

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

Complaint no. : 909 of 2021
First date of hearing: 28.04.2021
Date of decision : 13.07.2022

1. Sh. Udit Sharma
2. Sh. Rakesh Kumar Sharma
R/O: - 17 Vijay Nagar, Meerut,
Uttar Pradesh

Complainants

Versus

M/s Pareena Infrastructures Private Limited
Office: C7A 2nd Floor, Omaxe City Centre Mall,
Sohna Road, Sector 49, Gurugram, Haryana.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Udit Sharma
Sh. Prashant Shoeran (Advocate)

**Complainant in Person
Respondent**

ORDER

1. The present complaint dated 04.03.2021 has been filed by the complainants/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 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 complainants, 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.	T-6/402, (page P5 of complaint)
8.	Unit admeasuring area	1550 sq. ft. (page P5 of complaint)
9.	Provisional allotment letter	27.11.2013 (annexure R4, page 24 of reply)
10.	Date of builder buyer agreement	22.01.2014 (page 5 of complaint)
	Date of start of construction	16.10.2014 (page P8 of complaint)
13.	Due date of possession	16.10.2018 (grace period is not allowed Due date is calculated from the date of start of construction)

	Cancellation letter	04.08.2021 (page 56 of reply)
15.	Total sale consideration as per payment plan	Rs. 98,49,250/- (page P5 of complaint)
16.	Total amount paid by the complainants	Rs. 43,72,773 as alleged by complainants
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. The complainants booked an apartment measuring 1550 sq. ft. in February 2013 at a rate of Rs.5035 per sq. ft. (Total price 78,04,250/-). It was promised that the project would be ready within 4 years. The developer called and asked the complainants to sign the builder-buyer agreement in Jan 2014 and whereby they discovered various new and hidden charges of Rs.22 lacs approximately which included charges such as PLC, car parking, IFMS, EDC/IDC, club membership, power backup etc. The final cost of the apartment as stated in the agreement was Rs.1,00,32,150/-. The agreement again stated that the project would be ready and handed over in next 4 years. The developer would charge us a penalty of 24% per annum in case of delayed payments.
 - II. That in 2016, the complainants asked the developer to modify the payment plan and agreed to a new flexi-payment plan. In return, the respondent asked them to pay additional charges of Rs.200 per sq. ft. (Total Rs.3,10,000) for deferment/modification of the payment plan.
 - III. That till date, the complainants have paid a total sum of Rs.43,72,773/- to the developer. It has been 8 years since they booked the flat with "Pareena

Coban" and they are still waiting for the offer of possession. There is no reasonable justification for the developer for this gross delay in the construction of this project.

- IV. That in December 2020, the developer sent them a new demand letter asking for a sum of Rs. 21 lacs approx. On asking about the status of possession, they did not get any satisfactory response from the developer. Despite several to-and-from email conversations, they did not commit to any final date for possession of this project.
- V. That they have no idea as to when they can expect the handover of their flat. They have already waited 8 years for the project completion, and they have very low confidence in Pareena Management. As a result, they have decided to cancel their flat and seek refund of the paid up amount.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. **Direct the respondent cancel the flat immediately and refund the complete amount paid till date along with the interest as per RERA rules.**
 - II. **Direct the respondent to pay adequate compensation for the mental and financial harassment cause because of the developer's poor planning and time-management resulting in the non-delivery of this project.**
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. The complainants in the year 2013 through their broker property Chaahat Homes initially approached the respondent to book a flat. For booking, the complainants paid an amount of Rs. 7,50,000/-. In the said application form it was clearly mentioned that the complainants had opted for construction linked payment plan and agreed to pay the installments as and when demanded as per the stage of construction. After execution of booking form, the respondent offered a unit to the complainants vide letter dated 03.08.2013, where by a 2BHK + ST flat was offered and requested to pay an amount of Rs. 8,68,726/- for allotment. The complainants duly accepted the said offer and paid the said demand vide cheque bearing no. 813331 dated 02-09-2013. Thereafter, the respondent allotted a unit bearing no. 402 tower 6 to the complainants vide letter dated 27.11.2013 and sent two copies of apartment buyer agreement to them for execution vide letter dated 21.01.2014.
- b. That thereafter on 15.07.2016, the allottees approached the respondent and requested to change their payment plan, as they were unable to meet the time bound conditions of construction linked plan. The said request was duly approved by the respondent vide letter dated 16.07.2016 and a letter was issued in this regard to the allottees.

- c. That as per modified payment plan, the respondent raised a demand of Rs. 21,68,450/- on completion of super structure slab vide demand letter dated 20.11.2020. After receiving of said letter, the complainants paid no heed to genuine requests of the respondent and opted to ignore the demands raised by it. It is submitted that though the super structure was already completed in year 2018 but said demand was not raised only on the request of complainants. That the complainants even requested to defer the payment in year 2018. The respondent sent a mail to the complainants in this regard.
- d. That since the complainants failed to pay the said demand, the respondent issued reminder dated 29.01.2021, whereby they were again requested to pay an amount of Rs. 21,57,529/-. That even after receiving said letter, the complainants failed to pay the same. Thus, the respondent vide letter dated 22.02.2021 sent a final notice to the complainants whereby 15 more days were granted to them for payment and in case of default, their unit was notified to be cancelled. That even at this time, the complainants failed to pay. Hence, the allotment stood cancelled and the amount was forfeited as per agreed terms. Thus, a cancellation letter was sent to the complainants on 04-08-2021. The present complaint has been filed on 25.02.2021 after receiving final notice from the respondent and complainants have tried to defend their lapses and non-compliances on baseless grounds. It is submitted that had the complainants come before authority with clean hands, they would have disclosed the actual

state of affairs and mode and time period of payment made by them, but they concealed all the defaults with a malafide motive to gain undue benefit from the authority.

- e. That the hon'ble authority must appreciate the facts that such allottees like present one are the main reason of causing delay in completion of construction and the magnitude of defaults committed by various allottees over the period of time, which caused huge loss to the respondent in terms of time and as well money.
- f. That non-payment is one of the major issue faced by the all the developer including the respondent. But it is not the only issue faced by the respondent while developing a project, 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.
- g. 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.1 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.*" 2021-2022(1)RCR(C), 357 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, is 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 cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the 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 complainants has submitted that they booked an apartment in February 2013. On 23.01.2014, a BBA was executed between the parties, wherein he

found some hidden charges of Rs. 22 lacs & the final cost of the unit was 1,00,32,150/-. In 2016, he requested the respondent to modify the payment plan and the same was approved and in return, the respondent asked to pay additional charges of Rs. 31,00,000/- for deferment/modification of the payment plan. The complainants have paid Rs. 43,72,773/- till date to the respondent. The respondent has submitted that as per application form, the complainants opted for construction linked payment plan and the allottees agreed to pay the installments as and when demanded as per the stage of construction. The respondent admitted that on the request of complainants, it modified the payment plan & as per modification payment plan the respondent raised a demand of Rs. 21,68,450/- on completion of super structure slab vide demand letter dated 20.11.2020. Thereafter, the respondent issued a reminder dated 29.01.2021, to pay an amount and the complainants failed to pay the same. On 22.02.2021, the respondent sent a final opportunity notice to the complainants to make the payment. Thereafter, on non-payment, the respondent issued a cancellation letter on 04.08.2021.

14. Keeping in view of the above-mentioned facts, the authority observes that the allottee approached the authority for refund before the cancellation of the unit. The respondent has cancelled the unit on account of non-payment. It is pertinent to mention here that the respondent failed to give possession on time and also not obtained the OC till date. In this situation, the project was delayed and after the due date of possession, it is the right of the allottee to seek withdrawal from the project and return of the amount paid by him along with interest at the prescribed rate.
15. The due date of possession as per agreement for sale as mentioned in the table above is 16.10.2018 and there is delay of 2 years 4 months 16 days on the date of filing of the complaint.

16. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ire v Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.*, civil appeal no. 5785 of 2019, decided on 11.01.2021

“” The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.* (supra) reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

17. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the

promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

18. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
19. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 43,72,773 /- with interest at the rate of 9.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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

20. The complainants are 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

21. 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/promoter is directed to refund the entire amount of Rs.43,72,773/- paid by the complainants along with prescribed rate of interest @ 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- 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.

22. Complaint stands disposed of.

23. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.07.2022