

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

Complaint no. : 3348 of 2019
First date of hearing: 13.11.2019
Date of decision : 30.08.2022

Rajender Kumar Gupta
R/o : N-99, N Block, Sham Nager,
Delhi-110018

Complainant

Versus

M/s Pareena Infrastructure Pvt. Ltd.
Office: Flat no. 2, Palm Apartment, Plot no. 13b,
Sector-6, Dwarka, New Delhi- 110075.
Also at : C-7A, Second Floor, Omaxe City Centre,
Sector-49, Sohna Road, Gurugram-122018

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyla

**Chairman
Member**

APPEARANCE:

Ms. Vandana Agarwal (Advocate)
Sh. Prashant Sheoran (Advocate)

**Counsel for the complainant
Counsel for the respondent**

ORDER

1. The present complaint dated 26.08.2019 has been filed by the complainant/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 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.	T2-1201 (page 25 of complaint)
8.	Unit admeasuring area	1997 sq. ft. (page 25 of complaint)
9.	Allotment letter	N/A
10.	Date of builder buyer agreement	10.01.2014 [page 23 of complaint]
11.	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..... (Emphasis supplied)</i>
13.	Date of start of construction	16.10.2014 (page 13 of reply)
14.	Due date of possession	16.10.2018

		[Due date calculated from start of construction i.e. 16.10.2014]
15.	Total sale consideration	Rs 1,23,41,000/- (as per schedule of payment page 48 of complaint)
16.	Total amount paid by the complainant	Rs. 20,38,533/- (page 26 of reply)
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 complainant booked a flat in project M/s Pareena Infrastructure Private Limited. The flat no. was 1201 in tower no. T-2, located on 12th floor in the group housing complex having an appropriate super Area of 1997 sq. ft. at total basic price of Rs. 98,28,235.5/-.
 - II. That the complainant paid Rs. 8,50,000/- for booking of the flat and also paid Rs. 11,88,533/- dated 15.10.2013 and the complainant he had paid an amount of Rs. 20,38,533/- towards the flat to it. The respondent grabbed more than 20% of the total cost of project amounting total Rs. 20,38,533/- from the complainant without signing the builder buyer agreement.
 - III. That on 10.01.2014, a buyers' agreement was executed between the parties. As per clause 3.1 of the buyers' agreement " The developer shall complete the construction of the said building in which the said flat to be located with 4 years of the start of contraction or execution of this agreement. The project is not completed yet which is the final cause of action to file the complaint and cause of action is continuous one.
 - IV. That the act and conduct of the respondent shows that they had only one intention i.e. to grab a handsome amount from the complainant by making

false grounds by using unfair trade practices, and by making fraud, which shows the deficiency in service on the part of it.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to pay the Rs. 20,38,533/- along with interest @ 24% p.a. from the date of deposit till its actual realization.
 - II. Direct the respondent to award a cost of Rs. 50,000/- towards litigation expenses in favour of complainant.
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 a residential group housing colony in Sector-99A, Gurugram. The said colony is being developed in the name of "COBAN RESIDENCES.
 - b. That the construction work of the said project is at an advance 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 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 un-wavering 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 realised from the complainant 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 instalments and charges.
- d. That admittedly completion of project is dependent on collective payment by all the allottees and just because few of the allottees paid the amount demand does not fulfil the criteria of collective payment. It is submitted that a numerous allottees have defaulted in payment demanded by it, resulted in delaying of completion of project, yet it is trying to complete the project as soon as possible by managing available funds. A brief detail of the expenditure showing the bonafide intention of the respondent that the respondent is trying to complete structure out of his own fund is duly given in certificate issued by Singh Saini & Co.
 - e. That it is the admitted fact that the builder buyer agreement was executed between the parties on 10.01.2014 and prior to that the complainant had paid an amount of Rs 20,38,533/-. However, certain extremely important facts were concealed by him while drafting the complaint. It is submitted that since the complainant had signed the buyers' agreement out of his own accord and free will, he is also bound by the terms and condition of the said agreement.
 - f. That though the agreement was executed on 10.01.2014 and the complainant had paid an amount of Rs 20,38,533/-, but he failed to disclose the fact that he never paid the amount demanded from him by the respondent time to time. It is submitted at the time of execution of buyers' agreement on 10.01.2014, he specifically agreed that he shall pay the amount as and when demanded by the builder.
 - g. That the complainant also agreed to pay as per payment plan annexed as annexure-2 with the buyers' agreement. However, the complainant

miserably failed to pay even a single amount after execution of buyers' agreement. The said fact was also admitted by him in his complaint wherein he himself stated that he did not pay further installments to the builder. However, he took a false and frivolous plea that he did not pay the amount because the excavation was not started. However, said plea was absolutely baselessly and frivolous one since after execution of buyers' agreement on 10.01.2014, the respondent issued a letter dated 01.10.2014, wherein he was asked to pay an amount of Rs. 12,64,398/- against start of excavation. Even after receiving of demand letter against start of excavation the complainant did not pay any heed to the genuine request of it. Moreover, he was also duty bound to pay in terms of buyers' agreement and the payment plan he agreed to.

- h. That not only the payment request made at the time of start of excavation was ignored by the complainant, but he also ignored all other further request at the difference stage of constructions. It is submitted that none less than 15 reminders over a period of time were issued to him at the difference stages of construction, he did not pay even a single amount thereafter.
- i. That above stated facts and circumstances clearly reveals that the complainant miserably failed to pay the amount demanded by the respondent from time to time. It is further submitted that as of now the respondent had already paid an amount of Rs. 2,05,524/- against taxes and an amount of Rs. 161,258/- against brokerage charges since the complainant came through a broker namely Property Junction Realtors Pvt. Ltd. as duly mentioned in application form signed by the complainant on 27.07.2013.

- j. That it is also apparent that the construction work of the project is at an extremely advanced stage and the structure work is already complete. Regarding the tower wherein the unit in question is located it is submitted that the development work of the same is at advance stage. The structure work of this tower is completed, the brick work is also completed, wall conduit is completed till 11th Floor, internal plaster work completed till 9th floor, internal door frames completed till 9th floor, machine room and water tank of this tower is also completed.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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.
12. 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 (Civil), 357* and 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**, 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."

13. 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.1 Direct the respondent to pay the Rs. 20,38,533/- along with interest @ 24% p.a. from the date of deposit till its actual realization.

14. The complainant booked a flat in the project named as "Coban Residences" and paid Rs. 20,38,533/- against the total sale consideration of Rs. 1,23,41,000/-. On 10.01.2014 a BBA was executed between the parties and as per agreement possession was given within 4 years from the date of execution of the agreement, but the project was not completed till date. The complainant did not pay the further installments due to late excavation of the project. The complainant is no more interested in this project.
15. The contention of the respondent is that the complainant has defaulted in making payment with respect to its allotted unit. The respondent has placed on record the reminder letters sent to complainant regarding payment of dues. Accordingly, the respondent had issued reminder letters dated 01.10.2014, 11.11.2014, 11.12.2014, 02.01.2015, 04.02.2015, 25.04.2015, 21.05.2015, 04.08.2015, 29.09.2015, 03.11.2015, 24.11.2015, 04.02.2016, 07.03.2016, 03.06.2016, 13.06.2016, 16.07.2016, 24.01.2017, 08.04.2017, 11.07.2017 and 13.07.2018.

16. On consideration of documents available on record and submission made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant had paid Rs. 20,38,533/- against the total sale consideration of Rs. 1,23,41,000/-. The respondent/builder send number of demand letters/reminders on 01.10.2014, 11.11.2014, 11.12.2014, 02.01.2015, 04.02.2015, 25.04.2015, 21.05.2015, 04.08.2015, 29.09.2015, 03.11.2015, 24.11.2015, 04.02.2016, 07.03.2016, 03.06.2016, 13.06.2016, 16.07.2016, 24.01.2017, 08.04.2017, 11.07.2017 and 13.07.2018 respectively and asking the allottee to make payment of the amount due but having no positive result.
17. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot 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.
18. 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 10 months 10 days on the date of filing of the complaint.
19. 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....."

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

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

21. 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.

22. The authority hereby directs the promoter to return the amount of Rs. 20,38,533/- received by him along with interest at the rate of 10% (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*.

III. Direct the respondent to award a cost of Rs. 50,000/- towards litigation expenses in favour of complainant.


23. The complainant is also seeking relief w.r.t compensation. *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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

24. 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 is directed to return the amount of Rs. 20,38,533/- received by him along with interest at the rate of 10% (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.
 - 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.
25. Complaint stands disposed of.
26. File be consigned to registry.

v.l. 
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.08.2022

HARERA
GURUGRAM