



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

**Complaint no. : 4094 of 2021**  
**Old Complaint no. : 3732 of 2019**  
**First date of hearing: 13.09.2019**  
**Date of decision : 14.09.2022**

1. Gaurav Gupta  
R/O : House no. 969/31, Luxman  
Vihar, Phase I, Gurugram  
2. Prashant Chibber  
R/O : Apartment A#1203, Rainbow Apartments,  
GH-26, Sector-43, Gurugram-122009

**Complainants**

**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 Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Ms. Aarti Bhalla (Advocate)  
Sh. Prashant Sheoran (Advocate)

**Counsel for the complainants**  
**Counsels for the Respondent**

**ORDER**

1. The present complaint dated 27.08.2019 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 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 colony
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	<b>Registered</b> <b>Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024</b>
7.	Unit no.	T1-1101, tower T1 [page no. 30 of complaint]
8.	Unit admeasuring area	1997 sq. ft. of super area [page no. 30 of complaint]
9.	Date of provisional allotment	27.11.2013 (annexure R15, page 82 of reply)
10.	Date of builder buyer agreement	17.04.2014 (annexure 19 of reply)
11.	Date of new builder buyer agreement with new payment plan	14.01.2015 [page 28 of complaint]
12.	Date of start of construction	16.10.2014 (annexure R9, page 73 of reply)



13.	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 <b>4 years of the start of construction or execution of this Agreement whichever is later</b>, as per the said plans..... <b>emphasis supplied.</b></i>
14.	Grace period clause	<i>5.1 In case within a period as provided under clause 3.1, <b>further extended by a period of 6 months</b> 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.</i>
15.	Due date of possession	14.01.2019
16.	Basic sale price	Rs 1,08,82,052/- [as per clause 1.2 of BBA, page 30 of complaint]
	Total sale consideration	Rs 1,28,29,940/- [as per payment plan on page 61 of reply]
17.	Total amount paid by the complainant	Rs 45,86,750/- [as alleged by the complainant, page 5 of complaint and the same was admitted by the respondent, page 6 of reply]
18.	Occupation certificate	Not obtained
19.	Offer of possession	N.A.
20.	Email w.r.t refund	27.05.2018, 12.08.2018 (page 55, 59 of complaint)

**B. Facts of the complaint**

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

- I. That the complainants booked a unit vide an application and paid a booking amount of Rs. 21,53,560/-. In pursuance to which the booking



- made hereinabove, the respondent allotted the complainants with T1-1101, Coban Residencies, Sector-99A, Gurgaon, Haryana, located on the 11<sup>th</sup> floor having a super area approx. measuring 1997 sq. ft. in the project.
- II. That the original allottee entered into a builder buyer agreement undated along with a covering letter dated 14.01.2015 wherein the total consideration/basic sale price of the said unit was stated at Rs. 1,28,82,994.20/-. Thereafter the complainant continued paying the respondent as per the demands raised by the respondent in a timely manner. However, on continuous inspection of the said project, it was found that there was no significant progress in the said project. Despite paying a considerable amount and a long wait of years for the said unit, the same is nowhere near to completion. The complainant had particularly chose a specific payment plan to plan large sum of instalments at a time in order to attain some rebate in cost and would also be beneficial for the respondent for the said unit construction.
- III. That as per clause 3.1 of the buyer's agreement, the respondent assured and represented that the possession of the said unit after its construction would be handed over within a period of 4 years from the start of construction or date of execution of the said buyer's agreement. The possession date as per buyer's agreement inclusive of grace period was due on 14.01.2019.
- IV. That It is pertinent to note herein that the complainants being diligent buyer and consumer, made continuous follow ups asking the respondent on the status and update on the project. The complainants received no response from the respondent at all and on rare occasions, received extremely unsatisfactory responses on the status of the said project. However, instead the respondent kept asking for payment demands



without making any headway on the said project. Various email exchanges took place between the parties herein wherein the respondent failed to provide any satisfactory response and constantly failed to deliver as per the representations and warranties made by it.

- V. This clearly represented that the consideration amount along with miscellaneous and additional charges and expenses were paid, yet, the complainants were subjected to unfair and clever dilatory tricks and tactics, false promises and assurances, biased agreements, ill trade practices and under highly deficient services causing immense loss to them. The complainants have paid more than enough of the consideration for the said unit. The complainants after paying huge amount still have not received nothing in return.
- VI. That the complainants had fairly purchased the said unit in the year 2015 and till 2019, they have no idea about the fate and future of the project while losing a major chunk of their lifelong savings to such a dead investment. On the last visit of the complainants, they were appalled to look at the state of affairs at the site. There were no labour, no construction workers, staff, equipment at the site and the work was on complete standstill with only 40% approx. construction. However, it is pertinent to note herein that while the delivery was due in 2018, the respondent has not even managed to complete even half of the said project.
- VII. That it is pertinent to note herein that as per the biased buyer's agreement clause 17.2(a), the complainants were liable to pay 24% interest p.a. delayed installments. If the same remained in arrears, the agreement would stand cancelled without any further notice to the allottee and company would have liberty to deal with/further allot/transfer the unit in



any manner. The complainants had no option but to accept the terms of the buyer's agreement without any negotiation as of the assurance given by the respondent and the hope of the complainants that it would stick to their assurances and promises. On the contrary, the complainants have been awarded a poor remedy for delay compensation of Rs.5/- per. sq. ft. per month of the super area as per the clause 13(a) of the builder's agreement. Evidently, the respondent has miserably failed in keeping the promises and assurances causing irreparable losses and injury to the complainants and keeping no parity in remedy to the losses incurred by them further reflects on its ill-intentions and misrepresentations.

**C. Relief sought by the complainant:**

4. The complainants have sought following relief(s).
  - I. Direct the respondent to refund the total amount paid to them amounting to Rs.45,86,750/- along with interest calculated at the rate of 10.75% from 18.04.2013 till date of realization.
  - II. Hold the respondents guilty of indulging into unfair practices and providing deficient services to the complainants and award a compensation of Rs. 30,00,000/- with interest @18% per annum for the actual promised date of allotment till realization.
  - III. Award pendent-lite interest @18% per annum from the date of payment of amounts till realization.
  - IV. Grant the cost of litigation of Rs. 50,000/- in favour of the complainant and against the respondent.
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 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 initially on 17.04.2014, the complainants entered into an apartment buyer agreement with the respondent against the same unit in question i.e. unit no. 1101. However, at that point of time complainants opted for construction linked plan. The payment plan opted by the complainants initially is part of above stated apartment buyer agreement.
- d. That after execution of above stated apartment buyer agreement, the respondent issued a payment request letter dated 01.10.2014 whereupon an amount of Rs. 13,21,910/- was demanded against start of excavation, which the complainants were liable to pay within 15 days i.e. up to 15.10.2014. However, the complainants failed to pay the said amount within the agreed time frame. Thus, the respondent was constrained to issue a reminder on 11.11.2014 and requested to clear the amount at the earliest.
- e. That even after issuance of above said reminder, the complainants did not pay any amount. Thus, another reminder was issued by the respondent on 11.12.2014 again requesting the complainants to pay the balance amount along with interest at the earliest.
- f. That even this time, the complainants failed to abide by the payment request and did not pay any amount to the respondent against the reminder. Thus, the respondent again issued another reminder



whereby the complainants were requested and advised to clear their dues at the earliest to avoid further accrual of interest and also intimated that if the payments were not made, the company may be constrained to cancel the allotment.

- g. That after receiving of above stated reminders, the complainants approached the respondent and requested to modify their payment plan as they would not be able to address the demand sent as per current payment plan as they travel abroad frequently, Thus, they demanded to change the payment plan from construction link plan to down payment plan (Pareena Provident Plan). That at that point of time, there was an option for the respondent to cancel the allotment but out of bonafide intentions and to build a better builder buyer relation, said request was approved by the respondent and a new apartment buyer agreement was executed on 14.01.2015 with a new payment plan.
- h. That as per the said apartment buyer agreement, the complainants were to pay an amount of Rs.23,72,440/- on start of excavation plus taxes. After execution of above stated apartment buyer agreement, the respondent issued a mail to the complainants whereby an amount of Rs.24,09,098/- was demanded on 09.02.2015.
- i. That even execution of new apartment buyer agreement, the complainants again failed to abide by the request of the respondent. Thus, the respondent was constrained to issue another payment request letter dated 23.03.2015 to the complainants demanding the agreed amount against the stage of start of excavation plus service tax.
- j. That the respondent on 06.04.2018 issued a demand letter against the completion of super/structure amounting to Rs.31,23,838/-. That an e-mail was also sent in this regard to the complainants on 09.04.2018





whereby they were requested to pay the amount on or before the due date. That even this time, the complainants failed to pay the amount as requested by the respondent, thus, it was constrained to issue another letter against invoice dated 06.04.2018 printed on 20.07.2018. However, the complainants did not pay even the said amount to the respondent.

k. That it is submitted that the total sale consideration agreed between the complainants and respondent is Rs.1,28,29,940.20/- plus taxes. However, as on today, the complainants had only paid an amount of Rs 45,86,750/- which itself proves a severe default on their part. That even out of said amount, an amount of Rs. 3,40,384/- had been paid to the broker through whom the complainants had approached the respondent as his fees.

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 cases 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 paid to them amounting to Rs.45,86,750/- along with interest calculated at the rate of 10.75% from 18.04.2013 till date of realization.**

14. That the complainants booked a unit vide an application and paid a booking amount of Rs. 21,53,560/-. In pursuance to the booking made hereinabove, the respondent allotted the complainants with T1-1101, Coban Residencies, Sector-99A, Gurgaon, Haryana, located on the 11<sup>th</sup> floor having a super area approx. measuring 1997 sq. ft. in the project. The allottees entered into a builder buyer agreement undated along with a covering letter dated 14.01.2015 wherein the total consideration/basic sale price of the said unit was stated at Rs. 1,28,82,994.20/-. Thereafter, the complainants continued

paying the respondent as per the demands raised by it in a timely manner. As per the buyer's agreement, the respondent assured that the possession of the said unit after its construction would be handed over within a period of 4 years from the start of construction or date of execution of the said buyer's agreement. The possession date as per buyer's agreement inclusive of grace period was due on 14.01.2019. The complainants had fairly purchased the said unit in the year 2015 and till 2019, they complainants have no idea about the fate and future of the project.

15. The respondent submitted in its reply that initially on 17.04.2014, the complainants entered into an apartment buyer agreement with the respondent against the same unit in question i.e. unit no. 1101. After execution of above stated apartment buyer agreement, the respondent had issued a payment request letter dated 01.10.2014 whereupon an amount of Rs. 13,21,910/-, which the complainants were liable to pay within 15 days i.e. up to 15.10.2014. However, they failed to pay the said amount within the agreed time frame. Thus, the respondent was constrained to issue reminders on 11.11.2014 and 11.12.2015 to clear the amount at the earliest. After receiving of above stated reminders, the complainants approached the respondent and requested to modify the payment plan. On request of the complainants, a new apartment buyer agreement was executed on 14.01.2015 with a new payment plan. The total sale consideration agreed between the complainants and respondent is Rs.1,28,29,940.20/- plus taxes. However, as on today, the complainants had only paid an amount of Rs 45,86,750/- which itself proves a severe default on the part of the complainants.
16. Keeping in view of the above said facts and submission made by complainant, the authority observes that they surrendered the unit vide



email dated 27.05.2018, 12.08.2018. So, after surrender of the unit, the respondent/builder was bound to act upon the same and return the remaining amount after retaining the earnest money which can't exceed more than 10% of the basic sale price. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that:-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the amount of the real estate i.e. apartment/plot/building as the case may be in all case where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

17. Keeping in view the aforesaid legal provisions, the respondent would refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this failing which it shall pay the amount due along with prescribed rate of interest.
18. The authority hereby directs the respondent to refund the deposited amount after forfeiting 10% of the basic sale price of the unit being earnest money as per Haryana Real Estate Regulatory authority Gurugram (Forfeiture of earnest money by the builder) Regulation, 2018 along with an interest @10% p.a. on the refundable amount, from the date of surrender (i.e., 27.05.2018) till the date of realization of payment.

**FII. Hold the respondents guilty of indulging into unfair practices and providing deficient services to the complainant and award a compensation of Rs. 30,00,000/- with interest @18% per annum for the actual promised date of allotment till realization.**



**FIII. Award pendent-lite interest @18% per annum from the date of payment of amounts till realization.**

**F IV. Grant the cost of litigation of Rs. 50,000/- in favour of the complainant and against the respondents**

19. The complainants are 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**F. Directions of the authority**

20. 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 respondent is directed to refund the deposited amount of Rs 45,86,750/- after forfeiting 10% of the basic sale price of the unit being earnest money along with an interest @10% p.a. on the refundable amount, from the date of surrender (i.e. 27.05.2018) till the date of realization of payment.




**HARERA**  
**GURUGRAM**

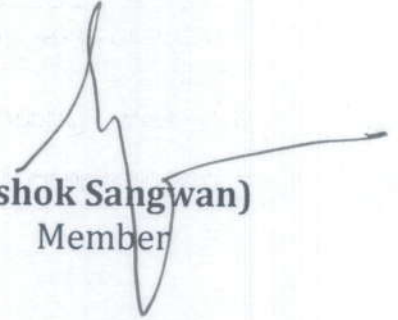
Complaint No. 4094 of 2021

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.

21. Complaint stands disposed of.

22. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Ashok Sangwan)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022

**HARERA**  
**GURUGRAM**