

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

Complaint no. : 5828 of 2025
Date of complaint : 18.11.2025
Date of decision : 11.08.2026

Khusboo Patel and Kumar Vanshaj,
R/o: - H.No. C-120, Ground Floor, Suncity, Sector-
54, Gurugram, Haryana-122002.

Complainants**Versus**

**M/s Godrej Developers and Properties Private
Limited**

Regd. Office At: Godrej One, 5th Floor,
Pirojshanagar, Eastern Express Highway, Vikhroli,
Mumbai City, Maharashtra-400079.

M/s M/s Godrej Properties Limited.

Regd. Office At: 3rd Floor, UM House Tower A, Plot
No. 35, Sector-44, Gurugram-122002.

M/s Orris Infrastructure Private Limited.

Regd. Office At: J-105, DLF Phase 3, MG Road,
Gurugram-Haryana-122002.

Respondents**CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Shri Manish Yadav (Advocate)

Shri Saurab Gaba (Advocate)

Ms. Charu Rustagi (Advocate)

Complainants**Respondent no. 1&2****Respondent no. 3****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. Unit and project 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.No.	Particulars	Details
1.	Name and location of the project	"Godrej AIR", Phase-3, Sector-85, Gurugram
2.	Nature of the project	Residential Group Housing
3.	RERA Registered/ not registered	34 of 2018 dated 07.12.2018 valid up to 30.09.2023
4.	Unit no.	A1-903, 9 th floor, Tower-A1 (As per page no. 26 of complaint)
5.	Unit area admeasuring	146.94 sq. mtr. (As per page no. 26 of the complaint)
6.	Application form	13.03.2020 (As per page no. 24 of complaint)
7.	Date of execution of flat buyer's agreement	Not executed
8.	Possession clause	<i>cannot be ascertained</i>
9.	Due date of possession	<i>cannot be ascertained</i>
10.	Total sale consideration	Rs. 1,50,00,000/-
11.	Amount paid by the complainant	Rs.5,00,000/- (As per SOA 14.03.2020 on page no. 39 of the complaint)
12.	Occupation Certificate/ completion certificate	Not obtained
13.	Offer of possession	Not offered
14.	Surrender/withdrawal request made by the complainant	24.11.2020 (page no. 60 of complaint)

B. Facts of the complaint**3. The complainants have made the following submissions in the complaint:**

- I. That the respondent no. 1 is a developer and has developed residential project in various sectors of Gurugram. That the complainant were looking for a residential accommodation and on a visit to the new developing Gurugram, complainants visited the under construction site Godrej Air in Sector 85 Gurugram of respondent no.1 and complainants were represented by Mr. Pradeep Yadav, a sales representative of Godrej Properties Developer i.e the Respondent No. 2. That Mr. Pradeep Yadav assured the project of respondent is approved by various financial institutions like ICICI Bank, SBI, HDFC Bank, LIC Housing Finance etc. for the home loan facility and after sanction of the Home loan further process of the booking of the Unit will be initiated. That Mr. Pradeep Yadav also assured on behalf of the respondents that in any case if the desired loan amount is not sanctioned by the financial institutions, complainants entire booking amount will be refunded without any deductions.
- II. That on 13.03.2020 complainants applied to book a residential unit space admeasuring 2250 sq. ft. super build up area being 3 bhk plus utility room unit no. GODAIRA1-0903 on the Ninth Floor in Tower No. - A1 with for a total consideration of Rs. 1,50,00,000/- and the complainants have paid an amount of Rs 5,00,000/- as the earnest booking amount.
- III. That after applying for booking the unit the complainants had applied for the loan from ICICI Bank and the bank representatives had informed the complainants that considering their salary status and the other

factors complainants will get the approval for the loan amount of Rs. 1,10,00,000/- and the complainants had to arrange the balance amount of Rs. 40,00,000/- on their own.

- IV. That the respondent as the well as the people know that COVID-19 has affected all over the world, all the industries and business are affected due to COVID-19 and the Indian economy has decreased and GDP is also severely affected due to COVID-19. That due to the pandemic situation of COVID-19 the Indian government had declared lockdown nationwide from 22.03.2020 and the further processing regarding the sanctioning of loan were stopped. That on 26.03.2020 the complainants had emailed to the respondents informing to hold the booking of the unit as due to COVID-19, loan of the complainants could not be processed and bank will carry forward with the processing once the lockdown is over.
- V. That the complainants had again emailed the respondent on 27.03.2020 informing the respondent that the bank is not initiating their loan process. The complainants before making further payments want to be sure that their loan will be sanctioned by the ICICI Bank as one of the representatives named Pradeep Yadav of respondent had assured the complainants that if the bank does not approves the home loan then the initially full booking amount will be refunded to complainants but the respondents did not revert to the emails of the complainants.
- VI. That the complainants had emailed to the respondent explaining the situation that due to the lockdown situation the organization had reduced the salary of their employees and due to reduction in salary of complainants the ICICI Bank has decreased the Home loan amount of Rs. 1,01,00,000/- instead of Rs 1,10,00,000/- of complainants in the month of April,2020. Now the bank has even decreased the home laon



amount to Rs 80,00,000/- and now rest of Rs. 70,00,000/- will be paid by the complainants which is not possible for the complainants as the salary of the second complainant i.e Mr. Kumar Vanshaj has decreased to 20% of his original salary and now burden of managing the house is on the first complainant i.e Ms Khusboo Patel. That in the same email the complainants had also requested the respondent to change the applied unit to 3BHK from 9th to 12th Floor of the same tower or to refund the booking amount as assured by representative Pradeep Yadav of Respondent at the time of booking but no reply was ever received by deponent from the opposite party. The initial stage the respondent was willing to refund the whole booking amount and have sent the email of the complainants to the concerned department for refund process but later on the integrity of the respondent/shifted to grab the handsome hard earned money of complainants.

- VII. That the complainants have been continuously in touch with the opposite party and sending emails to opposite party on dated 16.06.2020, 17.06.2020, 25.06.2020, 07.08.2020, 21.08.2020, 22.08.2020, 27.08.2020, 28.08.2020, 02.09.2020, 03.09.2020, 05.09.2020, 12.09.2020, 16.09.2020 and 17.09.2020 asking opposite party to reply back and refund the money as due to the decrease of salary, complainants have been facing financial crisis as well as complainant no. 2 was found covid-19 positive and the other member were infected and their income had decreased by 60% and complainants had business in which they had us based clients who had also discontinued their contracts with complainants and complainants were in serious need of money and were also making regular phone calls in the office of respondents but no response was given by

respondent and due to this behaviour of opposite party , the complainants were mentally harassed and the complainant no. 1 also fainted 2-3 times and also had to face serious financial issues and the bank has also reduced the loan amount to Rs. 75 lakhs and will enhance the home loan amount to Rs 1,01,00,000/- only when the salary of the complainants is revived.

- VIII. That the respondent had taken signature of the complainants on a blank application form to book the above said residential unit, respondent neither allotted complainant the residential accommodation nor demanded any booking amount if any or rejected application of complainants and did not refund the earnest money of the complainants.
- IX. That the process of booking was in the initial stage and no allotment letter was issued by the respondent in favor of complainants and the project of the respondent was under construction and the respondent can get the maximum profit on sale of the said unit on the higher price in comparison of previous one and now the respondent is in advance stage in all manner and the respondent can get the maximum profit by selling the said unit in open market to public at large.
- X. That no agreement was ever made by respondent to proceed further into this matter after taking earnest money, opposite party are detaining and misusing money of complainants without any right. thus, action and activities of respondent are unlawful and respondent failed to provide proper service to deponent, this is service fault of respondent.
- XI. That the complainants had sent a legal notice through their counsel Ms. Sapna Rao Advocate through registered AD and speed post dated

24.11.2020 to calling upon the opposite party to refund the booking amount of Rs.5,00,000/-paid to the respondent in March 2020 by the complainants within the period of 07 days after the receipt of this legal notice The respondent failed to refund the booking amount within the stipulated period despite notice, knowledge and receiving the notice. hence this complaint.

- XII. That the complainants filed consumer complaint bearing No. DC/62/CC/156/2021 before District Consumer Dispute Redressal Commission Gurugram against the respondent and was withdrawn on technical ground with liberty to file fresh complainant before appropriate authority.
- XIII. That the complainant was shocked to see the cheating and fraud done to them in the name of allotting unit in the project which was developed by the respondent even when the title of land vest in some other person's name and license has also been obtained on their name only and just to gain undue advantage , the respondent has played fraud and cheating on the complainant. That it has become very clear that the respondent have manipulated by issuing advertisement by which a huge amount of Rs. 5,00,000/- has been taken from the complainant and the same has been withheld and misappropriated by the respondent.
- XIV. That it has become very clear that the complainant has been cheated and by retaining the amount , a criminal breach of trust has also been committed by the respondent. That shocked by the illegal and unlawful conduct on part of the respondent , complainant has to visited the officials of the respondent since Sep. 2020 and asked them to refund the money paid by the complainants which they have miserably failed to do and even after asking repeatedly for return of money , the

respondent and its officials has failed to acknowledge the just and genuine request of the complainant and till date no money has been returned/refunded to the complaint.

- XV. That the respondent has liability of refund of the advance deposit of Rs. 5,00,000- along with prescribed RERA interest from the date of each payment(s) to the complainant. Seeing no positive response on part of the respondent, the complainant got issued legal notice dated 24.11.2020 to the respondent for refund of the amount paid by the complaint along with interest within 07 days of receiving this legal notice but the respondent did not pay any heed to the just and genuine request of the complainant and no payment so far has been made to the complainant by the respondent. That the cause of action is still continuous against the respondents.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Directing the respondent to refund the entire amount of **Rs 5,00,000/-** plus prescribed RERA interest from the date of each payment till actual payment is refunded to the complainant.
 - II. Direct the respondent to pay a sum of Rs.50,000/- towards the cost of Litigation.
 - III. Direct the respondent to pay a cost of Rs 5,00,000/- for the harassment and mental agony suffered by the complainants;
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 no.3

6. The respondent has contested the complaint vide its reply dated 15.05.2026 on the following grounds: -
- i. That, as per the documents annexed by the complainants, the complainants booked for a unit No. 903, 9th Floor, Tower A1, admeasuring total area 146.44 sq. mtrs. in the project 'Godrej Air Phase-III'.
 - ii. That, it is pertinent to note that the complainants vide application form dated 13.03.2020 and has made a total payment of Rs. 5,00,000/- in favour of respondent no. 2, i.e., M/s Godrej Properties Ltd.
 - iii. That, thereafter, the complainants have annexed the email correspondences between the complainants and the respondent no. 2, i.e., M/s Godrej Properties Ltd including but not limited to the cancellation of the booking since the financial institution was providing loan to the complainants.
 - iv. That, the legal notice dated 24.11.2020 which was sent by the complainants, was also responded by the respondent no. 2 and not the answering respondent as the answering respondent, i.e., the respondent no. 3 has fraudulently been impleaded.
 - v. That, the consumer complaint bearing DC/62/CC/156/2021 which was filed by the complainants before the District Consumer Dispute did not make respondent no. 3 as the party to the complaint.
 - vi. That, it is submitted that the complainants have been unable to prove any kind of relationship to exist between the complainants and the respondent no. 3 and the complainants are just arm twisting the facts to drag the answering respondent, i.e., respondent no. 3 into the present litigation.

- vii. That, when the loan was not processed and the complainants made the request for refund from respondent no. 2 and the amount was not refunded by the respondent no. 2, the complainants have filed the present false, fabricated and frivolous complaint against the answering respondent, ie, respondent no. 3 in order to harass the respondent no. 3 despite acknowledging and admitting that the complainants had booked the unit in question with the respondent no. 2.
- viii. That, it is humbly submitted that the documents which have been annexed by the complainant clearly distinguishes the relationship between the complainants, and the respondent no. 2. It is pertinent to note that there is no iota of proof in the entire complaint that the complainants are in anywhere customers of the respondent no. 3.
- ix. That, through the definition of "allottee" as enshrined under section 2 (d) of the Real Estate (Regulation & Development) Act, 2016, it is crystal clear that the complainants are not the allottee in relationship with the respondent no.3 as neither the unit in question was allotted by respondent no. 3, nor the respondent no. 3 executed any document, nor the respondent no. 3 accepted the payment, if any, made by the complainants towards the unit in question.
- x. That, in the present case in hand, the respondent no. 1 is the promoter in question who has issued the documents demand letters, payment receipts, email communications, etc due to which the complainants falls in the category of the being an allottee per se respondent no. 1 and not the answering respondent, i.e., respondent no. 3 and therefore, the present case does not involve respondent no. 3 anywhere.

- xi. That, it is submitted that the project in question "GODREJ AIR PHASE-III" bearing RERA registration no. RC/REP/HARERA/GGM/34 OF 2018 dated 07.12.2018 and RERA Registration Extension RC/REP/HARERA/GGM/34 OF 2018/ 7(3)/ 76/ 2025/ 18 dated 03.07.2025. It is further submitted that the said fact can be verified from the application form and other documents and the RERA registration certificate bears that the main licensee is M/s Elegant Land & Housing Pvt Ltd.
- xii. That, there is no privity of contract between the complainants and the respondent no. 3, since there is no execution of the buyers agreement, and the application form nowhere bears the name of the respondent no. 3. It is further submitted that the complainants have made the payments also to the respondent no. 2 and thus, the complainants with ulterior motive have made the respondent no.3 as the party to the present frivolous complaint by levelling fraudulent allegations as the respondent no. 3 holds no liability or accountability towards the complainants.
- xiii. That, from the facts as narrated above, the present complaint is liable to dismissed on the account of mis joinder of parties wherein the respondent no. 3 has been wrongly impleaded as the party to the present complaint without any allegation made against the respondent no. 3 by the complainants and the complainants are not entitled to any reliefs as claimed herein by this Authority.
7. All other averments made in the complaint were denied in toto.
8. 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.

E. Reply filed by the respondent no. 1.

9. That the complainant booked an apartment bearing unit no. A1-0903, Tower A1, 9th Floor, with the OP 1 in its project namely "Godrej AIR - Phase III" situated at Sector 85, Gurgram, Haryana vide an application form dated 13.03.2020 and paid an amount of Rs. 5,00,000/- towards the booking of the unit. It is submitted that the complainant unequivocally agreed to make timely payments as per the payment plan provided in the application form. It was made clear to the complainant that timely payment will be the essence of the transaction.
10. That the total cost of the Apartment was Rs.1,50,53,381/- inclusive of taxes, that as per clause 3 of the application form, the complainants agreed and undertook to pay all amounts due as per the payment plan opted by the complainant.
11. The application form clearly stipulated and defined the booking amount to be 10% of the total cost of the property that was to be treated as earnest money. It is submitted that the earnest money was meant to ensure compliance on the part of the complainants.
12. That the clause 7 of the application form clearly stipulated that the complainants shall agree, confirm and undertake to come forward and register the agreement for sale of the unit, failing which without prejudice to any other rights be entitled at its sole discretion (i) to change interest to the complainants and/or (ii) cancel this application form/allotment letter and forfeit the various amounts paid/due from the complainants.
13. That as per clause 9 of the application form, the complainants agreed that in event of failure on part of complainants in complying with obligations as set

out in the application form or allotment letter including timely registration of agreement to sale, respondent shall be entitled to cancel the transaction and forfeit the various amounts paid from the complainants.

14. That Further, clause 10 of the application form provided that the in the event the application form is cancelled by the complainants for reasons not attributable to the promoter's default, shall be entitled to forfeit the various amounts paid by the complainants and refund the balance amount as mentioned in clause 9.
15. That clause 20 of the application form also states that the complainants agree and understand that it shall not be the responsibility or liability of the promoter to make arrangements or facilitate in any manner whatsoever in the sanctioning and disbursement of the said loan to the applicant.
16. That the complainants agreed and undertook to pay all amounts due as per the payment plan opted by the complainants. It is submitted that the promoter raised payment invoice on 24.03.2020 for an amount of Rs. 10,05,338/- within 30 days from the date of the Booking and the same was due for payment on 11.04.2020.
17. That instead of discharging the contractual obligations of making timely payments, the complainants vide an email dated 26.03.2020 and 28.03.2020 communicated its inability to pay the amount towards the invoice dated 24.03.2020 and requested promoter to keep things on hold as due to COVID-19 situation. It is submitted that the complainant made such a request due to the alleged non-sanctioning of the loan documents by the bank. It is submitted that the complainants further assured that once the situation normalizes, they shall proceed with the payments as per the agreement.

18. That pursuant to the request made by the complainants, the promoter vide its email dated 30.03.2020 suggested the complainants to make a partial payment towards the pending amounts.
19. That the complainants vide an email dated 11.04.2020 stated that they are unable to get the loan from the bank and sought an abrupt cancellation of the booking. It is submitted that the promoter vide a reply dated 22.04.2020 communicated that in case of cancellation, the amount paid shall stand forfeited as per the agreed terms and conditions of the application form. It is further submitted that the promoter thereafter vide an email dated 23.04.2020, promoter went out of the way and offered to provide an interest-free extension of one month till 11.05.2020, as a goodwill gesture.
20. That, despite providing several opportunities and extension of time, complainants in violation of the contractual duties utterly failed to make the payment. It is further submitted that the complainants vide an email dated 03.06.2020 informed the promoter that there has been an alleged reduction in the sanctioned loan amount provided by the bank and once again communicated her inability to pay the balance consideration.
21. That despite our various discussion with the complainants and despite promoter best efforts to suggest alternative to complainants like downgrading the unit and/ or changing the payment plan as per the convenience of complainant's, the complainants sent emails dated 02.09.2020 and 12.09.2020 and sought refund of the amount paid citing several reasons despite being fully aware that the complainants is not entitled to any amount as per the terms and conditions already agreed upon in the Application form.
22. That pursuant to the request of the complainants, promoter vide email dated 01.09.2020 offered several relaxations to the complainants such as waiver

of interest on delayed payments if the pending dues are cleared before 25.09.2020. It is submitted that the promoter vide email dated 25.09.2020 further offered the complainants to clear the outstanding dues in two equal instalments of Rs. 5,02,699/- each in the month of October and November 2020 or to clear the outstanding dues in full before the November 2020.

23. That the complainants have miserably failed to perform its part of the obligation in as much as the complainants have failed to make the timely payments therefore committed material breach of the terms and conditions as stated in the application form. It is submitted that as on 06.07.2021, there is a total outstanding amount of Rs. 10,05,338/- as per the statement of account and Rs.1,14,902/- as per statement of interest.
24. that admittedly, it is the complainants who have committed an event of default by not making the payment as per the payment plan. It is clearly admitted by the complainant that he is unable to make payment of the remaining consideration, thereby defaulting towards its obligations. It is submitted that the complainants are trying to take advantage of its own wrong and are arbitrarily seeking a refund being fully aware that she is not entitled to any such refund.
25. That the complainants vide their email dated 12.09.2020 stated that the salary of her husband has been reduced to 50% post COVID-19. However the salary slips shared by the complainants reveals that there has been a deduction of approximately 43% only in the month of April'20 while the salary slips of March'20, June'20, July'20, August'20 shared by the customers show a deduction of approximately 3% only.
26. That the complainants also represented that the bank has not only denied their full loan, but also denied their eligibility in this respect. That such statements are contradictory to the contents of email dated 01.06.2020 from

the bank, shared by complainants, which clearly mentions that once the salary is regularised as it was before February'20, the sanctioned loan amount shall be enhanced upto previous sanction amount of Rs. 1,01,00,000/-. Further, to add to their mala-fide intentions, complaints deliberately did not share any documents where the loan application had been rejected by the bank.

27. All other averments made in the complaint were denied in toto.
28. 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.

F. Jurisdiction of the authority

29. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

30. 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.

F.II Subject-matter jurisdiction

31. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made

thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

32. 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 complainants at a later stage.
33. 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.*** and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021*** 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"

34. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the relief sought by the complainant.

- G.I Directing the respondent to refund the entire amount of Rs 5,00,000/- plus prescribed RERA interest from the date of each payment till actual payment is refunded to the complainant.**
 - G.II Direct the respondent to pay a sum of Rs.50,000/- towards the cost of Litigation.**
 - G.III Direct the respondent to pay a cost of Rs 5,00,000/- for the harassment and mental agony suffered by the complainants.**
35. The complainants booked a 2250 sq. ft. 3-BHK residential unit bearing No. GODAIRA1-0903 in Godrej Air, Sector 85, Gurugram, for a total consideration of Rs.1.50 crore and paid Rs. 5 lakh as booking/earnest money on 13.03.2020. At the time of booking, the respondents' representative assured them that the project was approved by various banks and that if the required home loan was not sanctioned, the entire booking amount would be refunded without deduction. However, due to the COVID-19 lockdown and substantial reduction in the complainants' salaries, the sanctioned loan amount was progressively reduced, making it financially impossible for them to proceed with the purchase. The complainants repeatedly requested the respondents to keep the booking on hold, shift the unit, or refund the Rs. 5 lakh, and sent several emails and made repeated calls, but the respondents failed to provide an effective response or refund the amount. No allotment letter or final agreement was issued, and the complainants contend that the respondents unlawfully retained and misappropriated their money. A legal notice dated 24.11.2020 seeking refund was also not complied with. The

complainants thereafter filed a consumer complaint, which was withdrawn on technical grounds with liberty to approach the appropriate authority. They now allege deficiency in service, unfair conduct, cheating and criminal breach of trust and seek refund of Rs.5 lakh along with applicable RERA interest from the dates of payment.

36. On the contrary, the respondent no.1 states that the complainants booked apartment no. A1-0903 in Godrej AIR - Phase III, Gurgaon, for a total consideration of ₹1,50,53,381/- and agreed to make timely payments as per the opted payment plan, with 10% of the total cost being treated as earnest money. The promoter relies on the contractual clauses providing for cancellation and forfeiture in case of default, including failure to register the Agreement for Sale or make timely payments. According to the promoter, an invoice of Rs. 10,05,338/- was raised on 24.03.2020, but the complainants expressed inability to pay due to COVID-19 and difficulties in obtaining the required loan. Although the promoter offered extensions, partial-payment options, waiver of interest, instalment facilities, and alternatives such as downgrading the unit or changing the payment plan, the complainants failed to clear the outstanding dues and instead sought cancellation and refund. The promoter therefore alleges that the complainants committed a material breach of the agreed terms and are not entitled to a refund. It further disputes the complainants' claims regarding reduction in salary and denial/reduction of the bank loan, stating that the salary records and bank communication did not fully support their assertions and the complainants failed to provide documents showing rejection of the loan.
37. The respondent No. 3 contends that the complainants had booked Unit No. 903, 9th Floor, Tower A1, in the project "Godrej Air Phase-III" through respondent no. 2, M/s Godrej Properties Ltd., and paid Rs.5,00,000/- to

respondent no. 2 pursuant to the application form dated 13.03.2020. All subsequent communications, including the cancellation/refund correspondence and legal notice dated 24.11.2020, were between the complainants and respondent no. 2, and respondent no. 3 neither received any payment nor allotted the unit nor executed any document or agreement with the complainants. It is further contended that the earlier consumer complaint filed by the complainants did not implead respondent no. 3, and there is no evidence establishing any contractual or customer relationship between the complainants and respondent no. 3. The respondent no. 3 therefore submits that there is no privity of contract or liability on its part under the RERA Act, as the relevant project documents, payment receipts and communications relate to respondent no. 1/2, while the project's RERA registration records identify M/s Elegant Land & Housing Pvt. Ltd. as the main licensee. Accordingly, respondent no. 3 alleges that it has been wrongly and fraudulently impleaded merely to harass it and seeks dismissal of the complaint against it on the ground of misjoinder of parties and absence of any cause of action or liability against respondent no. 3.

38. The Authority observes that the present complaint arises out of an application form dated 13.03.2020 submitted by the complainants for allotment of a unit in the respondent's project, namely "Godrej AIR" Phase-3, Sector-85, Gurugram. As per the record, neither any formal allotment of the said unit has been made in favour of the complainants nor has any Buyer's Agreement been executed between the parties till date. Accordingly, the transaction between the parties did not progress beyond the stage of booking and never culminated in the allotment of any plot, apartment or building to the complainants.

39. Before examining the merits of the case, it is necessary to determine whether the complainant fall within the definition of allottee or not under the Real Estate (Regulation and Development) Act, 2016. Section 2(d) of the RERA Act, 2016 defines an "allottee" as under:

"...the person to whom a plot, apartment or building...has been allotted, sold...or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment... but does not include a person to whom such plot...is given on rent."

40. As per Section 2(d) of the RERA Act, 2016, an "allottee" means a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. In the present case, admittedly no formal allotment of any unit was ever made in favour of the complainant. Mere payment of booking amount and issuance of payment receipts against the same, in the absence of an allotment letter or agreement for sale, does not confer the status of an allottee upon the complainant.
41. This Authority further observes that for a legally enforceable contract to come into existence, there must be consensus ad idem on essential terms such as identification of the unit, consideration, payment schedule, rights and obligations of the parties which are ordinarily crystallized through an allotment letter and agreement for sale. In the absence of such documents, no concluded contract for sale came into existence between the parties.
42. Since no concluded contract was formed and no allotment was made, the dispute raised by the complainant relating to handover of possession and execution of conveyance deed pursuant to payment receipts, falls outside the scope and jurisdiction of this Authority under the RERA Act, 2016.
43. In view of the above facts and circumstances, this Authority holds that the complainant does not fall within the definition of "allottee" as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. Consequently, the present complaint is not maintainable under the

provisions of the Act and is accordingly dismissed with liberty to the complainant to avail appropriate remedies in accordance with law before the competent forum.

44. Complaint as well as applications, if any, stands disposed of accordingly.
45. File be consigned to the registry



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.08.2026



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