

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

Complaint no. : 4800 of 2024
Date of decision : 31.10.2025

Kundan Sawat and Kavita Chowdhary
R/o: - H. No. 1728, 4th floor, Near Ardee City,
Gate No. 2, Sector 52, Gurugram

Complainant

Versus

M/s Godrej Highview LLP.
Regd. Office at: - Godrej one, 5th floor,
Pirojsha Nagar Eastern Express Highway,
Vikhroli, Mumbai-400079

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Rishabh Jain (Advocate)
Sh. Rohan Malik (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 to the allottees as per the agreement for sale executed inter se them.

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 of the project	"Godrej Nature Plus", Sector 33, Gurugram
2.	Project area	18.744 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	01 of 2014 dated 03.01.2014
5.	RERA Registered/ not registered	Registered 18 of 2018 dated 30.01.2018 valid upto 30.01.2028
6.	Unit no.	2401, 23 rd floor Tower D2 (As per page 28 of complaint)
7.	Unit area admeasuring	104.10 sq. ft. (As per page 40 of complaint)
8.	Allotment letter	23.06.2022 (page 27 of complaint)
9.	Draft of Agreement for sale send via email	13.07.2022 (page 36 of complaint)
10.	Possession clause	7.1 <i>The Developer shall offer possession of the units comprised in Tower-E, G, H, J, T3, T4 to the buyer on or before 30.01.2026 ("Completion Time Period") as per agreed terms and conditions unless there is delay due to Force Majeure Event. Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Developer shall be entitled to the extension of time for delivery of possession of the Unit.</i>
11.	Due date of possession	30.01.2026 (as per possession clause)
12.	Total sale consideration	Rs. 94,01,348/- (as per allotment letter on page 29 of complaint)



13.	Amount paid by the complainant	Rs.9,40,134/- (as per payment receipts on page 23 of complaint)
14.	Offer of possession	Not offered
15.	Occupation certificate	03.04.2023 (as per DTCP website)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- The complainants booked the apartment on 14-May-2022 by paying ₹2,00,000/- to the respondent. Further, the complainants paid ₹3,24,000/- on 19-May-2022 and ₹4,16,134/- on 3-Jun-2022. The complainant in total paid a sum of ₹9,40,134/- towards booking of the apartment in the said project. Subsequently, the respondent issued allotment letter dated 23-jun-2022 to the complainants.
 - It came as a shock to the complainants that the terms of the allotment letter were different from what was told to the complainants by the sale executives of the respondent at the time of booking. It seemingly appeared at the beginning that the respondent digressed from their commitments, making it difficult for the complainants to continue in the project.
 - The genesis of the present complaint lies in the gross indifference, refusal and failure of the various obligations on the part of the respondent. The respondent initially enticed various customers including the complainants to pay their hard-earned money for the purchase of an apartment in the project. Later, the respondent digressed from its commitments and coercively forfeited the amount of ₹9,40,134/-. Thus, the complainants now seek refund of their entire deposited amount of ₹9,40,134/- with interest as prescribed from the respondent from the various dates of receipts till realisation.

- iv. The respondent published very attractive colourful brochure, highlighting the project 'Godrej Nature Plus' situated in Sector 33, Sohna, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers including the complainants to buy apartment in the project. There are fraudulent representations, incorrect and false statements in the brochure.
- v. The complainants were approached by the sales representatives of the respondent who made tall claims about the project describing it as the world class project. The complainants were invited to the sale office and were lavishly entertained and promises were made to them that the project would be finished in time as per the approved layout plan, complete with parking and other common area facilities. The complainants were impressed by their statements and oral representations and ultimately lured to pay ₹2,00,000/- on 14-May-2022 to respondent as booking amount for the apartment.
- vi. The complainants further paid ₹3,24,000/- on 19-May-2022 and ₹4,16,134/- on 3-Jun-2022. The complainant in total paid a sum of ₹9,40,134/- towards booking of the apartment in the said project.
- vii. Subsequently, the respondent issued allotment letter dated 23-Jun-2022 to the complainants wherein the apartment no. 2401, 23rd Floor, Tower D2, measuring 71.54 sq. mtrs of carpet area in the project 'Godrej Nature Plus at Sector 33, Sohna, Gurugram, Haryana, was allotted in favour of the complainants.
- viii. It came as a shock for the complainants to learn the fact that the respondent has digressed from the verbal terms & conditions, as was committed at the time of booking. It seemingly appeared at the

beginning that the respondent is trustworthy promoter, further making it difficult for the complainants to continue in the project.

- ix. It is pertinent to state that as per terms of the allotment letter dated 23-Jun-2022, the respondent was supposed to execute the agreement for sale with the complainants within 15 days of issuance of allotment. The respondent did not take any steps to inform the complainants about the status of execution of the agreement for sale.
- x. All of a sudden via email dated 13-Jul-2022, the respondent sent the draft for execution of the agreement for sale, which added fuel to the fire.
- xi. The complainants after observing the nonchalant attitude and voluntary digression from its commitments decided to withdraw from the project.
- xii. The complainants via email dated 13-Jul-2022 conveyed their intention to not proceed further in the project to the respondent. As no response was received, the complainants again communicated their intention to discontinue in the project to the respondent via email dated 14-Jul-2022.
- xiii. The respondent via even dated email abruptly denied the request of the complainants to refund the entire deposited amount. Moreover, the complainants were shocked to know that the respondent intends to forfeit the entire deposited amount paid by the complainants.
- xiv. The representatives of the respondent have informed the complainants that until execution of a registered agreement, the complainants were free to withdraw from the project. Moreover, the draft agreement sent by the respondent via email dated 13-Jul-2022 stipulates a similar condition.

- xv. As the respondent has failed to take any justified action, the complainants sent a legal notice dated 26-Jul-2022 to the respondent seeking refund of their entire deposited amount.
- xvi. Forced by the circumstances, the complainants filed a complaint before the District Consumer Disputes Redressal Commission, Gurugram. Due to technical reasons the said complaint was withdrawn by the complainants with liberty to file a fresh complaint before appropriate forum.
- xvii. The complainants, time and again, approached the respondent and enquired about the status of refund of their deposited amount but to no avail. The respondent did not bother to respond to the requisitions made by the complainants.
- xviii. Initially, at the time of booking, the respondent has made certain verbal commitments but digressed from it while issuing the allotment letter. Thus, the complainants decided to withdraw from the project due to failure of the respondent to fulfil its obligations. The complainants now seek refund of their entire deposited amount of ₹9,40,134/- with interest from the respondent from various dates of receipts till realisation.
- xix. The respondent has in an unfair manner siphoned off hard earned money of the complainants and utilised the same for its own benefit for no cost. The respondent being builder and developer, whenever in need of funds from banks or investors ordinarily has to pay heavy interest per annum. However, in the present scenario, the respondent utilised funds collected from the complainants and other such buyers for the organisation's own good in other projects, being developed and maintained by the respondent.

- xx. The complainants have lost confidence and in fact has got no trust left in the respondent/developer/promoter as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainants beside being guilty of indulging in unfair trade practices and deficiency in services and then remaining non responsive to the requisitions of the complainants.
- xxi. The respondent has cheated the complainants knowingly and has taken monies by deception, made fraudulent representations, given deliberate false written promises. This fraudulent behaviour of the respondent also attracts criminal liability under the Indian Criminal Dispensation System. The conduct of the respondent is suspect, wilfully unfair and arbitrary, deficient in every manner and scandalous. The complainants have lost faith, confidence and trust in the respondent as the respondent is continuously deceptive and non-responsive to the requisitions made by the complainants.
- xxii. The complainants intend to withdraw from the project. The complainants seek the complete refund of their deposited amount along with interest at the prescribed rate due to the failures of the respondent. The complainants reserve their right to seek compensation before the appropriate forum and in accordance with law.
- xxiii. In the given premise and circumstances, it is submitted that the respondent/seller/builder/promoter is habitual of making false promises and has deceptive behaviour. The respondent has earned handsome money by duping the innocent complainants and other buyers through its unfair trade practices and deficiencies in services and has caused the complainants immense pain, mental torture, agony, harassment, stress, anxiety and financial loss.

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 interest.
 - II. Direct the respondent to pay legal expenses of Rs. 1,00,000/-.
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 contested the complaint on the following grounds: -
 - i. In order to substantiate the aforesaid, the respondent seeks to state the facts in chronological manner before raising the preliminary objections to the present complaint. On 14.05.2022, the complainants vide expression of interest showed their interest in buying the unit in question. Thereafter, the complainants vide application form dated 03.06.2022 applied for the allotment of a residential unit bearing no. D2 – 2401 in the project.
 - ii. That in view of the aforesaid agreed terms and as per the opted payment plan provided in the application form the complainants were required to pay an amount of Rs. 94,01,348/- towards the total sale consideration for booking the unit. Out of the total sale consideration, the complainant paid an amount of Rs. 9,40,134/- towards the booking amount on 21.06.2022.
 - iii. Pursuant to the receipt of the aforesaid amount, the complainants were allotted with the unit vide allotment letter dated 23.06.2022.
 - iv. Thereafter, vide email dated 13.07.2022 the respondent sent a copy of the agreement for sale to the complainants. In the said email, the

complainants were requested to go through the AFS and indicate a suitable date for scheduling an appointment for registration of the AFS.

- v. However, the complainants are realizing their incapacity to pay the total sale consideration of the unit, vide email dated 13.07.2022 sought unilateral and arbitrary cancellation of the allotment. In the said email, the complainant also sought complete refund of amount paid by them towards the booking and allotment of the unit.
- vi. Later, vide email dated 14.07.2022, the complainants again requested the respondent for the cancellation of the allotment and sought refund of the entire amount paid.
- vii. Thereafter, vide email dated 14.07.2022 the complainants once again requested for complete refund of the booking amount. On the same day, the respondent vide email dated 14.07.2022 informed the complainants that after the booking of unit in the system, refund policy changes. Meaning thereby, once an application form is executed, the parties are bound by the terms and conditions mentioned therein, including the forfeiture clause. The complainants on the same day vide email again reiterated the same request regarding refund of entire amount paid.
- viii. Thereafter, the complainants vide email dated 15.07.2022 again requested for the refund. In response to the same, vide email on same day, the respondent informed the complainants that the parties are bound by the RERA Rules & Regulation which also provides for forfeiture of booking amount if allotment is sought to be cancelled without the default of the developer of the project. It was informed that prior to the execution of the AFS, the parties are governed by the

- agreed terms and conditions of the application form. Later, in response, the complainants vide email dated 15.07.2022 informed the respondent that they will be sending legal notice.
- ix. On the persistent requests of the complainants seeking unilateral cancellation, the respondent vide email dated 26.07.2022 sent a cancellation acceptance form to the complainants. The cancellation acceptance form was required to be signed by the complainants, however, instead of doing the same, the complainants sent a misconceived legal notice dated 26.07.2022 to the respondent.
- x. From the aforesaid narrated facts, it is clear that the cancellation of the unit has been sought to take arbitrary exit from the project without any default of the respondent. The complainants now seek to unilaterally withdraw from the project without consequence and for the same has resorted to file the present complaint to arm-twist the respondent.
- xi. It is respectfully submitted that the complainants have miserably failed to perform its part of the obligation in as much as the complainants have failed to adhere to the terms and conditions of the application form and allotment letter. The complainants have also failed to execute the AFS therefore committed material breach of the terms and conditions as stated in the said application form and allotment letter. Further, it is submitted that non execution of AFS consequently led to non-payment of agreed total price of the said unit, thereby defeating the very concept of a construction linked payment

plan. If every time potential buyers are allowed to back out from the allotment mid-way, without any consequences borne by them, it may have a cascading effect on the developers.

xii. It is pertinent to mention that the complainants vide email dated 13.07.2022 and 14.07.2022 themselves had shown their incapability to pay the agreed total sale consideration and further sought unilateral cancellation without any fault of the respondent.

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 submissions made by the parties as well as the written submission of the respondent.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, 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

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) RCR (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.1. Direct the respondent to refund the entire paid-up amount along with interest.

14. The complainant was allotted unit no. 2401 on 23rd floor, in tower/block- D2, in the project "Godrej Nature Plus" by the respondent/builder for a total consideration of Rs.94,01,348/- and he has paid an amount of Rs.9,40,134/-.
15. The OC for the project of the allotted unit was granted on 03.04.2023. It is evident from the above-mentioned facts that the complainant has paid a sum of Rs. 9,40,134/- against basic sale consideration of Rs.94,01,348/- of the unit allotted on 23.06.2022. As per possession clause 7 of the draft of agreement for sale, the due date of possession comes out to be 30.01.2026. In the present complaint, the complainant wrote an email to the respondent on 14.07.2022, and even requested for withdrawal/surrender of the allotment of the said unit due to the harsh circumstances and requested for the refund of the paid-up amount.
16. The Hon'ble Apex Court of law 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, (2016) 4 SCC 136*, 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 provision of the section 74 of the Contract Act,

1872 are attracted and the party so forfeiting must prove actual damage.

17. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided 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. Keeping in view the above-mentioned facts, the promoter was required to return the paid-up amount after retaining 10% of the basic sale consideration. However, in the present matter the complainant has paid only Rs.9,40,134/- against the total sale consideration of Rs.94,01,348/- which constitutes about only 10% of consideration money and hence, no case for refund of any amount is made out.

F. II Cost of litigation of Rs. 1,00,000/-.

19. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)**, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71



and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

20. Complaint stands disposed of.
21. File be consigned to registry.

Dated: 31.10.2025

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

