

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

Complaint no. : 1155 of 2020
First date of hearing: 24.02.2021
Date of decision : 13.07.2022

1. Beena Dubey
2. Aviral Maheshwari

Both RRO: - A/3, MIG Flat, Malkhan Nagar,
Aligarh, UP-202001

Complainants

Versus

M/s Pareena Infrastructures Private Limited
Office: Flat no. 2, Palm Apartment, Plot no. 13B,
Dwarka, New Delhi-110075

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Vinamra Kumar Bansal (Advocate)
Sh. Prashant Shoeran (Advocate)

**Counsel for Complainants
Respondent**

ORDER

1. The present complaint dated 04.03.2020 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-99 ^a , 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-2/203 (page 15 of complaint)
8.	Unit admeasuring area	1997 sq. ft. of super area
9.	Allotment letter	N/A
10.	Date of builder buyer agreement	23.12.2013 (page 13 of complaint)0
12.	Possession clause	<i>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.</i>
13.	Grace period clause	<i>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</i>

		<i>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.</i>
11.	Date of start of construction	16.10.2014
11.	Due date of possession	16.10.2018 (grace period is not allowed) *Note: calculated from the date of start of construction
13.	Total sale consideration	Rs. 1,23,82,572/- as per SOA dated 31.05.2019 (page 48 of complaint)
14.	Total amount paid till 15.11.2018 by the complainant	Rs. 1,15,00,863/- as per SOA dated 31.05.2019 (page 49 of complaint)
15.	Occupation certificate	N/A

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

I. That the complainants got lured into the representations and assurances of the respondent and booked a residential unit for a total sale consideration of Rs.1,01,84,700/- and made an advance payment of Rs. 21,12,470/- against the said booking.

II. That on 23.12.2013, respondent provided a prescribed and unilateral apartment buyer agreement (hereinafter referred as '*the Agreement*') to complainants and compelled them to sign on the dotted lines on the agreement, without giving equal bargaining powers. That the complainants had no other option but to sign the said unilateral agreement under the forfeiture threat mentioned therein.

- III. That the respondent raised premature demand letters, which were duly paid by the complainants, despite the fact that the stage of construction mentioned therein was not even initiated. That the complainants have paid an amount of Rs.1,28,21,193/- to the respondent against the said flat till date.
- IV. That the respondent had a contractual right under clause 2.23 of the agreement, either terminate the agreement on delay of payment by the complainants, for more than 15 days or to condone the delay by charging interest @24% p.a. The respondent solely opted to charge interest @ 24% p.a. and not to condon the delay in payment by complainants. That the complainants, despite existence of the fact that the demand letters were issued at a very premature stage, duly paid the interest whenever charged by the respondent.
- V. That in terms of the clause incorporated under the said agreement, the respondent was obliged to complete the construction and deliver the possession to the complainants within a period of 4 years from the start of construction or execution of the said agreement, whichever is later. The said agreement was executed on 23.12.2013 and it is an admitted fact that the construction started in October, 2014. Thus, the construction ought to have been completed till October, 2018.
- VI. That the construction has not been completed till date and neither the respondent has intimated the complainants about any delay or stoppage of construction due to force majeure circumstances, prior to the filing of

the present complaint. Instead, the respondent has been regularly raising the demand letters for payments.

- VII. That the said agreement fastens liability on the complainants to pay an interest @ 24% p.a. if failed to pay the instalments on time and on the other hand, if the seller fails to hand over the possession on time, he would allegedly be liable to pay only a compensation for delay at the rate of Rs.5/- per sq. ft. per month of the super area.
- VIII. That the complainants cannot be compelled to accept the possession of the said unit at such a delayed stage or whenever the same is offered by the respondent, in any manner whatsoever as they waited a lot more than a reasonable time period for delivery of possession and thereafter moved for another alternative and now are planning to reside abroad. The complainant no. 1 has already been traveling and is having an accommodation in foreign country due to his profession and the complainant no.2 will also migrate to the same country soon with the complainant no.1 as she is a senior citizen and totally depended upon for her daily needs and requirements.
- IX. That in the present case, the respondent was obliged to complete construction of the said flat and handover the same as per the terms of the agreement but has admittedly failed. Thus, the complainants are entitled to claim the refund of the amount paid alongwith interest in terms of the above law enshrined under the Act and rules made thereunder.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. **Direct the respondent to refund the total amount of Rs. 1,15,82,572/- paid by the allottee to the respondent no.1 towards the purchase of the aforesaid allotment along with the interest from the date of provisional of allotment till the date of realization.**
 - II. **Direct the respondent to pay compensation Rs. 1,00,000/- & Litigation cost Rs. 75,000.**
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 is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residences" at Sector 99A. The construction of the said project is at an advanced stage and the structure of various towers has already been completed and remaining work is endeavored to be completed as soon as possible.
 - b. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainants have already been spent in the development work of the proposed project. On the

other hand, the respondent is still ready to deliver the unit in question of this due completion to the complainant, of course, subject to payment of due installments and charges.

- c. That admittedly, completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfill the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of project. But even, yet the respondent is trying to complete the project as soon as possible by managing available funds.
- d. That over a period of time, numerous allottees have defaulted in the payments at the relevant stages of construction and it is not possible to construct with inadequate funds. Thus, the situation of non -payment of amount by the allottees is beyond the control of respondent. It is submitted that even in the apartment buyer agreement, it was stated that period of 4 years was subjected to normal conditions and force majeure and with any stretch of imagination situations faced by respondent is not normal. It is submitted that if one goes through table given more than 30% payment was not received by the respondent and yet the work at the site is completed approximately 80 to 90 percent. That it is the fault of those allottees who had committed defaults and the respondent should not be made to suffer for the same.
- e. That it is the admitted fact that the builder buyer agreement was executed between the parties on 23.12.2013. However, certain

extremely important facts were concealed by the complainant while filing the present complaint. That the complainants have intentionally provided details of payments only but concealed the facts whether the payments were made on time or not. It is submitted that material, labor and other requirements do not come for free and if allottees wishes to get the possession on time, than it is their legal duty to pay on time, as without money, it is not possible to construct on time.

- f. It is submitted that RERA is based on principles of natural justice and equity and these principles applies both to allottee and developer alike. It is further submitted that RERA does not give absolute right to allottee to seek withdrawal if in standard time, the project is not completed. It is submitted that allottee rights are governed through their duties and if they failed to fulfill their duties , than they have no right to seek refund.
- g. That the construction is reciprocal to amount paid and it is not possible to raise complete construction without getting complete amount. That in such cases if refund is granted then it would be absolutely against the natural justice. It is denied that complainants paid an amount of Rs. Rs. 1,23,82,572 upto January 2020, and thus they cannot claim the refund of same. It is also submitted that even out of total amount paid by complainants, a major portion was paid as taxes and charges like EDC, IDC to government. Thus, the said amount can't be claimed from respondent. Other than taxes and charges, an amount of Rs. 634507 was paid by the respondent to the broker of complainants as brokerage and thus even that amount can't be claimed from respondent. It is pertinent

to mention here that whatsoever amount was received by respondent qua construction has already been utilized for construction and any sort of refund would be against natural justice. Thus keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves 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 total amount of Rs. 1,15,82,572/- paid by the allottee to the respondent no.1 towards the purchase of the aforesaid allotment along with the interest from the date of provisional of allotment till the date of realization.

13. Keeping in view the fact that the allottee complainants wishes to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016. 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 1 years 4 months 17 days on the date of filing of the complaint.
14. 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 *Ireo 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....."

15. 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 that:

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."

16. 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 allottees, as they wish 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. This is without prejudice to any other remedy available to the allottees including compensation for which they 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.
17. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 1,15,00,863/- 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. Compensation Rs. 1,00,000/- & Litigation cost Rs. 75,000.

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 entire amount of Rs. 1,15,00,863/- paid by the complainants along with prescribed rate of

interest @ 9.70% 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.

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

[Signature]
(Dr. K.K. Khandelwal)

Chairman