

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

Complaint no. : 1667 of 2021
First date of hearing: 28.04.2021
Date of decision : 13.07.2022

Sh. Rajpal Singh Yadav
S/O Sh. Balbir Singh Yadav
R/0: - House No. 1018, Sector 15,
Part 2, Gurugram, Haryana

Complainant

Versus

M/s Pareena Infrastructures Private Limited
Office : Flat No 2, Palm Apartment, Plot
Number 13 B, Sector 6, Dwarka, New Delhi
110075.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Garv Malhotra (Advocate)
Sh. Prashant Shoeran (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 02.04.2021 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 under the provision of the Act

or the Rules and regulations made there under or to the allottee 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 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 and location of the project | "Coban Residences", sector-99A, Gurgaon |
| 2. | Nature of the project | Group Housing Project |
| 3. | Project area | 10.5875 acres |
| 4. | DTCP license no. | 10 of 2013 dated 12.03.2013 valid up to 11.06.2024 |
| 5. | Name of licensee | Monex Infrastructure Pvt. Ltd. |
| 6. | RERA Registered/ not registered | Registered Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024 |
| 7. | Unit no. | 104, tower T-3, 1 st floor (page 24 of complaint) |
| 8. | Unit admeasuring area | 1997 sq. ft. (page 24 of complaint) |
| 9. | Allotment letter | N/A |
| 10. | Date of builder buyer agreement | 14.01.2015 [page 22 of complaint] |
| 11. | Possession clause | 3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or |

| | | |
|-----|--------------------------------------|--|
| | | execution of this Agreement whichever is later, as per the said plans. |
| 12. | Grace period clause | 5.1 In case within a period as provided under clause 3.1, further extended by a period of 6 months if so, required by the developer, the developer is unable to complete construction of the said flat as provided hereinabove to the flat allottee(s) who have made payments as required for in this agreement, then the flat allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs. 5/- per sq.ft. per month of the super area till the date of notice of possession as provided hereinabove in this agreement. |
| 13. | Date of start of construction | 01.10.2014 [page 32 of reply] |
| 14. | Due date of possession | 01.10.2018 [Due date calculated from start of construction] |
| 15. | Cancellation letter dated | 04.08.2021 |
| 16. | Total sale consideration | Rs. 1,26,58,997/- (as per SOA dated 15.12.2018 page 18 of complaint) |
| 17. | Total amount paid by the complainant | Rs. 31,21,363/- (as per SOA dated 15.12.2018 page 18 of complaint) |
| 18. | Offer of possession | Not offered |
| 19. | Occupation certificate | Not obtained |

B. Facts of the complaint

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

- I. On 27.07.2013, the complainant made booking in the project of the respondent by paying a sum of Rs 8,50,000/- and was allotted the unit no. T3-104, on 1st floor, tower 3A, 3BHK + SQ (servant quarter) admeasuring 1997 Sq. Ft. (approx..) super area. On 15.10.2013, further amount of Rs. 11,11,971/- was paid by the complainant to the respondent. Thus, a total amount of Rs 20,27,971/- was paid towards this allotment which was more than 20% of the basic sale price. Even after taking more than 20% of BSP the respondent did not sign the BBA, despite the complainant's various visits to the respondent's office. He was forced to make a further payment of Rs 8,41,180/- on 03.01.2015. Thus, he made a total payment of Rs 28,68,151/- which was almost 30% of BSP. The agreement was signed on 14.01.2015, which clearly indicated that it was a construction linked payment plan.
- II. The complainant made another payment of Rs.2,49,680/- on 20.04.2015, making the total payment made to the respondent as Rs. 31,21,363/-. As per the statement of account dated 15.12.2018 reflecting all the payments made till that date, towards booking of a residential flat in the abovementioned project having the following details: super area admeasuring 1997 square feet approximately and @ basic sale price of Rs 5068/- per square feet (equivalent to Rs. 1,01,20,796/-) in the project. That it can be clearly seen from the statement of account that on 26.08.2013, the complainant paid Rs 20,99,215/- as booking amount & within 30

days of booking (20% of the BSP less booking amount). Thus, more than 10% of payment of total consideration was made on this date. On 16.10.2014, the complainant paid EDC and IDC amounting to Rs 1,86,220/-.

- III. That as per agreement clause 3.1 read with clause 5.1 of the agreement dated 14.01.2015 i.e., 4 years from the date of start of construction or execution of agreement whichever is later as per the agreement. The due date for possession should be calculated from 26.08.2013 and not 14.01.2015 in light of the section 13 of Act, 2016. Thus, the due date of possession comes out to be 26.08.2017.
- IV. That the project was not moving as per the schedule and timelines as promised by the respondent-builder. Despite the delay, the respondent kept on sending arbitrary and illegal demand notices. The complainant visited the respondent's office many times and asked for a confirmation on date of possession but was given nothing but false promises and deadlines. Even as on date, there is virtually very little progress in the project and it is far from completion.
- V. That the complainant has approached the respondent time and again seeking the information and status of the project and date of offer of possession of the said premises. After repeated reminders, the respondent assured that it would refund the amount soon. Yet no such offer has been made till now. It is pertinent to note that no

offer of refund has been made till date despite all obligations and payments being met with by the complainant in time as and when demanded by the respondent.

VI. That recently, the complainant was shocked to receive an undated arbitrary, illegal, malafide and threatening termination letter threatening cancellation of unit and forfeiture of earnest money. Since then, the respondent has also sent two more arbitrary letters. It is humbly submitted that the present unit is under a construction linked plan and the complainant is bound to pay as per the various stages of construction which have not been met as per the scheduled timeline, Thus there is absolutely no liability to pay and the said letter is nothing but a pressure tactic to make the complainant succumb to the illegal demands of the respondent builder.

VII. That almost 35% of the BSP was duly paid. Yet, the respondent kept on illegally demanding further payments irrespective of the fact that the construction of the unit was inordinately delayed. Even as on date, more than three and half years after the due date of possession, the unit is nowhere near completion.

VIII. That the possession is delayed by almost three and half years approximately. Having faced serious hardship on account of the delay, the complainant wants to withdraw from the project and the respondent should refund the entire amount deposited with interest for every month of delay at prevailing rate of interest from

the actual date of deposit of each payment till date of realization on pro rata basis.

- IX. That the respondent has failed to provide possession in promised date and therefore is liable to refund the entire amount paid along-with simple interest @ 10% per annum as per clause 3.1 of ABA. That despite several request and visits to the offices of the respondent till date, no amount has been paid back to the complainant and the respondent is enjoying the hard-earned money of the complainant for nearly past more than three and half years approximately.
- X. That it is again pertinent to mention here that the respondent has yet to register the project, "Coban Residences" with the RERA authority. The registration of the project is mandatory under section 3 of Act, 2016 within the stipulated time period, which the respondent has failed to do.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to refund the entire amount paid by the complainant from the date of deposit of each payment till date of realisation on pro rata basis along with interest at the rate of 10% p.a.;
 - II. Direct the respondent to pay Rs. 1,00,000/- as litigation charges.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been

committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.

a. That the respondent launched a residential project under the name and style of "Coban Residences" in Sector 99A Gurugram, Haryana ("said project"). That the complainant in the year 2013 through their broker property junction realtors Pvt. Ltd. initially approached the respondent to book a 3 BHK flat. That for booking, the complainant paid an amount of Rs. 8,50,000/- as mentioned by him in his complaint. That in the said application form, it is clearly mentioned that the complainant had opted for construction linked payment plan and agreed to pay as and when demanded as per the stage of construction. That after execution of booking form, the respondent offered a unit to the complainant vide letter dated 03.08.2013, where by a 3BHK + SQ flat was offered and requested to pay an amount of Rs. 11,77,971/- for allotment. That complainant duly accepted the said offer and paid the said demand vide cheque bearing no.143156 dated 04.09.2013.

b. That since the complainant had opted for construction linked payment plan, thus respondent vide its demand letter dated 01.10.2014 demanded an amount of Rs. 12,59,117/- against the start of excavation. That said demand letter was duly received by complainant, yet he failed to pay the same. That since the

complainant failed to pay the amount demanded against the start of excavation, respondent again sent a reminder to him vide letter dated 11.11.2014, but with no results.

c. That instead of making payment against the demands raised by the respondent, complainant approached it and requested to change his construction linked payment plan, as he is not in a condition to meet the requirements of current time bound payment plan. That at the time of making request the complainant also signed an undertaking whereby he assured that he would pay the amount on time as per modified payment plan. That in order to show his bonafides, complainant had paid an amount of Rs. 8,41,180/- to the respondent. That the said request was approved by respondent vide its letter dated 02.01.2015, wherein payment plan of complainant was modified from construction linked plan to pareena provident plan. That thereafter, the complainant executed buyer agreement on 14.01.2015. In said payment plan, it was duly mentioned that it is a pareena provident plan, instead of construction linked plan. That the authority can see the difference between two payment plans by comparing them side by side.

d. That there is a major difference in both plans. That after new payment plan was agreed and after execution of apartment buyer agreement, respondent raised fresh demands to complainant at the relevant stages but surprisingly he opted not to pay the same. That complainant had specifically assured that he shall pay all the

demands raised by the respondent at the relevant stage, yet he failed to pay the demand raised by respondent even after modifying payment plan as per his requirements. It is submitted that authority would appreciate the facts that development of a project is not an easy task and to develop a project in timely manner developer need continuous flow of money. It is submitted in the project like present one, the developer was not bound to construct one flat or apartment rather the entire project and if all the allottees do not pay on time, then it will be extremely difficult to develop the project on time. It is submitted that conditions such as forfeiture and high interest on payment due, are necessary so that all allottees should pay on time and project can be completed on time. It is submitted that despite of such conditions several allottees kept on defaulting in payments and losses have been suffered by the developer.

- e. That even the present complainant falls in category of such allottees who were habitual defaulters. The list of dates of defaults by the complainant are 06.02.2016, 12.05.2016, 03.06.2016, 16.07.2016, 19.08.2016, 24.01.2017, 08.04.2017, 11.07.2017, 13.07.2018, 05.01.2021. That all these reminders/demands were sent to the complainant through post as well as mails.
- f. That ultimately on 23.01.2021, the respondent sent a letter to the complainant reminding him that the unit allotted in his favour was liable to be cancelled since he is in gross violation of application form signed by him and granted him one more opportunity to make the

balance payment and reminded him that in case of default, the allotment was liable to be cancelled and amount paid would be forfeited as per agreed.

- g. That even after receiving of said letter, the complainant paid no heed to genuine requests of the respondent. Thus having no other option for respondent but to sent a final letter to the complainant whereby 15 more days were granted to him for payment and in case of default the unit would be cancelled. That even at this time complainant failed to pay and hence, the allotment stands cancelled and the amount stands forfeited as per agreed terms. That even this time, the complainant failed to pay the same, Thus a cancellation letter was sent to the complainant on 04.08.2021. That even the complainant has mentioned the said letter in the complaint but have tried to defend the lapses and non-compliances on baseless grounds.
- h. That the hon'ble authority must appreciate the facts that such allottees like present one is the main reason of causing delay in completion of construction. The magnitude of defaults committed by various allottees over the period of time, caused huge loss to the respondent in terms of time and as well money.
- i. That non-payment is one of the major issue faced by the all the developer including respondent but it is not the only issue faced by the respondent while developing a project. That over the period of time several orders / notifications were kept on passed by various authorities/courts like NGT or supreme court where construction

activities were either completely stopped or levied such condition which makes it highly difficult for develop the project, even when developer is facing shortage of fund due to non-payment of installments by allottees.

- j. Thus from the above stated facts and circumstances, it is crystal clear that present complaint is not maintainable and is liable to be dismissed.

E. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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.

10. 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.
11. 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."

12. 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.

F. Findings on the relief sought by the complainants.

F.1 Direct the respondent to refund the entire amount paid by the complainants from the date of deposit of each payment till date of realisation on pro rata basis along with interest at the rate of 10% p.a.

13. The complainant submitted that he booked an apartment in the abovesaid project on 27.07.2013 by paying a sum of Rs. 8,50,000/-. On 15.10.2013, further amount was paid of Rs.11,77,971 was paid by him which was more than 20% of the BSP. Thereafter, on 14.01.2015, a BBA was executed between the parties under the construction linked payment plan. On 16.10.2014, the complainant paid EDC and IDC amount to Rs. 1,86,220/-. He further submitted that the respondent has send arbitrary and illegal demands notices and when the complainant inquired about the status of the project, he found that the project was not moving as per the schedule and timelines as promised by the respondent/builder. Then, he requested for the refund but there is no proof in file. After that the respondent issued an undated termination

letter to the complainant. The respondent has submitted that the complainant had opted for construction linked payment plan and vide its demand letter dated 01.10.2014 it demanded an amount of Rs. 12,59,117/- against the start of excavation which was not paid by the complainant. Instead of making payment, the complainant approached the respondent to change his construction linked payment plan and that request was approved and in the said payment plan. It was duly mentioned that it is a "Pareena Provident Plan instead of "Construction linked plan". After new payment plan was agreed and after execution of apartment buyer agreement, respondent raised fresh demand to complainant at the relevant stage but surprisingly complainant opted not to pay the same. The respondent raises demands/reminders on 06.02.2016, 12.05.2016, 03.06.2016, 16.07.2016, 19.08.2016, 24.01.2017, 08.04.2017, 11.07.2017, 13.07.2018, 05.01.2021 respectively. The complainant did not pay any heed to said demands/reminders and ultimately on 23.01.2021, the respondent informed him the unit allotted in his favour is liable to be cancelled since the allotment in his favour is liable to be cancelled as he was in gross violation of application form signed by him and granted him one more opportunity to make the balance payment and reminded that in case of default the allotment is liable to be cancelled and amount paid would be forfeited as per agreed plan. Even after receipt of said letter, the complainant did not pay any heed and the respondent issued a letter on 04.08.2021, whereby the allotted unit was cancelled.

Now the question before the authority is whether this cancellation is valid?

14. On consideration of the document available on record and submissions by both the parties, the authority is of the view that on the basis of provisions of allotment dated 15.10.2013, the complainant has already paid 31,21,363/- against the total sale consideration of Rs. 1,26,58,997/-. The respondent/builder sent number of reminders on 06.02.2016, 12.05.2016, 03.06.2016, 16.07.2016, 19.08.2016, 24.01.2017, 08.04.2017, 11.07.2017, 13.07.2018, 05.01.2021 respectively asking the allottee to make payment of the amount due but having no positive result and ultimately leading to cancellation of unit vide letter dated 04.08.2021 in view of the terms and conditions of the agreement. No doubt, the complainant did not pay the amount due despite various reminders but the respondent while cancelling the unit was under an obligation to forfeit out of the amount paid by him the earnest money and refund the balance amount deposited by allottee without any interest in the manner prescribed the agreement as per clause 4.4. of the terms and conditions of the allotment, but that was not done. Clause 4.4 of the agreement is reproduced hereunder for ready reference:

"4.4 If the Flat Allottee(s) is in default of any of the payments as aforesaid, then the flat allottee(s) authorizes the Developer to withhold registration of the Sale/Conveyance Deed in his/her/their favour till full and final settlement of all dues to the Developer is made by the Flat Allottee(s). The flat allottee(s) undertakes to execute Sale/Conveyance Deed within the time stipulated by the Developer in

its written notice failing which the Flat Allottee(s) authorizes the Developer to cancel the allotment and terminated this Agreement in terms of this Agreement and to forfeit out of the amounts paid by him/her/them the Earnest Money, processing fee, interest on delayed payment any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount deposited by the Flat Allottee(s) without any interest in the manner prescribed in this Agreement.

15. The complainant has paid Rs. 31,21,363/- to the respondent/builder and the cancellation of the allotted unit was made on 04.08.2021 by retaining the amount beyond 10% which is not legal in view of number of pronouncements of the Hon'ble Apex court. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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

16. Keeping in view the aforesaid legal provisions, the respondent is forfeited the earnest money which shall not exceed the 10% of the basic sale price of the said unit as per statement of account and shall return the balance amount to the complainant within a period of 90 days from the date of this order

E. II. Pass an order for a sum of Rs.50,00,000/- against the respondent as compensation and damages in favour of the complainant towards the mental

agony, harassment and undue hardship suffered by them at their hands and on account of the loss of use of the property in question.

17. The complainant is also seeking relief w.r.t. litigation expenses. 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

18. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent-promoters is directed to return the balance amount after deducting 10% of the sale consideration within 90 days from the date of this order along with interest @9.50% from the date of cancellation i.e., 04.08.2021 till its actual payment.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to registry.


(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.07.2022



HARERA
GURUGRAM