

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

Complaint no. : 983 of 2021
First date of hearing: 28.04.2021
Date of decision : 13.07.2022

1. Latika Srinivasan
2. Srinivasan Krishnaswamy
Both RRO: - 216, Garden Home, OUD Mehta,
PO Box 749, Dubai UAE

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:

Aditi Mishra (Advocate)
Sh. Prashant Shoeran (Advocate)

**Counsel for Complainants
Respondent**

ORDER

1. The present complaint dated 08.03.2021 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	"The Elite Residences", sector-99, Gurgaon
2.	Nature of the project	Group Housing Project
3.	Project area	12.031 acres
4.	DTCP license no.	70 of 2011 dated 22.07.2011 valid up to 21.07.2024
5.	Name of licensee	Shivnandan Buildtech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 46 of 2019 issued on 25.09.2019 up to 31.07.2020
7.	Unit no.	502, Tower A [page no. 40 of complaint]
8.	Unit admeasuring area	2150 sq. ft. of super area [page no. 86 of complaint]
9.	Provisional allotment letter	09.05.2013 [page no. 40 of complaint]
10.	Date of builder buyer agreement	Not executed
11.	Date of start of construction	Not Provided
12.	Due date of possession	09.01.2017 [calculated from the date of allotment 09.05.2013]
13.	Cancellation letter	07.09.2020 (page 76 of reply)

15.	Total sale consideration as per payment plan	Payment plan	Statement of account
		Rs.1,40,47,675/- {excluding taxes} [page 39 of complaint]	Rs. 1,46,84,996/- [page 108 of complaint]
16.	Total amount paid by the complainants	Rs.12,50,000/- [as per SOA dated 07.07.2020 on page no. 108 of complaint]	
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. That the complainants booked an apartment admeasuring area 2150 sq. ft. in the said project of the respondent by submitting an application form dated 09.05.2013. The provisional allotment letter mentioned the PLC amount; however, it was mutually agreed between the parties that the PLC shall not be charged by the respondent. This was followed by a payment of Rs. 12,50,000/- towards the booking of the said apartment. The respondent thereafter issued an acknowledgement receipt dated 08.05.2013 for the same. It was humbly submitted that, honouring the mutual agreement of between the parties, the PLC amount was not charged as is evident from the booking form. The respondent had also showcased that the project is in a location without any noise disturbance and the same was represented in their broacher as well. That upon receipt of the booking and the subsequent amount from the complainants and on consistent request made by them, the respondent

issued an allotment letter dated 09.05.2013. They were allotted said apartment. It is pertinent to mention here that the respondent, breaching and dishonouring the mutual agreement, with mischievous and fraudulent intention added an amount of Rs. 1,61,250/- as PLC and Rs. 2,68,750/- as PLC (Park facing) in the total cost of the in spite of the mutual agreement of not charging the same.

- II. Being aggrieved by the dishonest move of the respondent, the complainant raised concern through telephonic conversation and by personally visiting the office of the respondent and asked it to remove all the charges levied in the name of preferred location as no such particular was ever asked for and displayed "Nil" in the application form. During the visit of their office, the complainants came to know that the location at which the project is being developed is not at all as similar as assured, promised, represented, warranted and showcased at the time of booking by the respondent though brochure or any other means. The complainants came to know that the project was being developed besides of railway track and next to flyover on Dwarka expressway which could never be an undisturbed location for living peacefully. It is bound to cause disturbance and excess noise pollution which would jeopardize the lives of the residents.
- III. Despite fulfilling the assurances, promises representations, and warranties made, the respondent after the lapse of more than 1 year, issued a letter for execution of apartment buyer agreement on 09.05.2014 along with 2 copies and asked the complainants to sign the

same and return within 15 days from the date of dispatch. By way of the agreement, the respondent again tried to compel the complainants to execute the agreement having arbitrary, unfair, unlawful and one-sided terms and conditions. The respondent also imposed a PLC even after contesting the same by the complainants right from the issuance of allotment letter.

- IV. Apart from levying PLC, under the clause 2.24 of the agreement, it was mentioned that in case of delay in remitting instalments from the side of the complainants, the respondent would become entitled to charge an interest @24% p.a. However, on the other hand, if the respondent failed to complete the project within specified time period, than the complainants would be entitled for the compensation of Rs 5/sq.ft. p.m. under clause 5.1 of the agreement.
- V. It is pertinent to mention here that under clause 3.1 of the agreement, it was mentioned that the respondent would be liable to handover the flat within 4 years from the date of start of construction of the project and also a grace period of 6 months was availed by the respondent. However, till the year 2014, the construction work of the project was not even started even after lapse of 1 year from booking and the respondent neither enclosed any date of start of construction of the project.
- VI. That the complainants approached the respondent various times and asked him to amend/rectify all those unfair, arbitrary and one-sided clauses of the agreement. However, the respondent remained intact on the terms mentioned in the agreement and refused to change them. After

not receiving any positive response from the respondent upon the consistent follow up regarding redressal of the grievances, the complainant on 25.07.2014 sent email to the respondent and expressed resentment. The complainants further stated that they are not satisfied with the location and progress of the project as the development of the project was going on in very shoddy manner. The complainants asked the respondent to refund the amount paid along with interest. Frustrated by the act of the respondent, the complainants again on 25.07.2014 sent an email to it and asked to reply to the concerns raised vide email dated 25.07.2014.

- VII. That after visiting and discussing all concerns at their office, the complainants on 09.08.2014, sent an email to the respondent reiterating all the discussions held in the meeting. The complainants mentioned that the Dwarka expressway not being there at present, the risks related to completion and disputes related to land which seems to be uncontrollable till the road work is sorted out. The complainants requested for exit option to the respondent and to refund the amount paid by them thereafter.
- VIII. That the respondent vide email dated 02.12.2014 through demand letter requested to the complainants for the payment. On 02.12.2014 and 03.12.2014, the complainants through email showed the concerns related to the project and requested to refund the amount paid by them. After discussions through mail dated 04.12.2014, 06.12.2014, 07.12.2014, 08.12.2014, 09.12.2014 on email dated 14.12.2014, the

complainants again requested the respondent for an exit option. On 21.12.2014, complainants sent an email to the respondent for change in payment plan as decided in the meeting, but no proper response was given. The respondent with malicious intention to cheat and dupe the complainants, on 15.04.2015, sent a reminder to the complainants for payment. This gesture of the respondent was very clear that it had no intention to redress the grievances of the complainants even after assuring him for the refund.

- IX. Despite of fulfilling the assurances and promises made in the meeting in regard of refund of the amount of the complainants, the respondent vide email dated 18.03.2015 proposed them a different payment plan. Being in a dominant position, the respondent was trying wriggle out from its promises and assurances and was trying to cheat and dupe the innocent complainants.
- X. That the respondent sent a demand letter dated 12.09.2015 requesting complainants to remit the amount of Rs. 8,161,376.00 in its favour. That the respondent in email dated 13.02.2016 offered the plan to merge and transfer the funds to different unit and asked for the clearance of outstanding dues for the different unit and to handover the document of A-502 i.e. provisional allotment letter, all payment receipts and executed builder buyer agreement, for which the complainants choose to not to reply to the mail. The complainants through email dated 17.09.2016 quoted mail in which respondent specifically mentioned that "*they have*

achieved the milestone of within 24 months from the Booking or completion of Bricks work and Internal Plaster whichever is Later”.

- XI. That the respondent with malicious intention to cheat and dupe the complainants, for the payments by providing different payment plans vide email dated 13.02.2016 in spite of knowing that the complainants are requesting for the exit option. The respondent again on 14.09.2017 sent a reminder to the complainants for payment. This gesture of the respondent was very clear that it had no intention to redress the grievances of the complainants even after assuring him for the refund.
- XII. The complainants again through telephonic discussion asked the respondent to refund the amount as agreed in the meeting. The complainants further mentioned that they are chasing the respondent since last 5 years.
- XIII. The respondent again with *malafide* intention on 07.09.2020 sent a cancellation letter stating that the unit booked by the complainants were being terminated and the amount paid stands forfeited. The respondent further mentioned that the complainants from now have no right, claim, etc in the unit booked. Thereafter, also sent email for the same on 14.09.2020.
- XIV. That on account of inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the respondent company and the complainants have rightly claimed to withdraw from the project and claimed total refund of amount along with other interest as per the Act along with other compensations.

XV. The respondent has utterly failed to fulfil obligations to refund the amounts paid as per the agreed terms and hence is liable to refund the money along with interest and also compensate the complainants for the mental agony, harassment and huge losses caused due to breach of contract by the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

- I. **Direct the respondent to refund the entire amount of Rs. 12,50,000/- paid by the complainants along with interest from the date of respective deposits till its actual realisation.**
- II. **Direct the respondent to pay compensation of Rs. 5,00,000/- for causing mental agony, harassment to the complainants.**
- III. **Direct the respondent to pay the compensation of Rs. 2,00,000/- for legal costs.**

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 Junction Realtors Pvt. Ltd initially approached the respondent to book a flat. For booking, the complainants paid an amount of Rs. 12,50,000/- vide cheque bearing no. 851647 dated 15.04.2013 and in lieu of the same a receipt was issued to the complainants. The application form attached by

the complainants are not the same application form which was submitted before the respondent at the time of applying for allotment. That the complainants on admitting and acknowledging the terms and conditions of said application form signed it as a token of acceptance and paid an amount of Rs. 12,50,000/-. That vide said application form the complainants specifically agreed that 15% of the sale price would be treated as earnest money to ensure terms and conditions contained in the application and buyers agreement. The complainants further admitted that in case of non-payment or breach of terms, the allotment would be cancelled/terminated and said 15% along with interest was liable to be forfeited. That the complainants had duly acquainted themselves with the terms of builder buyer agreement at the time signing of said application form and only after acknowledging terms and conditions of builder buyer agreement as well and complainants out of their own free signed the application form. It is submitted that even in the application itself, it was mentioned that the complainants are required to sign builder buyer agreement in company's prescribed format. Without prejudice it is submitted that since at the time of signing of application, the complainants had complete knowledge of all the terms and conditions, thus plea taken by complainants qua unreasonableness of terms and conditions is untenable. Moreover the terms and conditions are not unreasonable. It is submitted that hon'ble court will 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.

- b. That even the present complainants falls in category of such allottees who were habitual defaulters. That reminders dated 12.05.2014, 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 08.11.2014, 01.12.2014, 17.12.2014, 09.01.2015, 26.02.2015, 09.03.2015, 11.04.2015, 07.08.2015, 12.10.2015, 16.09.2016, 02.06.2017 and 19.06.2017 were sent to the complainants through post as well as mails. That ultimately on 14.09.2017, the respondent sent a letter to the complainants reminding them that the unit allotted in their favour is liable to be cancelled since they are in gross violation of application form signed by them and granted them one more opportunity to make the balance payment and reminded them that in case of default, their allotment was liable to be cancelled and amount paid would be forfeited as per agreed.
- c. That even after receiving of said letter, the complainants paid no heed to genuine requests of the respondent, thus having no other option

respondent sent a final letter to the complainants whereby 15 more days were granted to them for payment and in case of default, their unit would be cancelled. That even at this time, complainants failed to pay, hence the allotment stands cancelled and the amount stands forfeited as per agreed terms. That a cancellation letter was also sent to the complainants on 07-07-2020. That even the complainants have mentioned said letter in their complaint but have tried to defend their lapses and non-compliances on baseless grounds.

- d. 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 their defaults with a malafide motive to gain undue benefit from the authority.
- e. 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."* 2021-2022(I) RCR,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, 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 of Rs. 12,50,000/- paid by the complainants along with interest from the date of respective deposits till its actual realisation.

13. The complainants submitted that they booked a flat in the project named as "The Elite Residences" and paid 12,50,000/- through cheque on 15.04.2013. Thereafter, a provisional allotment letter was issued on 09.05.2013 and the PLC amount was mentioned, however it was mutually agreed between the parties that the PLC would not be charged by the respondent. The complainants raised concerns through telephonic conversation and by

personal visiting the office of the respondent and asked it to remove all the charges levied in the name of PLC. During the visit, they came to know that the location at which the project was being developed was not at all as similar as assured, promised, represented, warranted and showcased at the time of booking by the respondent. Thereafter, on 09.05.2014, a letter was issued for execution of BBA and the asked the complainants to sign the same and return within 15 days from the date of dispatch. The complainant further submitted that after lapse of one year from the booking, the construction work of the project was not even started. After not receiving any positive response from the respondent, the complainants sent an email on 25.07.2014 and expressed resentment and they were not satisfied from the location and progress of the project. The abovesaid email of their was followed by the reminders dated 07.07.2014, 16.07.2014 & 17.07.2014 respectively. It is pertinent to mention here that after the email w.r.t refund, the respondent sent an email dated 02.12.2014, through demand letter requested for payment. On 02.12.2014 and 03.12.2014, the complainant through email shown the concern related to the project and requested to refund the amount paid by them. After the request of email, the respondent was still raising the demand on various dates. On 01.07.2020, a final notice letter was sent to the complainant for making the payment. Thereafter, on 07.09.2020, the respondent sent a cancellation letter stating that the unit booked by them has been cancelled and forfeited the whole amount paid by him.

14. On consideration of the documents available on record and submission by both the parties, the authority is of the view that at the time of booking the complainants paid 12,50,000/-. Thereafter, a provisional allotment letter was issued in which PLC charges were mentioned which was not accepted by the complainant as not disclosed at the time of booking. Moreover, a letter

was issued w.r.t execution of BBA and the same was not signed by the complainants as there were some unfair & arbitrary clauses mentioned. The complainants were not satisfied from the location and progress of the construction. So, they sent an email for refund the amount. The complainant sent various emails before the due date for refund, but the respondent did not follow up the procedure and raised demand again and again and on 01.07.2020, a final notice letter was sent to the complainants for making payment which ultimately leads to cancellation.

15. On consideration of record and submission, the authority is of the view that no builder buyer agreement has been executed between the parties till date. So, the due date is calculated as per clause 13 of the application form which comes out 09.01.2017.
16. The complainants have surrendered the unit vide an email dated 25.07.2014 and that email was followed by the reminders dated 07.07.2014, 16.07.2014 & 17.07.2014 respectively. In the present case, it has observed that no builder buyer agreement has been executed between the parties. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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 amount of the real estate i.e. apartment/plot/building as the case may be in all case 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."

17. Keeping in view of the aforesaid legal provisions, the respondent shall refund the deposit amount after forfeiting 10% of the basic sale price of the

unit within a period of 90 days from the date of this order failing which it shall pay the amount due along with prescribed rate of interest.

E. II. Direct the respondent to pay compensation of Rs. 5,00,000/- for causing mental agony, harassment to the complainants.

E.III. Direct the respondent to pay the compensation of Rs. 2,00,000/- for legal costs.

18. 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

19. 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 deposited amount of Rs. 12,50,000/- after forfeiting 10% of the basic sale price of the unit to the complainants within a period of 90 days from the date of this



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order failing which it shall pay the amount due along with prescribed rate of interest.

20. Complaint stands disposed of.
21. File be consigned to registry.

V.1 - 3

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.07.2022

(Dr. K.K. Khandelwal)
Chairman



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