

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

Complaint no. : 4931 of 2020
First date of hearing: 24.02.2021
Date of decision : 24.08.2022

Smt. Renu Bala Mittal
R/O: - Emerald Hills, Ivory 92, First Floor,
Sector-65, Golf Course Extension Road,
Gurugram

Complainant

Versus

M/s Pareena Infrastructures Private Limited
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:

Surbhi Garg Bhardwaj (Advocate)
Sh. Prashant Shoeran (Advocate)

**Counsel for Complainant
Respondent**

ORDER

1. The present complaint dated 13.01.2021 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.	2302, tower T5, 23 rd floor (page 61 of complaint)
8.	Unit admeasuring area	1245 sq. ft. (page 61 of complaint)
9.	Allotment letter	02.12.2015 (annexure P3, page 36 of complaint)
10.	Date of builder buyer agreement	Not executed

11.	Date of start of construction	02.06.2016 (annexure R14, page 85 of complaint)
12.	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.
13.	Due date of possession	02.06.2020 (grace period is not allowed). Date of execution of BBA is not given in file so, the date of start of construction has been taken which is 02.06.2016
14.	Notice for final opportunity letter to make payment	10.09.2020 (annexure R27, page 108 of reply)
15.	Total sale consideration as per payment plan	Rs. 84,38,280/- (page 84 of complaint)
16.	Total amount paid by the complainant	Rs. 14,43,004/- (6,00,000 + 7,93,004 + 50,000/- as per receipts at page 17,18 & 21 of complaint)
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That believing the misrepresentations of the respondent in the advertisements and relying upon its goodwill, the complainant booked an apartment admeasuring 1483 sq. ft. in the said project by paying an amount of Rs. 6,00,000/- towards the booking vide cheque no. 134223

and 602526 dated 12.03.2014 to the respondent. It is submitted that the said booking was a pre-launch booking and was made at the sale price of Rs. 5405/- per sq. ft. That the respondent/builder further entered into a flat buyer agreement dated 21.01.2014 with the complainant. The complainant has paid Rs. 89,19,957/- [inclusive of Tax] to the respondent/builder as per demands and the schedule of payments.

II. That thereafter, despite delay in launching the project, the respondent again raised a payment demand. To this, the complainant inquired about the project launch and basis of payment demand as earlier she was told that second installment shall be payable only after 90 days of project launch, but the representative of the respondent falsely assured her that the said demand is the second installment due after 2-3 months from booking and after that, the demands shall be raised in accordance with construction linked payment plan once the project is launched and construction is resumed. Believing the said misrepresentations of the respondent, the complainant in good faith and showing utmost trust, paid an amount of Rs. 7,93,004/- vide cheques bearing no. 000002 dated 09.06.2014 for Rs. 3,50,000/- and 602527 dated 12.06.2014 for Rs. 4,43,004/- respectively as per said demand raised by respondent towards the purchase of the said flat.

III. That the aforementioned payment was made by the complainant *bonafidely* in the hope that the project would be launched soon as per the assertions of the respondent. Accordingly, a few months after making the

payment of second installment, somewhere around Nov'2014, the complainant inquired about the project launch and allotment of unit to her along with execution of a builder buyer agreement, to which the respondent said that the project launch has been delayed by a few months and would be launched very soon and the agreement would also be executed in coming months, but to no avail.

- IV. That no intimation was made by the respondent even till mid-2015 to which the complainant took a serious note and visited the respondent's office to inquire about the launch of the project and unit allotment in her name only to find out that the project launch was delayed further and the plans have been revised and a unit admeasuring 1483 sq. ft. is no more available as the same is not approved by the management of the respondent and as per the choice of bigger category flat, the option available to the complainant shall be a flat with larger flat area, i.e. 1750 sq. ft. and the rate shall be increased to Rs. 5750/- sq. ft. However, an increase in area and an increase in unit consideration/price was not acceptable to the complainant owing to financial constraints and accordingly, she asked for another option. To this, one of the representatives of the respondent said that since at the time of pre-launch, the complainant chose the larger flat in the categories of flats available, she cannot shift to a lower category of flat and only upon payment of Rs. 1,50,000/- in cash, her booking could be transferred to a

lower category flat admeasuring 1245 sq. ft. whereupon she can also get some rate concession.

- V. That believing the misrepresentations of the said representative the complainant made a payment of Rs. 1,50,000/- in cash to the representative of the respondent.
- VI. That thereafter, vide cheque bearing no. 000184 dated 24.11.2015, the complainant made a payment of Rs. 50,000/- as per the demand raised by the respondent. Accordingly, the respondent vide allotment letter dated 02.12.2015 allotted unit bearing no. 2302, on 23rd floor in Tower 5 admeasuring 1245 sq. ft. in the said project. The said allotment letter was issued after an expiration of 1.5 years from the date of booking of the said unit. It is submitted that the project was finally launched only around January'2016.
- VII. That the respondent demanded and received the said amount of Rs. 14,43,004/- against the basic sale price of Rs. 67,29,225/- unjustifiably and prior to issuance of allotment Letter and execution of builder buyer agreement. The said receipt of more than 10% of the total sales consideration without first entering into a written agreement is a clear violation of section 13 of the Real Estate (Regulation and Development) Act, 2016.
- VIII. That in order to purchase the said flat , the complainant sought financial assistance and applied to HDFC bank for loan. Meanwhile, the respondent raised payment demand vide mail dated 06.04.2016 to which



the complainant sought time of few days as loan approval was towards final stages. Accordingly, on 29.04.2016, HDFC bank approved a loan amounting to Rs. 50,00,000/- and the same was intimated by the complainant to the respondent on the same day vide mail dated 29.04.2016.

- IX. That later, the complainant received an apartment buyer agreement for the unit bearing no. T5-2302 in MI Casa, Sector 68, Gurugram. However, after going through the one sided, arbitrary and illegal clauses of the apartment buyer agreement contacted the respondent in order to enquire about the same. The respondent further pleaded that the agreement is just a formality and complainant needs to sign the same. The complainant refused to sign the builder buyer agreement having unfair clauses until the agreement bears the unfair clauses. To this, the representative of the respondent falsely assured that they would send a fresh copy of the agreement after making requisite changes, but to no avail as the same was never sent. Further, during telephonic conversation dated 06.06.2016 with the respondent's representative, the complainant was informed that once all the documentary formalities at their end are completed with HDFC Bank, the complainant will be intimated and till then, no delay interest will be imposed on delay in disbursal on part of bank.
- X. That thereafter, on 04.07.2016, the complainant received a payment demand letter due 'on start of excavation'. Upon this, the complainant



contacted HDFC bank and enquired about the disbursal to which the bank representative said that the respondent has failed to share the required documents with the bank due to which the amount as demanded could not be disbursed. Accordingly, vide e-mail dated 19.07.2016, the complainant very clearly asked the respondent to share the requisite documents with bank so that payment may be made against the unit. Since, the delay was due to respondent's fault. So, keeping in view the commitment made by the respondent, no interest be imposed upon him, but to no avail.

- XI. That thereafter, the complainant again requested the respondent telephonically as well as in meetings to complete the documentary formalities with the bank so that loan amount can be disbursed. But the respondent kept telling the complainant that they would do the needful and would inform her once all formalities are complete. During the said period, the complainant received several demand letters along with "Interest on Delayed Payments" from the respondent and upon objection to the respondent, in reply, she was told several times that the same demand letters are simply system generated letters and no interest would be charged and the delay is on the part of the respondent as the respondent failed in submitting required documents to HDFC bank. The complainant believing the misrepresentations of the respondent and in hope that it would deal with the matter and intimate her, kept waiting for the latter's intimation.

- XII. That almost after one year, the complainant again contacted the respondent over its lackadaisical attitude at which, it asked her to change the loan account from HDFC bank to Indiabulls Housing Finance Limited. The complainant refused to do the same despite the fact that the respondent had been wrongfully retaining her life savings from 2014 and had been subjecting her to sheer harassment.
- XIII. That the complainant in the month of March, 2020 contacted the respondent and enquired about the status of the project and submission of documents to HDFC bank. But to the utter shock of the complainant, the respondent further said that it would inform the complainant once it is done.
- XIV. That to the utter shock of the complainant, on 10.09.2020, she received a notice as final opportunity letter to make payment in terms of application form against her booking in project 'Mi-Casa' from the respondent. The said notice also stated that in case of non-payment of pending dues, respondent would cancel the application for booking of the complainant in the said project.
- XV. That the complainant after receiving the said notice dated 10.09.2020, wrote an email dated 13.09.2020 to the representative of the respondent namely, Mr. Amit Soni, making him aware of the fact that no delay could be attributed to her in delaying the payment and evidently, the same has been delayed on part of the respondent. It was further informed that the

respondent failed in handing over requisite documents to HDFC bank resulting the amount not being disbursed.

- XVI. That till date, the complainant has paid a sum of Rs. 14,43,004/- towards the said apartment from 12.03.2014 apart from Rs. 1,50,000/- in cash, fraudulently obtained by the representative of the respondent.
- XVII. That due to the snail-paced work at the project site and upon receiving unsatisfactory response from the respondent regarding handing over documents to the HDFC bank despite having several request for the same, the complainant has lost all faith in the respondent.
- XVIII. That the complainant on 10.0.2020 telephonically requested to the respondent to refund the entire deposited amount of Rs. 14,43,004/- with interest but it flatly refused to refund the deposited amount by saying that the deposited amount would not be refunded. The respondent further pleaded that it was not concerned about whether any document needs to be submitted by it or not and kept on pressurizing the complainant.
- XIX. That the present complaint has been filed in order to seek refund of the principal amount of Rs. 14,43,004/-, paid by the complainant along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the date of receipt of payment till the date of actual refund, and compensation for the mental stress and torture as well as financial and physical loss suffered by the complainant due to the fraudulent acts of the respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. **Direct the respondent to refund an amount of Rs. 14,43,004/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.**
 - II. **Direct the respondent to give Rs. 4,00,000/- as compensation on account of loss/injury as well as mental suffered by the complainant.**
 - III. **Direct the respondent to pay litigation charges to the tune of Rs. 30,000/-.**
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 present complaint is not maintainable in the present form as the allotment of complainant had already been cancelled. Thus the complainant is not an allottee of respondent, and has no right to approach this authority as per provisions of Act.
 - b. That without prejudice, it is submitted that as clear from the complaint itself, the complainant knew that the unit allotted to her has been cancelled in pursuance to final notice dated 10.09.2020, which has been annexed by herself relief has been sought qua the said legal and valid cancellation.

- c. That the Act specifically deals with the procedure where an allottee can challenge his/her cancellation and since same has not been done by the complainant. Thus, it is clear waiver of her right to do so and since the cancellation has not been challenged, the complainant has no right to seek refund as well, in any form.
- d. It is submitted that the cancellation has not been challenged by the complainant since she herself knew it very well that she has no stand to challenge the same and thus in order to avoid/conceal her defaults, the present complaint has been filed on the basis of baseless assumptions and concocted stories.
- e. That the complainant has concealed and manipulated several facts from the hon'ble authority while drafting the complaint and has intentionally posed a picture as if she is not at fault. That actual facts and circumstances are as follow:
- i. That in the year 2014, the complainant visited the office of the respondent in order to book an apartment in the project namely "COBAN RESIDENCES" at sector 99A, of the respondent. That at that point of time complainant approached the respondent through a broker, namely, "Axiom Properties" after understanding the terms and conditions of the application, filed by herself.
 - ii. That at the time of said application, the complainant paid an amount of Rs. 6,00,000/- vide two cheques bearing no. 602526 & 134223 both dated 12.03.2014 drawn on SBI & HDFC Bank. And in

furtherance to the booking she paid an amount of Rs. 793004/- vide two cheques bearing no. 000002 dated 09.06.2014 drawn on HDFC bank amounting to Rs. 3,50,000/- and cheque bearing no. 602527 dated 12.06.2014 drawn on SBI amounting to Rs. 4,43,004/-.

- iii. That the said project was duly launched and after having obtained a license bearing no.10 of 2013 dated 12.03.2013 and building plans bearing no. ZP-882/SD/(BS)/2013/47004 dated 25.07.2013. Since, on 12.03.2013 the licence and on 25.07.2013, building plans for development of a project, namely, Coban Residences were granted/sanctioned, and the respondent had every right to take booking in the said project.
- iv. That the respondent was developing another project namely Mi CASA at sector 68 bearing licence nos. 111 of 2013, 92, 94 of 2014. That even the building plans for the sector-68 project were duly sanctioned on 28.04.2015.
- v. That after the second project namely Mi-Casa was launched by the respondent, complainant approached it and requested for substitution of the allotment from the sector-99A project to the project being developed in sector-68, Gurgaon. A written request in this regard was made by the complainant on 24.11.2015. It is further submitted that at the time of substitution, complainant requested not to charge a fresh booking amount against newly

booked unit at sector 68 and the payment made against earlier project by cheque be adjusted against the booking of new unit. That considering the request of complainant, the said booking amount was adjusted against booking of new unit and only amount of Rs. 50,000 was paid against transfer charges, which was paid by the complainant vide cheque bearing no. 000184 dated 24-11-2015. It is submitted that though legally the respondent would have charged separate amount for booking of unit however, since the complainant requested for substitution, so, no new amount was charged for booking, except transfer charges. That from said request letter, it clear that on acquiring knowledge of another project at sector 68, complainant opted to transfer her booking from originally allotted unit in sector 99A project to new launched project at sector 68.

- vi. That thereafter, complainant signed another application for booking of unit in project at sector 68 on 02.12.2015 and in pursuance to the same an allotment letter dated 02.12.2015 was issued to her. The respondent on 27.04.2016 sent two copies of builder buyer agreement to the complainant and requested to return the same duly signed within 15 days, but till date she has not sent back agreement.
- vii. That vide said application for allotment, the complaint specifically agreed that 15% of the sale price would be treated as earnest

money to ensure compliance of terms and conditions contained in the application and buyers agreement. She further agreed that in case of non-payment or breach of terms, the allotment would be cancelled/terminated and said 15% along with interest would be forfeited. That even the complainant was acquainted with the terms of builder buyer agreement at the time signing of said application form and only after acknowledging terms and conditions of builder buyer agreement as well, the complainant out of her own free signed the application form. It is submitted that even in the application itself, it was mentioned that the complainant was required to sign standard buyer agreement. Without prejudice, it is submitted that since at the time of signing of application, complainant had complete knowledge of all the terms and conditions, thus pleas taken by her qua unreasonableness of terms and conditions is untenable. Moreover, the terms and conditions are not unreasonable. It is submitted that Hon'ble court would appreciate the fact that development of a project is not an easy task and to develop a project in timely manner developer need continuous flow of money. It is submitted in the project like present one, the developer is responsible for the whole of the project and if allottees default in making the 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, is necessary so that all allottees may make the payment on time and project can be completed on time. It is submitted that even after high interest, several allottees kept on defaulting in payments and loss was suffered not only by the developer but also by the other genuine allottees who never defaulted.

- viii. That even the present complainant falls in category of such allottees who were habitual defaulters. The respondent issued various reminders dated 06.04.2016, 02.06.2016, 04.07.2016, 03.09.2016, 02.02.2017, 02.07.2017, 17.07.2017, 31.01.2018, 13.04.2018, 19.01.2019, 14.05.2019, 06.06.2019, 18.07.2019, 05.09.2020 & 10.09.2020 to the complainant through post. That even after waiving off interest on her request, the complainant failed to pay the demand raised by respondent. Ultimately on 10.09.2020, the respondent sent a letter to the complainant reminding her that the unit allotted in her favour would be cancelled as per terms and conditions of the application form and granted her one more opportunity to make the balance payment by giving 10 more days. That even the complainant failed to pay and hence the allotment was terminated and the amount was forfeited as per agreed terms.
- ix. That the complainant has mentioned the said letter in her complaint but has tried to defend her lapses on base less grounds.

It is submitted that had the complainant come before authority with clean hand, 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.

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 complainants 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(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."

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. I Direct the respondent to refund an amount of Rs. 14,43,004/- paid along with interest at the prescribed rate from the date of receipt of each instalment of payment till the date of refund.

14. The complainant has submitted that she booked an apartment admeasuring 1483 sq. ft. by paying an amount of Rs. 6,00,000/- towards the booking to the respondent. After the 2-3 months of the booking the respondent raised further demand of Rs. 7,93,004/-, Rs. 3,50,000/- and 4,43,004/- respectively and which was paid by the allottee. Accordingly, a few months after she made an inquiry from the respondent's office about the launch of the project and allotment of unit on her name. She got a reply that the project launch would be delayed further, and the plans have been revised. A unit admeasuring 1483 sq. ft. was no more available and the same was not approved by the management of the respondent and as per the choice of bigger category flat, the option available to the complainant would be flat

with larger flat area i.e., 1750 sq. ft. However, an increase in area and an increase in unit consideration were not acceptable to her owing to financial constraints and accordingly, she asked for another option. To this, one of the representatives of respondent told that since at the time of pre-launch, the complainant chose the larger flat in the categories of flats available, she could shift to a lower category of flat and only upon payment of Rs. 1,50,000/- in cash, her booking could be transferred to a lower category flat admeasuring 1245 sq. ft. and the same has been made in cash. Thereafter, on 24.11.2015, she made a payment of Rs. 50,000/- as per demand raised by the respondent. Accordingly, the respondent vide allotment letter dated 02.12.2015 allotted a unit. She paid an amount of Rs. 14,43,004/- against BSP of Rs. 67,29,225/- prior to issuance of allotment letter and execution of BBA which is more than 10% of the total sales consideration without entering into a written agreement.

15. The complainant further submitted that she took a loan of Rs. 50,00,000/-. On 04.07.2016, she received a payment demand letter due "on start of excavation". Upon this, the complainant contacted HDFC bank and enquired about the disbursal to which the bank representative said that the respondent has failed to share the required documents with the bank due to which the amount as demanded could not be disbursed. Accordingly, vide email dated 19.07.2016, the complainant asked the respondent to share all the requisite documents with bank to avoid delay in making payments. On 10.09.2020, she received a notice titled as "*final opportunity letter to make payment in terms of application form against your booking in project Mi-Casa*". She again contacted to the respondent and found that it was again respondents' fault as it failed in handing over requisite documents to HDFC bank resulting into which even after sanction of the loan amount, the amount

was not disbursed. In its reply the respondent submitted that the complainant has made default in making payment after the reminders/demands dated 06.04.2016, 02.06.2016, 04.07.2016, 03.09.2016, 02.02.2017, 02.07.2017, 17.07.2017, 31.01.2018, 13.04.2018, 19.01.2019, 14.05.2019, 06.06.2019, 18.07.2019, 05.09.2029 & 10.09.2020 respectively send to her through post. Ultimately on 10.09.2020, the respondent sent a letter to the her reminding that the unit allotted in her favour would be cancelled as per terms and conditions of the application form and granted her one more opportunity to make the balance payment by giving 10 more days.

16. Upon perusal of above-mentioned facts & submissions made by both the parties, the complainant has made a payment of Rs. 14,43,004/- (i.e., more than 10% before executing BBA) against a total sale consideration of Rs. 84,38,280/-. Thereafter, the super area of the unit has been changed after the discussion between the parties. The complainant took a loan of RS. 50,00,000/- for making payment of allotted unit. On 04.07.2016, she received a payment demand letter due "on start of excavation". Upon this, complainant contacted HDFC bank and enquired about the disbursal to which the bank representative said that the respondent failed to share the required documents with the bank due to which the amount as demanded could not be disbursed. Accordingly, vide email dated 19.07.2016, the complainant asked the respondent to share all the requisite documents with bank to avoid delay in making payments as it is evident on page 50 of complaint. Thereafter, the respondent issued various reminders dated 06.04.2016, 02.06.2016, 04.07.2016, 03.09.2016, 02.02.2017, 02.07.2017, 17.07.2017, 31.01.2018, 13.04.2018, 19.01.2019, 14.05.2019, 06.06.2019, 18.07.2019, 05.09.2020 & 10.09.2020, the respectively to her through post.

Ultimately on 10.09.2020 respondent sent a letter to the her reminding that the unit allotted in her favour would be cancelled as per terms and conditions of the application form and granted her one more opportunity to make the balance payment by giving 10 more days. It is pertinent to mention here that the respondent took more than 10% of the BSP without executing BBA. Also, respondent is in default by not depositing requisite documents to the HDFC Bank even after email dated 19.07.2016. Also, pertinent to mention here that the respondent neither issued any cancellation letter to the complainant in respect of allotted unit nor completed the project till date. The allottee/complainant wishes to withdraw from the project and is 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 **02.06.2020** and there is delay of 7 months 11 days on the date of filing of the complaint.

17. 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 she 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....."

18. 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"

19. 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 she 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.
20. This is without prejudice to any other remedy available to the allottee including compensation for which she 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.

21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 14,43,004/- with interest at the rate of 9.80% (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*.

F. II. Direct the respondent to give Rs. 4,00,000/- as compensation on account of loss/injury as well as mental suffered by the complainant.

F III. Direct the respondent to pay litigation charges to the tune of Rs. 30,000/-.

22. The complainant is 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

23. 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):
- The authority hereby directs the promoter/respondent to return the amount received i.e., Rs. 14,43,004/- 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.
 - 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.
24. Complaint stands disposed of.
25. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)

Chairman

Dated: 24.08.2022