the project in the best interest of its allottees. The construction activities were progressing at a steady pace and to sustain the

momentum of development, a consistent and timely financial inflow was essential. However, the deliberate inaction and failure on the part of the complainant to execute the AFS within the stipulated timeline adversely impacted the respondent's ability to maintain the Project schedule. Nevertheless, in a continued spirit of cooperation and good faith, the respondent issued further reminders to the complainant vide emails dated 26.02.2024 and 04.03.2024, once again requesting her to come forward and execute the AFS. Despite multiple opportunities and reminders, the complainant neither responded to the communications nor took any steps to fulfil her contractual obligations.

- viii. Thereafter, the respondent after providing sufficient opportunities on various occasions to the complainant, was constraint to issue the pre-termination letter dated 14.03.2024, providing a last and final opportunity to the complainant to execute the AFS. Despite this last effort, the complainant failed to respond or take any constructive steps. Consequently, in accordance with the terms and conditions of the application form, the allotment letter, and the applicable provisions of the Act and the HARERA Rules, the respondent proceeded to lawfully terminate the allotment of the complainant vide termination letter dated 24.03.2024.
- ix. It is most respectfully submitted that the complainant had voluntarily approached the respondent for the allotment of a unit in its project. Pursuant thereto, the respondent allotted the unit in favour of the complainant. However, the complainant after realising her financial incapacity to pay the total sale consideration, the complainant deliberately avoided execution of the AFS. Further, from the date of accepting the allotment letter until the termination, the complainant never came forward to execute the AFS. More significantly, the complainant never raised any

query or concern regarding any aspect of the transaction. The complainant continued silence clearly reflects an intention to withdraw from the project without facing any consequences. In an attempt to justify such withdrawal, the complainant has filed the present complaint on a false pretext of misrepresentation regarding the 24-meter road. The allegations are baseless and alleged as an afterthought. Thus, the complainant is not entitled to any relief and the present complaint is liable to be dismissed.

- x. The present complaint is liable to be dismissed for want of cause of action. In this regard, it is submitted that the terms and conditions of the application form and allotment letter agreed by the complainant clearly shows that the respondent had the right to forfeit the booking amount in case of termination of the unit for any reason not attributable to the respondent. All the grounds raised by the complainant are misconceived, false and the complainant be put to strict proof to show otherwise. Even this Hon'ble Authority in plethora of judgments have allowed forfeiture in case of no fault attributable to the Developers and accordingly, reliance is also placed on those dictas. From the aforesaid detailed submissions of the respondent, it is clear that there is no subsisting claim of the complainant.
- xi. Further, the present complaint is not maintainable in view of the fact that the complainant is no longer an allottee in the project. Thus, the present complaint is filed without *no locus standi*. In this regard, it is submitted that the allotment of the complainant being terminated way before the date of delivery of the said unit, no question of possession/delivery of the said unit arises. It is submitted that on 24.03.2024, the unit of the complainant stood legally terminated well before alleged date of delivery of the possession of the unit. Thus, no question of interest on delay arises for such terminated unit. It is also submitted that complainant himself being a defaulter is

raising bald, false and defamatory allegations of the alleged delay in the development of the project.

- xii. That the respondent being a customer centric organization has already acted in the best interest of its customer. Further, in view of the submissions made herein above, it is evident that the present complaint is ridden with false statements, non-disclosures and concealments, thus amounts to abuse of process of law. While executing the application form and allotment letter, the complainant unequivocally undertook to abide by all the terms and conditions contained in the said application form and allotment letter. Hence, the present complaint is liable to be dismissed on this count alone.
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.

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 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.

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 complainant at a later stage.

12. 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. 2021-2022(1) R.C.R. (Civil) 357 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."

13. 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.I Direct the respondent to refund Rs. 74,75,943/- along with interest from the date of actual payment till its realization.

14. The factual matrix of the case reveals that the complainant was allotted a unit no. GODACT5-1903, admeasuring 160.83 sq. ft. in the project "Godrej Aristocrat" being developed by the respondent for a sale consideration of Rs. 7,49,51,263/-. The complainant had paid an amount of Rs. 74,75,943/- to the respondent against the unit.
15. The builder buyer agreement was not executed between the parties. It is pertinent to note that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.**" (12.03.2018 SC); MANU/SC/0253/2018, the Hon'ble

Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."

16. Herein, in the peculiar facts and circumstances of the present case, the due date of possession has to be calculated to be three years from the date of the allotment letter i.e. 06.01.2024. Therefore, the due date comes out to be 06.01.2027.
17. Further, the complainant herein intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per Section 18(1) of the Act and the same 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. -
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....***

(Emphasis supplied)

18. The due date of delivery of possession of the subject unit was 06.01.2027. Further, the occupation certificate/completion certificate of the project where

the unit is situated has still not been obtained by the respondent- promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., Civil Appeal no. 5785 of 2019**, decided on 11.01.2021.

"...The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project..."

19. It is established from the record that the complainant failed to respond or take any steps towards execution of the agreement of sale. Further, the respondent issued reminders vide emails dated 27.01.2024, 14.02.2024 and 19.02.2024, requesting the complainant to come forward for execution of the agreement of sale. As on date the unit in question is terminated for non-execution of agreement of sale by the complainant.
20. The allotment letter (clause 4 of the allotment letter) expressly permits forfeiture of earnest money (10% of total consideration), brokerage, and other benefits/incentives in case of cancellation without default by the developer. The complainant cannot claim entire refund contrary to the agreed terms. And the allegations of oral assurances and buy-back schemes are unsupported by any documentary evidence and are therefore rejected. The relevant clause of the allotment letter is extracted below:

*4. "If the Allottee(s) fails in submission of consent or seeks cancellation/withdrawal from the Project without any fault of the Promoter or fails in payment of required additional amount towards Total Price of Apartment and **signing of 'Agreement for Sale' within given time, then the Promoter is entitled to forfeit the 10 % of Total***

Price of the apartment paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the Promoter). The rate of interest payable by the Allottee(s) to the Promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the Allottee(s) Shall be returned within ninety days of such cancellation."

21. 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 Urs. 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."

22. 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 cannot 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 i.e. 8.85%)+2% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

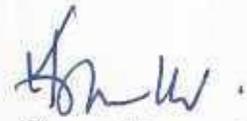
G. Directions of the authority.

23. 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 functions entrusted to the authority under section 34(f):

1. The respondent is directed to refund the paid-up amount i.e. Rs. 74,75,943/- to the complainant after deducting 10% of the total consideration as earnest money along with interest at the prescribed rate i.e., 10.85%, from the date of each payment till the date of realization of payment.

- 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.
24. The complaint stands disposed of.
25. Files be consigned to registry.

Date:12.12.2025



(Arun Kumar)
Chairman

**Haryana Real Estate
Regulatory Authority,
Gurugram**