

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

Complaint no. : 1015 of 2021
First date of hearing: 28.04.2021
Date of decision : 13.07.2022

Neetu Sethi w/o Sh. Atul Sethi
R/O: - A-45, 1st Floor, Indira Puri,
New Delhi-110012

Complainant

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. Sanjeev Sharma (Advocate)
Sh. Prashant Shoeran (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 04.03.2021 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.	1501, tower T-1, (page 34 of reply)
8.	Unit admeasuring area	1997 sq. ft. (page 34 of reply)
9.	Allotment letter	27.11.2013 (page 34 of reply)
10.	Date of builder buyer agreement	09.12.2013 [page 13 of complaint]
11.	Date of Fresh builder buyer agreement	02.01.2015 (page 45 of reply)
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 35 of reply]
14.	Due date of possession	02.01.2019 (calculated from the date of fresh BBA)
15.	Pre cancellation letter dated	23.01.2021 [page 112 of reply]
	Cancellation letter dated	23.02.2021 (annexure R27 of reply)
16.	Total sale consideration as per payment plan on page 70 of reply	Rs. 1,33,00,823/- (excluding service taxes)
17.	Total amount paid by the complainant	Rs. 31,56,724/- (as per receipts page 43 to 45 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. That the provisional allotment of the unit was issued by the respondent on 25.01.2013 and 26.11.2013 whereas the application form for the booking of the unit in question was executed on 25.01.2013 wherein the complainant had paid the booking amount of Rs. 8,50,000/-.
- II. That thereafter, the respondent entered into the builder buyer agreement with the complainant on 09.12.2013 whereas the stamp on the agreement was dated 26.11.2013.
- III. That as per the clause 3.1 of the builder buyer agreement, the possession was to be handed over within 4 years from the start of construction execution of the builder buyer agreement, which was later. It is pertinent to note that the possession was to be handed over by 09.12.2017 and till date, the possession has not been handed over by the respondent.
- IV. That during the year 2015, the respondent realised that the project could not be completed in time and therefore, the respondent illegally made the complainant enter into another builder buyer agreement dated 02.01.2015 allotting same unit and same size of the unit but with a huge increase in the basic sale price from Rs. 1,07,03,920/- to Rs. 1,13,52,945/- thereby an increase in the final cost of the unit after adding statutory taxes, i.e. Rs. 1,33,00,823.80/-. The complainant has made a total payment of Rs. 31,56,724/-.



V. That the complainant has made several attempts to settle the dispute with the respondent, but it is paying no heed towards the present matter and the complainant is being made to suffer heavily.

VI. That the complainant aggrieved of having not received possession on time is filing the present complaint for refund along with interest/compensation.

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;**

ii. **Direct the respondent to pay Rs. 5,00,000/- as compensation for mental harassment.**

iii. **Direct the respondent to pay Rs. 2,00,000/- 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 present complaint is not maintainable in the present form, since the allotment of complainant has already been cancelled. Thus,

the complainant is not an allottee of respondent and she has no right to approach this hon'ble authority as per provisions of RERA.

- b. It is respectfully submitted that the respondent launched a residential project under the name and style of "Coban Residences" in Sector 99A Gurugram, Haryana wherein the complainant in the year 2013 came to know that the respondent is in process of launching said project. Thus out of her own accord through her broker Axiom Landbase Pvt Ltd. initially approached the respondent in order to invest money in said project and paid an amount of Rs. 8,50,000/- as advance booking. It is submitted that at that point of time, the complainant was merely an investor in the project, who was looking to earn profit in case the respondent could not be able to launch the project on time. It is submitted that as per application towards provisional booking form if the respondent was not able to make any offer of allotment within 9 months due to any reason whatsoever than, she was entitled to interest @9 % P.A on the amount paid. The said amount was only paid by her as an investor with a profit motive and not as a homebuyer. On the other hand, the respondent wanted to develop the project and wanted to allot a unit to the complainant. However, the respondent well within time limit obtained sanctioned building plans from the concerned authority on 25.07.2013 and offered a unit for allotment on 03.08.2013 and requested to pay an amount of Rs. 13,70,164/-. Thus, accepting said offer, the complainant again filed an application form dated



22.08.2013, paid an amount of Rs.13,70,164 vide cheque bearing no. 319449 dated 05.09.2013 drawn on SBI.

- c. That after the above stated entire process the respondent issued a provisional allotment letter dated 27.11.2013 in favour of complainant whereby an apartment bearing no. 1501 T-1 was allotted to her. Thereafter on 09.12.2013, an apartment buyer agreement was executed between the parties. However, the said agreement was cancelled later on at the request of complainant and new one was executed. It is submitted that complainant at that point of time, agreed a payment plan i.e., annexure II attached with agreement itself and assured that she would pay all the dues as per said payment plan.
- d. That after execution of said apartment buyer agreement, the respondent raised a demand against "start of excavation" plus taxes for an amount of Rs. 13,55,214/-. However, said demand was not met by the complainant. The respondent again sent the said demand as reminder 1 vide letter dated 11.11.2014. That even at that time, the complainant failed to adhere the genuine request of respondent and the amount demanded was not paid. The respondent yet again issued another letter requesting payment of the amount due on 11.12.2014. But even the payment was not made by the complainant. It is submitted that this is the conduct of complainant since very inception remained the same for subsequent demands as well.

- e. That since complainant was unable to pay the demands raised, thus she contacted the respondent and requested to execute a fresh buyer agreement with different payment plan, so that she may arrange fund in timely manner and assured that she would not default in future and accordingly paid an amount of Rs. 9,36,560/- vide cheque dated 15.12.2014. That thereafter, the said request was accepted by the respondent and a fresh agreement with different payment plan was executed on 02.01.2015. That as per new agreement a fresh timeline was agreed for delivery of possession; however, the same was subject to timely payment. That as per fresh agreement the possession was to be delivered within 4 years 6 months from the date of execution of agreement subject to timely payments and circumstances beyond the control of developer.
- f. That after execution of fresh apartment buyer agreement, the respondent achieved various milestones of construction and raised demand letters accordingly, but surprisingly even after the changing payment plan, not even a single payment was made thereafter.
- g. It is submitted that the authority would appreciate the facts that development of a project is not an easy task and to develop a project in timely manner, the developer needs continuous flow of money. It is submitted in the project like present one developer was not only duty bound to construct one flat or apartment and rather whole of the project and assuming out of total no. of allottees, only one third allottees pay on time and remaining default in payment, then it would

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 allottee would 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. That even the present complainant also falls in category of such allottees who were habitual defaulters.

- h. That all these reminders/demands were sent to the complainant through post as well as mails. That ultimately on 23.01.2021, the respondent informed that unit cancelation process has been initiated via pre-cancelation letter and when complainant did not pay any heed to said letter, ultimately on 23.02.2021, the respondent sent a letter and on 26.02.2021, sent an email to the complainant whereby the unit allotted in her favour was cancelled as she was in gross violation of agreed terms and failed to pay several demands and despite of availing several opportunities for payment.
- i. It is submitted that had the complainant come before authority with ~~un~~clean hands, she would have disclosed the actual state of affairs and mode and time period of payment made by her. But she concealed all her defaults with a malafide motive to gain undue benefit from the authority.
- j. Thus, from the above stated facts and circumstances, it is clear that the present complaint is premature 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 complainant 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, 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.**

The complainant has submitted that the application form of the booking of the unit in question was executed on 25.01.2013, wherein she had paid the booking amount of Rs. 8,50,000/- through cheque. Thereafter, on 09.12.2013, a BBA was executed between the parties. The complainant made a total payment of Rs. 31,56,724/- against the total sale consideration of Rs. 1,33,00,823/-. The complainant raised an issue that during the year 2015, the respondent realized that the project could not be completed in time and therefore, the respondent illegally made the complainant enter into another builder buyer agreement dated 02.01.2015 allotting same unit and same size of the unit but with a huge increase in the basic sale price from Rs. 1,07,03,920/- to Rs. 1,13,52,945/- thereby an increase in the final cost of the unit after adding statutory taxes i.e., Rs. 1,33,00,832/- . The respondent has submitted that on 9.12.2013, a BBA was executed between the parties. However, the said agreement got cancelled later on at the request of complainant and new one was executed and at that point of time, complainant agreed a payment plan i.e., annexure II attached with agreement itself and assured that she would pay all the dues as per said payment plan. Thereafter at the time of start of excavation, the respondent raised a demand of Rs. 13,55,214 which was not paid by the complainant. On 11.11.2014, the respondent sent a reminder letter dated 11.11.2014 & 11.12.2014. Further, the complainant requested to execute a fresh buyer agreement with different payment plan, so that she may arrange fund in timely manner and assured that she would not default in future and according paid an amount of Rs. 9,36,560/- and the request was accepted and executed a fresh BBA which was executed on 02.01.2015. The

respondent raises demands/reminders on 07.04.2015, 18.07.2015, 06.02.2016, 03.06.2016, 13.06.2016, 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/reminder and ultimately on 23.01.2021, the respondent informed that unit cancellation process had been initiated via pre-cancellation letter. When the complainant did not pay any heed to said letter ultimately on 23.02.2021, the respondent issued a letter on 26.02.2021 whereby the allotted unit in her favour was cancelled.

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

On consideration of the documents available on record and submissions by both the parties, the authority is of the view that on the basis of provisions of allotment dated 27.11.2013, the complainant had already paid Rs. 31,56,724/- against the total sale consideration of Rs. 1,33,00,823/-. The respondent/builder send number of demand letters/reminder on 07.04.2015, 18.07.2015, 06.02.2016, 03.06.2016, 13.06.2016, 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 26.02.2021 in view of the terms and conditions of the agreement. No doubt the complainant did not pay the amount due despite of various reminders but the respondent while cancelling the unit was under an obligation to forfeit out of the amount paid by her 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 allottee without any interest in the manner prescribed in this 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.

The complainant has paid Rs. 31,56,724/- to the respondent/builder and the cancellation of the allotted unit was made on 26.02.2021 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."

Keeping in view the aforesaid legal provisions, the respondent is directed to forfeit the earnest money which shall not exceed the 10% of the 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 as cancellation is held to be valid and as per the buyer's agreement entered between the parties.

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.

13. The complainant is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in case 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

14. 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 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., 23.02.2021 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.

15. Complaint stands disposed of.
16. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)

Chairman

Dated: 13.07.2022