

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

Complaint no. : 6703 of 2019
First date of hearing: 20.01.2020
Date of decision : 13.07.2022

1. Alok Kumar
2. Savita Gupta

Both RRO: - Flat no. 301, Richmond Tower,
Omaxe Hills-1, Sector-43, Faridabad-121004

Complainants

Versus

1. M/s Pareena Infrastructures Private Limited
2. Sh. Surender Verma Kumar Director of Logix
City Developers Pvt. Ltd.
Office: C7A 2nd Floor, Omaxe City Centre Mall,
Sohna Road, Sector 49, Gurugram, Haryana.

Respondents

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Gaurav Arora (Advocate)
Sh. Prashant Shoeran (Advocate)

**Counsel for Complainants
Respondent**

ORDER

1. The present complaint dated 30.12.2019 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-6/1004 (page 18 of complaint)
8.	Unit admeasuring area	1550 sq. ft. of super area
9.	Provisional allotment letter	22.11.2013 (annexure A1)
10.	Date of builder buyer agreement	21.01.2014
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
14.	Due date of possession	01.10.2018 (grace period is not allowed) *Note: calculated from the date of start of construction
15.	Total sale consideration	Rs. 98,67,850/- excluding service tax (as per payment plan, page 41 of complaint)
16.	Total amount paid by the complainant	Rs. 89,19,957/- as per complainant's averment (page 9 of complaint)
17.	Occupation certificate	N/A
18.	Email w.r.t refund of amount	21.06.2019 (but evidentiary proof placed on record)

B. Facts of the complaint

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

- I. That the complainants booked a residential unit no. 1004, tower no. T-6 consisting 2 bedrooms, 10th floor, group housing complex having an approximate super area 1550 sq. fts., in the project of the respondent no. 1 for the total consideration of Rs. 98,67,850/- along with the tax as per demands. They paid Rs. 17,03,922/- [inclusive of tax] as booking amount and the amount to be paid within 30 days of booking till the allotment against which the respondent/builder issued the provisional allotment letter bearing customer id no. COB 336/2013 dated 22.11.2013 in favour of complainants.
- II. That the respondent/builder further entered into a flat buyer agreement dated 21.01.2014 with the complainants. The complainants have paid Rs. 89,19,957/- [inclusive of Tax] to the respondent/builder as per demands and the schedule of payments.
- III. That as per the aforesaid flat buyer agreement, the respondents were bound to complete the construction and deliver the possession of the booked flat on or before 21.01.2018. But even after the lapse and expiry of grace period of 6 Months i.e. 21.07.2018, the builder failed to complete the construction and therefore, no question of delivery of the possession arises. The respondents are kept on lingering on the issue of delivery to harass and cause serious ignominy to the complainants.
- IV. That as a matter of fact, the question of delivery comes only if the respondents would have completed the construction. The respondents till date failed to complete the construction and even now, there was no

progress in the construction work. Moreover, even after the lapse of more than 1 year after the expiry of grace period, the respondents failed to complete the construction. When the complainants requested to refund the amount received from them vide their e-mail dated 21.06.2019, the respondents failed to respond to the said e-mail. But the respondents till date failed to deliver the possession of the aforesaid flat even after the lapse of more than 1 year to them which caused the huge mental agony to the complainants.

V. That the respondent failed to abide the contract and further all the requests of the complainants fell on deaf ears. The cause of action arose on when the respondents failed to deliver the possession as per the contract and the same is continuing one as till date neither the possession nor the amount paid by them to respondents was refunded .

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. 89,19,957/- paid by the allottee towards the purchase of the aforesaid allotment along with the interest @24% from the date of provisional of allotment till the date of realization.**
 - II. **Pass an appropriate order with the direction to pay Rs. 5,00,000/- to the applicants towards the mental harassment and ignominy caused by respondents to the applicants.**
 - III. **Pass an appropriate order with the direction to pay Rs. 2,00,000/- to the applicants towards the litigation expenses incurred by the applicants.**

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. It is submitted that the present complaint has been filed before the authority in order to seek refund but since the hon'ble high court of Punjab and Haryana already stayed the operation of amended act. Thus, without seeking an amendment in order to file before the adjudication officer, the present complaint is not maintainable. That the present complaint is being referred to authority, Gurugram and not to adjudication officer. Thus, on this sole ground, the present complaint is liable to be dismissed. It is submitted that even on the last date of hearing i.e. 20.01.2020 when the complainants appeared before the adjudication officer, no application for amendment was filed by them. Thus, the adjudicating officer cannot adjudicate the present complaint which was not referred to him. It is further submitted that after the amendment in the RERA, powers of refund were transferred to the authority and the previous acts ceased to exist wherein the power of refund vested with the adjudication officer. It is submitted that after coming into existence of amended act, no jurisdiction remains with the adjudication officer to order refund. It is further submitted that the amended act has not yet been declared invalid.

Thus, the power of refund still lies with the authority but only the condition is that the authority cannot order the refund till the order of stay remains in existence.

- b. That the respondent is in the process of developing a residential group housing colony in sector-99A, Gurugram. The said colony is being developed in the name of "COBAN RESIDENCES". The construction work of the said project is at an advanced stage and the structure of various towers has already been completed and remaining work is endeavoured to be completed as soon as possible.
- c. That quite conveniently, certain pertinent fact has been concealed by the complainant. The concealment has been done with a motive of deriving undue benefit through an order, which may be passed by this Hon'ble authority at the expense of the respondents.
- d. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of instalments 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 hampered the capability of the respondent to deliver the project as soon as possible. The amount which was realised from the complainant has 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



course, subject to payment of due instalments and charges by the complainants.

- e. That certain extremely important facts were concealed by the complainants while drafting the present complaint. It is submitted that since the complainants had signed the apartment buyer agreement out of own accord and free will, So they are also bound by the terms and condition of the said apartment buyer agreement. It is submitted that as per clause 3.1, the date of possession was to be 4 years from the start of construction or execution of this agreement, whichever was later. It is submitted that the agreement in question was executed on 21.01.2014 and the complainant on said date had specific knowledge that the construction was yet to be started and it was specifically made aware that the construction of the project shall begin soon. It is submitted that the construction of the project started on 01.10.2014 as duly mentioned in Annexure RI i.e. payment request letter dated 01.10.2014.
- f. That as per clause 5.1 of apartment buyer agreement, it was specifically stated that "in case within a period as provided hereinabove, further extended by a period of six months, if so required, by the developer, a developer is unable to complete the construction of the said flat as provided hereinabove (subjected to force majeure conditions to the flat allottee". That the said clause further specify that in the event of delay, the flat allottee shall be entitled to the payment of compensation for delay @ Rs.5/- per sq. ft. per month of the super area till the notice of



possession. That combined reading of clauses 3.1 and 5.1 of the apartment buyer agreement duly clarifies that under normal circumstances, the date of the completion of construction would be 4 years 6 months which comes to 31.03.2019. However, the said date was only effective if all the situations remained normal and no force majeure circumstances arose.

- g. That admittedly, the completion of project is dependent on collective payment by all the allottees and just because few of the allottees paid the amount demanded does not fulfil the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by respondent, resulting in delaying of completion of project. In spite various order of various courts/authorities qua regulation on construction in NCR, the respondent is trying to complete the project as soon as possible by managing available funds and time.
- h. Thus, it is quite clear that a majority of allottees are habitual defaulters and without proper flow of funds, it is quite difficult to raise construction at a first space. Yet, the respondent is trying to complete the construction as soon as possible.

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 complainant.

F. I Direct the respondent to refund the total amount of Rs. 89,19,957/- paid by the allottee to the respondent no.1 towards the purchase of the

aforesaid allotment along with the interest @24% from the date of provisional of allotment till the date of realization.

13. The complainants have submitted that they booked a residential unit by making a payment of Rs. 17,03,922/-. Thereafter a provisional allotment letter dated 22.11.2013 was issued in their favour. On 21.01.2014, an agreement of sale was executed between the parties. The complainants have paid an amount of Rs. 89,19,957/- against the total sale consideration of Rs. 98,67,85/-. The complainants further submitted that the respondents till date failed to complete the construction and even now, there was no progress in the construction work. Moreover, even after the lapse of more than three years after the expiry of grace period, the respondents failed to complete construction. After that the complainants sent an e-mail dated 21.06.2019, w.r.t refund, the respondents have failed to reply the same. In its reply, the respondents have submitted that numerous allottees have defaulted in payment on demand raised, which resulted in delaying of completion of project. The respondents are still ready to deliver the project as soon as possible.
14. Upon perusal of above-mentioned submissions and facts, the complainants wish to withdraw from the project and are demanding return of the amount received by the respondents. The complainants submitted that they wrote an email on 21.06.2019, seeking refund but there is no evidentiary proof. But it is evident, that the respondents have failed to give possession till date and the complainants came to the authority after expiring of due date.
15. Keeping in view the fact that the allottees/complainants wish 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 **01.10.2018** and there is delay of 2 years 2 months 29 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 they have 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.....”

17. 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"

18. 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.
19. 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.
20. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 89,19,957/- 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 appropriate order with the direction to the respondent to pay Rs. 5,00,000/- to the applicants towards the mental harassment and ignominy caused by respondent to the applicants.



E. III. Pass an appropriate order with the direction to the respondent to pay Rs. 2,00,000/- to the applicants towards the litigation expenses incurred by the applicants.

21. 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

22. 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 authority hereby directs the promoters/respondents to return the amount received by them i.e., Rs. 89,19,957/- 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.



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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.

23. Complaint stands disposed of.

24. 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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