



**HARERA**  
**GURUGRAM**

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह. सिविल लाईंस. गुरुग्राम हरियाणा

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No. : 87/2019**  
**Date of Decision : 20.07.2021**

**Shri Dhiraj Chawla & Sadhna Chawla**  
**R/o J-8, Second Floor(Rear Portion)**  
**Vikas Puri, New Delhi**

**Complainants**

**V/s**

**1.M/s Godrej Premium Builders Pvt Ltd.**  
**@ Godrej Properties Ltd.**  
**U.M. House, 3<sup>rd</sup> Floor,**  
**Plot No.35,Sector 44**

**2.M/s Magic Info Solutions Pvt Ltd**  
**D-13, Defence Colony,New Delhi**

**Respondents**

**Complaint under Section 31**  
**of the Real Estate(Regulation**  
**and Development) Act, 2016**

**Present:**

**For Complainant:**

**Mr. Sonu Saini, Advocate**

**For Respondent:**

**Mr. Saurav Gaba, Advocate**

**ORDER**

Brief facts of the case as pleaded by complainants are that on being lured by the representatives of the respondents, they(complainants)

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booked a residential unit bearing NO.G-608 measuring 1269 sq ft in the project being developed by the respondents known in the name and style of "Godrej Summit" in Sector 104 of District Gurugram, Haryana for a total sale consideration of Rs. 77,68,510/-. Initially, they paid a sum of Rs.1,00,000/- and later on Rs.10,00,000/- at the time of filling of application which led to issuance of letter of allotment dated 23.01.2013. Builder Buyer's Agreement(BBA) was executed on 29.04.2013. As per terms and conditions of that agreement, the respondents agreed to give possession of the allotted unit within a period of 48 months from the date of issuance of letter of allotment dated 29.02.2013 with additional period of six months, being force majeure conditions. The respondents were time bound to hand over the possession of the allotted unit to the complainants till July, 2017, inclusive of grace period of six months.

2. It is alleged further by the complainants that despite writing letters and emails, the respondents failed to provide status report of the project including the status of allotted unit. Failing to adhere to the terms and conditions of agreement in sharing the status report as well as the building plans of the project, the complainants were constrained to withdraw from the project and thus sent email to the respondents on 19.06.2015 for cancellation of the allotted unit and refund of deposited amount by deducting 2% of maximum within two months, which was accepted by the respondents. Instead of cancelling the allotted unit, as agreed upon, the respondents sent a demand letter dated 20.08.2015 asking them (complainants) to pay a sum of Rs.48,63,304/-.

3. Till 11.11.2019, when no refunds made by the respondents despite endless pleas, requests and communications through ,SMS, phone calls,



emails, the complainants were forced to approach this forum with directions <sup>a prayer for</sup> to the respondents to refund Rs.28,44,703/- with interest and compensation. ✓

4. Details of the complainants' case in tabular form is reproduced as under:

Project related details		
I.	Name of the project	"GODREJ SUMMIT"
II.	Location of the project	Sector 104, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	G-608
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 1269 sq ft
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	11.09.2012
XI.	Date of Allotment(original)	23.01.2013
XII.	Date of execution of BBA (copy of BBA be enclosed)	29.04.2013
XIII.	Due date of possession as per BBA	48 months from the date of BBA i.e. 29.01.2017 with further grace period of six months i.e. July, 2017
XIV.	Delay in handing over possession till date	About two years

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XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause 4.2. of BBA	
	Penalty to be paid by the respondent in case of delay of handing over possession as per clause 4.2. of BBA	
<b>Payment details</b>		
XVI	Total sale consideration	Rs. 77,68,510/-
XVII	Total amount paid by the complainants	Rs.28,44,703/-

5. The respondents contested the claim of the complainants/buyers. As per respondent No.1, same entered into an agreement dated 05.08.2011 with respondent No.2 and other land owning entities. The complainants booked the apartment/unit which comes under the area of respondent No.2 and consequently all acts pertaining to said transactions etc to be burdened by respondent no.2 as the sale consideration etc received by said respondent and now it has nothing to do with the project.

6. Respondent No.2 in its written reply vehemently denied that its representatives approached the complainants or get the application form filled up from them i.e. complainants. According to it, the complainants booked the apartment upon their satisfaction. They opted for construction linked payment plan. The project/apartment with all amenities has been completed in a timely manner as promised. The allegations that there was lack of transparency, missing details on the website, inconsistent in relief details etc are also denied by the answering respondent. The latter rather blamed the complainants for defaults/breach in making timely payments against the outstanding dues



and also for raking up frivolous issues in order to cover up their own wrongs and to exit from the project arbitrarily.

7. It is further the plea of respondent No.2 that the complainants vide email dated 19.06.2015 requested to terminate the unit and sought refund. It is denied that said respondent offered deduction of 2% of BSP upon termination as alleged by complainants. Respondent no.2 referred clause 8.4 of Apartment Buyer Agreement, according to which 20%(earnest money) was to be deducted on cancellation/termination by the buyers. It is clarified by said respondent that it was a typographical error that in its email dated 05.08.2015, 2% deduction was mentioned. Respondent claimed to have issued a demand letter dated 20.08.2015 asking the complainants to clear their outstanding dues against the said unit. As per it, all grievances of the complainants were addressed in timely manner.

8. It is claimed that the complainants made payment of Rs.28,44,703/- against total sale consideration of Rs.77,68,510/-. The respondent No.2 through its email dated 08.06.2018 offered refund to the complainants post deduction as per clause 8.4 of the Agreement. Despite all that, the complainants failed to comply with requirements of surrendering the documents. According to Respondent No.2, the same <sup>has</sup> offered possession to the buyers after completion of unit/apartment as promised and possession of apartments have already <sup>been</sup> taken by 300 allottees/families. Contending that complainants are not entitled for any relief, respondent No. 2 requested for dismissal of complaint with costs.

9. As per complainants, they kept on requesting the respondents to provide details of progress made internally and externally since internet photographs were generated but not giving any details and again that despite

writing, no status update was provided by respondents. All this was breach of contract, by not following the terms and conditions of allotment under the construction linked payment plan.

10. True, even as per Act of 2016 (RERA), the builder/promoter is duty bound to provide details of the progress in construction of flat/unit to the buyers. Allegations of complainants in this regard are denied by the learned counsel for the respondents. According to him, the information about the progress of construction was given to each of the buyers including complainants. Even otherwise, the buyers could see the progress on their website. Copies of some correspondence through email between the parties are put on record as Annexure C-7. If the same are taken as true, the complainants Dhiraj Chawla wrote to the respondents on 13.12.2013 asking the respondents to confirm the status as on date with supporting pictures of site and again to provide contact number and name of person for any follow up. The respondent replied through email on 17.12.2013 i.e. within four days requested<sup>123</sup> the complainants to follow their link provided in that email to see the progress in construction. The same also provided contact number of one Ms Guneet Josh. In this way, it is not substantiated that the respondent did not provide details of progress in the construction of the project.

11. Although, the complainants alleged in the complaint that the project was not complete in time. As per clause 4.2. of the agreement, the apartment was to be ready for occupation within 48 months from the date of issuance of allotment letter. However, the developer/promoter was entitled for grace period of six months over and above the said 48 months period. The completion of the project/apartment was subject to certain conditions well described in the said proviso. Even otherwise, as per learned counsel for the



respondents, the complainants were bound to make payment as per stages of construction. The same failed to make payment in time. The contention that construction was not complete within the prescribed period was <sup>is not</sup> ~~not~~ proved by the learned counsel for the complainants. The only plea raised by them was that despite having agreed to refund the amount, the respondents are dragging their feet and did not refund the amount.

12. Another contention of the complainants is that though the respondents/builder promised to provide a very glamorous, very attractive apartment and scenic neighbourhood, futuristic living, in and around lush greenery through its projection but the same failed to <sup>prove</sup> ~~provide~~ all these. The complainants did not adduce any evidence to prove that any such promise was made by the respondents or the same was not fulfilled.

13. The fact that the respondent agreed to refund the amount is not denied by the learned for the latter but according to him, it was on request made by the complainants to withdraw from the project. According to him, as per clause 2.6 of the Agreement, it was specifically agreed between the parties that 20% of the basic sale price will be considered as earnest money under this agreement. As per clause 8.4 of the Agreement, if the buyers terminate the agreement, then the developer was entitled to forfeit the entire earnest money out of the amount paid by the complainants till termination date and any other dues payable by the buyers including interest on delayed payment as specified in the Agreement. The developer was bound to refund the balance amount to the buyers or any financial institution, as the case may be. As per learned counsel, the respondent is ready to refund the amount after deducting as per provisions mentioned above. But the complainants are not ready to receive the same.


14. As stated above, the complainants have sought refund of entire amount paid by them i.e. 28,44,703/- alongwith interest. A copy of email send by the complainants to the respondents dated 19.06.2015 has been put on record. The complainants requested for cancellation of their booking, referring some advice given to them by the respondents. There is nothing on record to verify as what advice or promise was given by the respondents, in case the complainants cancel their booking and opt for refund.

15. After considering above discussed facts, it is not proved that the respondents were at fault in not delivering the possession in time or did not provide any information about progress/development in the construction of project/unit in question or misrepresented any facts. In the same way, the complainants failed to prove as what promise/advice was given to them due to which same opted to cancel their unit and asked for refund. If the complainants by their sweet will opted to withdraw from the project, then the respondents are entitled to deduct/forfeit the amount as per Agreement. No case is made out for direction to the respondents to refund the entire amount as claimed by the complainants, what to say of interest, as sought by them in this case.

16. Complaint in hands is thus dismissed.

17. File be consigned to the Registry.

20.07.2021

  
**(RAJENDER KUMAR)**  
**Adjudicating Officer,**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**