

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

Complaint no. : 1901 of  
2018  
Date of first hearing : 14.03.2019  
Date of decision : 14.03.2019

1. Mrs. Vimla Vishwanath Saw
2. Mr. Vishwanath Saw

**Complainants**

Both r/o:  
Flat no. C/501, Alica Nagar,  
Lokhandwala Complex, Kandivali  
(East) Mumbai – 400101.

Versus

1. Godrej Premium Builders Pvt. Ltd.,  
Address: Godrej Bhavan, 4<sup>th</sup> floor,  
4A Home Street, Fort,  
Mumbai- 400 001.
2. Godrej Projects Development Limited  
Address: 3<sup>rd</sup> Floor, UM House Tower A,  
Plot no. 35-P, Gate no. 1,  
Sector-44, Gurugram-122002,  
Haryana, India.

**Respondent**

**Registered Office at:**  
Godrej One,  
5<sup>th</sup> Floor, Pirojsh nagar,  
Eastern Express Highway,  
Vikhroli(East), Mumbai-400079.

3. Mr. Pirojsha Godrej,  
The Managing Director,  
5<sup>th</sup> Floor, Godrej One, Pirojshnagar,  
Eastern Express Highway,  
Vikhroli(East), Mumbai-400079.
4. Mr. Adi Godrej  
Chairman- Godrej Group,  
5<sup>th</sup> Floor, Godrej One, Pirojshnagar,  
Eastern Express Highway,



Vikhroli(East), Mumbai-400079

**CORAM:**

Shri Samir Kumar

**Member**

Shri Subhash Chander Kush

**Member**

**APPEARANCE:**

Shri Sandeep S. Tiwari along  
with Shri Krishan Kant Pandey

Advocates for the complainant

Shri Kapil Madan along with  
Ms. Shalini Sinha

Advocates for the respondent

**ORDER**

1. A complaint dated 29.11.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs. Vimla Vishwanath Saw and Mr. Vishwanath Saw against Godrej Projects Development Pvt. Ltd. and others in respect of apartment described below for not fulfilling the obligations of the promoter under section 11(4)(a) and section 11(5) of the Act *ibid*.

2. Since the allotment letter was issued on 18.10.2014, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-



compliance of contractual obligations on part of promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Godrej Summit" Sector-104, Gurugram
2.	Nature of project	Group housing colony
3.	Unit no.	C 1603, 15 <sup>th</sup> floor, tower C
4.	Unit area	2692 sq. ft.
5.	Application form	05.08.2018
6.	DTCP licence no	102 of 2011 dated 07.12.2011
7.	RERA Registration	<b>Registered</b>
8.	Registration number	75 of 2017 dated 21.08.2017
9.	RERA registration valid up to	<b>30.09.2018</b>
10.	<b>Occupation granted on</b>	<b>20.06.2017</b>
11.	Date of allotment letter	18.10.2014
12.	Date of execution of builder buyer agreement	Executed but not dated
13.	Total consideration as per payment plan annexed as annexure A to the allotment letter	Rs. 2,22,73,880/-
14.	Total amount paid by the complainant as per statement of interest	Rs. 57,62,716/-
15.	Payment plan	Possession linked plan
16.	Due date of delivery of possession Clause 4.2- 38 months from date of issuance of allotment letter, i.e. 18.10.2014 + 6 months grace	18.06.2018



	period	
17.	Delay in handing over possession till offer of possession	No delay
18.	Penalty clause as per clause 4.3 of the agreement	Rs. 5/- per sq. ft. per month of the super built up area
19.	<b>Possession intimation letter</b>	<b>28.06.2017</b>
20.	Termination letter	09.12.2017

4. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainants and the respondents. Apartment buyers agreement is available on record for unit no. C 1603, 15<sup>th</sup> floor, tower C according to which the possession of the aforesaid unit was to be delivered by 18.06.2018. The complainant is alleging that the promoter has failed to deliver the possession of the said unit by the due date. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 14.03.2019. the respondent through its counsel appeared on 14.03.2019. The reply filed on behalf of the respondent has been perused.



**FACTS OF THE CASE:**

6. The respondents approached to the complainant with proposal to sale of a flat in developing project namely “Godrej Summit” situated at sector 104, Gurugram, Haryana, whereby the complainants were induced by lucrative offer. The complainants were overwhelmed by the management of Godrej Group’s and lured though commitment of sustainability and excellence in the real estate project which made complainant’s easy to choose project i.e. “Godrej Summit” as their destination to settle down in Gurugram, Haryana and they accordingly decided to put their entire life saving into purchase a flat in the project “Godrej Summit”.
7. The complainants submitted application dated 25.03.2014 for booking a flat in “Godrej Summit” on the website of the respondent no.1 and thereafter the respondent no. 01 sent a representative at residence of the complainants situated at Mumbai and thereby paid four cheques of Rs. 10,00,000/- as a down payment. The complainants handed over cheques to the representative of the respondent no. 01 bearing nos. 019635, 019636, 017637, 019638 dated 25.03.2014 of each having amount of Rs.2,50,000/- drawn on Corporation Bank. The complainants had thus booked an apartment for a total



consideration of Rs. 2,22,73,880/- under a scheme of payment of 25% at the time of booking and the remaining balance of 75% to be paid at the time of possession of the apartment.

8. In the month of September 2014, the respondent no. 01 forwarded the apartment buyers agreement on a stamp paper of Rs. 100/- to the complainants, which was duly signed by the complainants and respondent no.01. It is pertinent to mention here that the said agreement is not registered till date. The apartment buyer agreement is also kept undated to cause an unlawful advantage to the respondents at the cost of the complainants. The ulterior motive was to acquire more time for delivering the possession of the apartment to the complainants.

9. Despite receiving Rs. 10 Lakhs as the booking amount along with the application of booking; the respondent no.01 was negligent and unsuccessful in issuing an allotment letter to the complainants within a time period. The complainants regularly kept follow up with the respondent no.01 vide telephonic conversations regarding the issuance of the allotment letter and in good faith made further payments as per the scheme of payment annexed herein to the agreement.





The respondent no.01 finally issued an allotment letter on 18.10.2014 after a delay of 207 days from the date of application that is 25.03.2014.

10. The complainants submitted that vide letter dated 28.06.2017, the respondent no. 1 issued a possession intimation letter to the complainants informing that they have duly received an occupation certificate for tower - C from the office of Director Town and Country Planning (DTCP) vide occupation certificate no. ZP-802/SD(BS)/2017/13753 dated 20.06.2017 and further informed to the complainants that their apartment will be inspected from the 31.07.2017. The respondent no.1 also forwarded an invoice towards payment of milestone "on notice of possession" along with a maintenance invoice with respect to the said apartment. As per the said letter, the visit and handing over of possession of the said apartment was subject to payment of the said invoice.

11. Sometime in the month of July 2017, the complainants spoke to Mr. Xavier D'Souza (CRM) and enquired about the completion of work in their apartment. They were informed that finishing work is still going on and that the apartment was getting ready for possession. The complainants therefore



requested Mr. Xavier D'Souza to send pictures of the apartment. Thereafter several e-mails were exchanged between the complainants and respondent(s) regarding the completion of work and tentative date of possession to enable the complainants to make balance payment with respect to the apartment.

12. An e-mail was received by Mr. Xavier D'Souza intimating him that the photographs of the allotted flat were not received. On the same day Mr. Xavier D'Souza apologized and promised to share the same pictures as requested in some time the whole communication was intimated through e-mail.
13. It is pertinent to mention herein that on 07.09.2017 Mr. Xavier D'Souza requested the complainants to visit the site, vide an e-mail; as per their convenience.
14. On 22.09.2017, the complainants terminated the apartment buyers agreement by mail and letter sent to Mr. Lalit Makhijani and thereafter the complainants received a reply from Mr. Lalit Makhijani and through that E-mail sent by Mr. Lalit Makhijani, the complainants were assured that his colleague Mr. Vikas will help to resolve the issue.
15. On 24.09.2017, the complainants wrote a letter to addressed to respondent no.3, whereby they stated their grievance vis-





à-vis the substandard construction of their apartment and further requested him to intervene in the matter and refund the amount paid by complainants. The respondent no.2 had sent a letter regarding the outstanding dues against the apartments no. 1603, purchased by the complainant.

16. As there was no response from Mr. Makhijani, the complainant sent a reminder letter to the respondent no. 03 along with letter dated 10.10.2017 with request to terminate the agreement regarding the said flat and refund the entire amount with 15 % interest as the flat was not ready and was not in possession as per the agreement.

17. Finally, on 31.10.2017 an e-mail was sent to Ms. Tanu Sharma by the complainants, wherein the complainants gave details on the quality of work as well as standard of fixtures placed in their flat and once again reiterated that the agreement was being terminated as the work done in the apartment was substandard, shoddy and unacceptable with lots of defects and not as per the terms of the agreement and therefore requested to refund the amount with interest. The respondent sent an e-mail to the complainant(s) requesting for 3-5 days to revert appropriately to their concern.



18. On 06.11.2017, an e-mail was sent to remind the respondents about the termination of the agreement pertaining to their apartment and requested to refund the entire amount deposited by the complainants to the respondent with interest. The complainants further informed the respondents that they were unable to travel to Gurugram, Haryana to check the completion of work as travelling from Mumbai was very tedious, expensive, exhausting etc.
19. On 08.11.2017; the complainants intimated the respondents that appropriate legal action will be initiated by them against the respondent; since they were unable to resolve the issue.
20. On 20.11.2017, the respondent(s) sent an e-mail to the complainants through Ms. Tanu Sharma to reconsider their decision to cancel the agreement and further gave an assurance that the apartment will be handed over to the complainants; once completed in all aspects. The complainants' stated that, it is clear from this mail that as on 20.11.2017, the apartment was not ready to be handed over for possession.
21. It is pertinent to mention herein that on 25.11.2017, the respondent(s) sent an e-mail to the complainants conveying



their interest to pay the entire amount of Rs. 18,284,346 within 7 days of the receipt of letter.

22. On 01.12.2017 an e-mail was sent by the complainants stating that the e-mail dated 25.11.2017 written by the respondent with threaten to cancel the booking and to forfeit the deposit amount without giving any reference to the agreement clause. The complainant stated that vide termination letter dated 09.12.2017 sent through e-mail; the respondent no.01 terminated the agreement which was already terminated by the complainants. Further the respondent no 1 threatened to forfeit the amount of Rs. 55,00,100 toward earnest money, interest on delay payment and other charges as per agreed terms.

**ISSUES RAISED BY THE COMPLAINANTS:**

23. The complainants have raised the following issues:

- a. Whether the quality of construction is sub-standard and not in accordance with the provisions of the agreement?
- b. Whether or not the facilities and amenities as approved in the layout plan had not been provided?
- c. Whether the amount of Rs. 55,00,100/- forfeited by respondent no. 1 towards earnest money is justified?



- d. Whether or not the respondent has violated the terms and conditions of the agreement thereby delaying possession and not paying interest?

**RELIEF SOUGHT BY THE COMPLAINANTS:**

24. The complainants are seeking the following reliefs:

- a. To restrain the respondents for taking any action against the complainants.
- b. To set aside the termination letter dated 09.12.2017 issued by respondent no. 1 and direct them to return the fully deposited amount of Rs. 57,15,176/- with an interest rate of 18% per annum.
- c. To direct the respondent no.01 to file the complete statement of account in relation to apartment buyers agreement, executed between complainants and respondent no.01.
- d. Pass such other order or orders as this hon'ble tribunal may deem fit and proper in the interest of justice.



**RESPONDENT'S REPLY:**

The respondent submitted the following:

25. Respondents has completed the apartment with all the amenities as promised. It is further most vehemently denied that the respondents have induced or have made any lucrative offers in relation to the said project as alleged. It is further most vehemently denied that the respondents has lured the complainants to put their entire life savings to settle down in the project i.e Godrej Summit as alleged. It is submitted that the complainant is allegedly aggrieved by fall in the market prices of the apartment and have concocted a baseless story belatedly to somehow exit from the said project on frivolous grounds.

26. The respondent submitted that it has respondent duly constructed the project and the apartment and occupation certificate was issued by DTCP on 20.06.2017 (tower C is referred as tower 3 in OC). Thereafter, the respondent issued possession intimation letter dated 28.06.2017 to the complainant and raised a demand Rs. 1,78,76613/- towards balance 75% of the sale consideration.



27. The respondent submitted that it has duly constructed the project without any interim financial contribution by the complainants. It is submitted that as on date about 300 buyers have taken possession of their apartments in the project and enjoying the amenities delivered by the respondent.

28. The respondent submitted that the complainants have miserably failed to perform its part of the obligation in as much as they have miserably failed to pay the balance consideration as payable under the agreement. As on 09.12.2017, a sum of Rs. 1,76,83,818/- and interest of Rs.5,23,602/- was due and payable by the complainants.

29. The respondent submitted that the respondents have given reminder letters dated 04.09.2017, 05.10.2017, 24.11.2017 seeking payment however, the complainants have failed to pay any heed to the same.

30. In flagrant violation of its obligations, the complainants failed to take the payments and committed a default in terms of clause 2.5 of the agreement.

31. The respondent submitted that instead of paying the balance consideration, the complainants started ranking frivolous issues in order to some how avoid incurring losses on account





of fall in the market prices. Further, the complainants also started forcing the respondent to offer abnormal discounts in complete disregard of its payment obligations. A bare perusal of the emails dated 05.09.2017, 06.09.2017 and 07.09.2017 leaves no manner of doubt that the complainants were raising frivolous issues.

32. The respondent submitted that since the complainant miserably failed to pay the balance consideration the respondent was constrained to terminate the agreement vide a letter dated 09.12.2017.

33. The respondent submitted that the complainant sought to exit from the project on account of sharp fall in the market prices. It is submitted that the same unit is now being sold in the market at a lower price of Rs. 1,68,46,576 as against a similar unit in the said project and thus, there is a loss of Rs. 54,27,304/- on account of fall in such prices.

34. The respondent further submitted that it is pertinent to mention here that the respondents have further paid to broker a brokerage amount of Rs. 6,90,226/- for booking of complainant's apartment.

35. It may not be out of place to state here non-payment by the complainants resulted in considerable financial hardship on



the respondents who had to ensure progress of the construction without any interim agreed contribution from the complainants.

36. It is submitted that the falsity of the complaint is evident from the fact that the complainants are alleging defect in the flat without even inspecting the same. It is submitted that it is common knowledge that the final touch up work of the flat is always done only after the inspection is done by the complainant.

37. Thus, the instant complaint is liable to be dismissed on account of concealment of material facts and documents, besides being vitiated on account of the false, vexatious and unsubstantiated allegations levelled by the complainants. It is submitted that there is no misrepresentation or violations of any rules of RERA nor that the complainants have suffered any loss attributable to the respondents. It is submitted that there is neither any defect nor any delay in the offer of the possession of said flat.

38. Therefore, this hon'ble forum after taking due cognizance of the preliminary submissions, which are taken in alternative and without prejudice to each other, stating clearly and unequivocally the grounds for the dismissal of the instant



complaint, may dismiss the present complaint forthwith with exemplary costs.

**DETERMINATION OF ISSUES:**

39. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under :

a. With respect to the **first and second issues**, raised by the complainants which is in respect to various defects in construction, it is noted that as a sequel to it he is not taking possession as on date. It is noted that no documents have been produced on record pointing out certain defects. However so far as structural defects liability is concerned, respondent is under obligation as per section 14(3) of the Real Estate (Regulation and Development) Act, 2016.

b. With respect to the **third issue** raised by the complainants, the authority is of the view that the respondents had given reminder letters dated 04.09.2017, 05.10.2017, 24.11.2017 seeking payment. However the complainants have failed to pay any heed to the same. The total consideration of the unit as per payment plan annexed to the allotment letter is



Rs. 2,22,73,880/- and the amount forfeited is Rs. 55,00,100/- which is 24.69%. In the case of **DLF Ltd. v. Bhagwati Narula**,<sup>1</sup> revision petition no. 3860 of 2014 it was held by the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid and 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can be shown that it had only suffered loss to the extent the amount was forfeited by it. Earnest money is said to be the only amount that is paid at the time of concluding the contract. Thus, amount beyond 10% cannot be forfeited and if done so that would be unreasonable.

It is a well settled principle that any clause in derogation to the said law shall not be valid in law. Thus, it has to be noted that the respondent cannot forfeit more than 10% of the earnest money.

- c. With respect to the **fourth issue** raised by the complainants, the authority came across that as per



<sup>1</sup> 1(2015) CPJ 319 (NC)

clause 4.2 of buyer's agreement, the possession of the said apartment was to be handed over within 38 months plus grace period of 6 months from the date of allotment letter. Thus the due date is calculated from date of allotment i.e. 18.10.2014. The clause regarding the possession of the said unit is reproduced below:

***"4.2: The apartment shall be ready for occupation 38 months from the date of issuance of allotment letter. However the developer is entitled for a grace period of 6 months over and above this 38 months period."***

Accordingly, the due date of possession was 18.06.2018 and the possession was offered to the complainants on 28.06.2017 after receiving the occupation certificate on 20.06.2017. Thus, there is no delay in handing over possession and no delay can be attributed in the present case.

As per provisions of section 19(10) of the Act *ibid*, the complainants themselves are under an obligation to take possession of the flat failing which he is liable for all the consequences i.e. to pay 10.75% prescribed rate of interest to the respondent.



**FINDINGS OF THE AUTHORITY:**

40. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. 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 i.e. in sector 68, Gurugram, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

41. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter under section 11 of the Act *ibid.*. The complainants requested that necessary directions be issued





by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.

42. The complainants have booked a flat bearing no. C-1603, 15<sup>th</sup> floor, tower C, in project "Godrej Summit", Sector 104, for a total sale consideration of Rs. 2,22,73,880/- out of which complainants have so far paid an amount of Rs 57,62,716/- but no builder buyer agreement to this effect has ever been executed inter-se the parties.

43. A pertinent question has been raised with respect to non taking of possession by the complainants as they are in default with respect to payment of 75% of total consideration amount i.e. Rs 2,22,73,880/- minus Rs. 57,62,716/-. Project is registered. Occupation certificate has been received by the respondent on 20.06.2017. As such the respondent is competent to offer possession of the flat/unit to the complainants, as a result of which offer of possession letter dated 28.06.2017 has been issued.

44. As per provisions of section 19(10) of the Act ibid, the complainants themselves are under an obligation to take possession of the flat failing which he is liable for all the consequences i.e. to pay 10.75% prescribed rate of interest to the respondent. However so far as structural defects liability



is concerned, respondent is under an obligation as per section 14(3) of the Act. If the complainants does not come forward to take possession within 30 days, the respondent shall be at liberty to deduct 10% of the total consideration amount and refund the balance amount to the complainants within 90 days of this order. As per statement of counsel for respondent at bar, if the complainants intend to take the possession of the unit in that case they will make the balance payment as per the provisions of the Act *ibid*.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

45. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:

- i. The complainants are under an obligation to take possession of the flat failing which he is liable for all the consequences i.e. to pay 10.75% prescribed rate of interest to the respondent.
- ii. If the complainants do not come forward to take possession within 30 days, the respondent shall be at liberty to deduct 10% of the total consideration amount and refund the balance amount to the complainants within 90 days from the date of this order.



iii. If the complainants intend to take possession of the unit, he shall make balance payment as per provisions of the Act *ibid*.

46. The order is pronounced.

47. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 14.03.2019

Judgement uploaded on 08.04.2019



HARERA  
GURUGRAM

