

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

Complaint no. :	1271 of 2022
Date of filing complaint:	24.03.2022
First date of hearing:	13.07.2022
Date of decision :	07.12.2022

Vijay Kumar Sihag R/O: House No. C-344, Prodhogibi Apartments, Plot No. 11, Sector 3, Dwarka, Delhi 110075	Complainant
Versus	
M/s Pareena Infrastructure Pvt. Ltd. Office: C-7A, Second Floor, Omaxe City Centre, Sector-49, Sohna Road, Gurugram-122018	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Ishwar Singh Sangwan (Advocate)	Complainant
Sh. Prashant Sheoran (Advocate)	Respondent

ORDER

1. The present complaint 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 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and 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-4/1003, 10 th floor (page 60 of complaint)
8.	Unit admeasuring area	1997 sq. ft. (page 60 of complaint)
9.	Provisional allotment letter	22.01.2014 (page 60 of complaint)
10.	Date of builder buyer agreement	26.05.2014 (page 18 of complaint)
11.	Date of start of construction	16.10.2014 (as per SOA dated 01.04.2021 page 67 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 and specification seen and accepted by the Flat Allottee.... (Emphasis Supplied)
13.	Grace period clause	5.1 : In case within a period as provided under clause 3.1, further extended by a period of 6 months

		<i>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>
14.	Due date of possession	16.10.2018 (Grace period is not allowed and the due date is calculated from the date of start of construction i.e. 16.10.2014)
15.	Total sale consideration	Rs. 1,32,58,097/- (as per Annexure I of BBA page 41 of complaint)
16.	Total amount paid by the complainants	Rs.29,82,310/- (as per SOA dated 01.04.2021 page 67 of complaint)
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. That on believing the assurance given by the respondent, the complainant in their meeting with the representatives and authorized agents of the respondent agreed to purchase unit no. 1003, T-4 located on 10th floor, measuring 1997 sq. ft. in the project known as COBAN RESIDENSES, Sector-99A, Gurugram. The total cost of the apartment is Rs. 1,32,59,097/-. That on 18.12.2013, the complainant booked the above said unit having customer ID COB-370/2014 by paying initial amount of Rs. 5,96,500/- and till date the complainant has paid a sum of Rs. 29,82,310/- as per demands of the respondent. The respondent has issued an provisional allotment

letter in respect of the above said unit in favour of complainant dated 22.01.2014.

4. That the complainant gradually came to realize that the promises of timely possession of the above apartment were nothing but false assurances and misrepresentations on the parts of the respondent. There has been a situation where the respondent has failed to deliver possession of the constructed apartment as per the schedule that had been promised by the respondent within 4 years i.e. 48 months as mentioned in para no. 3(i) of apartment buyers agreement dated 26.05.2014. However, the project is incomplete till date and the tower in which the complainant unit's construction is not yet started in which the complainant unit is allocated.
5. That it was at this stage that the complainant again contacted the representatives of the respondent to find out status of apartment handing over. The complainant sought information on the tentative timeline for possession by way of a clear and firm assurance by the respondent that they shall complete the project on time. Much to his dismay, the respondent refused to provide any such assurance. Moreover the complainant is forced by the respondent to shift to a new project. This made the complainant realize that the respondent had duped him.
6. That to provide an instance of the ground reality of the status of progress of construction at site, it is brought to the attention of this hon'ble authority that the respondent's raised demands were all promptly paid by the complainant as it reflected from the annexed receipts and other

documents, which clearly shows that the complainant have been making timely payments in good faith all along.

7. That the complainant has until date deposited Rs. 29,82,310/- in furtherance of the apartment agreement with the respondent. However, the respondent has failed to deliver/offer possession of his allotted apartment unit to the complainant within the stipulated time.
8. Despite receiving the said amount, the respondent has knowingly, intentionally and deliberately not delivering the possession of the said Unit and also not executing the conveyance deed of the said unit. Much to the dismay of the complainant the construction of the said tower has not even been started till date.
9. That the act and conduct of the respondent amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainant. The complainant has paid such a huge amount after collecting their life's savings with hope to move into his own apartment in the NCR region.

C. Relief sought by the complainant:

10. The complainant has sought following relief(s):
 - i. **Direct the respondent to refund of amount Rs. 29,82,310/- received by the respondent in respect of the allotted unit with interest at prescribed rate.**
 - ii. **Cost of litigation of Rs. 2,00,000/-.**

11. On hearing i.e. 06.10.2022, the respondent was directed to file the written reply within two weeks along with cost of Rs.10,000/- to be paid to the complainant along with specific direction that *"failing which the defence of the respondent shall be struck off"*. On 07.12.2022(i.e. the next date of hearing), the respondent put in appearance through its counsel and stated at bar that no construction has yet started in the tower in which unit of the complainant is situated. However, despite specific directions the respondent neither filed any written reply nor paid the cost imposed on it. The authority is of considered view that sufficient opportunity has been given to the respondent and directed to struck of the defence of the respondent and decide the complaint on the basis of merit.
12. 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.

D. Jurisdiction of the authority:

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.1 Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all

purpose with offices situated in Gurugram. 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.

D. II Subject matter jurisdiction

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots, or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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.

14. 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.*** SCC Online SC 1044 decided

on 11.11.2021 and followed in M/s Sana Realtors Private Limited & others V/s 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."

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

E. Entitlement of the complainants for refund:

E.I Direct the respondent to refund of amount Rs. 29,82,310/- received by the respondent in respect of the allotted unit with interest at prescribed rate.

E.II Cost of Litigation of Rs. 2,00,000/-

16. The complainant was allotted a unit bearing no. 1003, T-4 on 10th floor admeasuring 1997 sq. ft. by the respondent vide allotment letter dated 22.01.2014. On 26.05.2014, a BBA was executed between the parties. The complainant made a payment Rs. 29,82,310/- against the total sale consideration of Rs. 1,32,58,097/-. As per buyer agreement clause 3.1, the

due date of possession as 4 years of the start of construction or execution of this Agreement whichever is later. The date of start of construction was 16.10.2014 which is later from the date of execution of agreement. So, the due date of possession comes out 16.10.2018 (from the date of start of construction 16.10.2014). but the respondent had failed to complete the construction and offer of possession to the complainant as per agreement. The complainant filed a complaint after the due date and seeking the relief of refund.

17. Keeping in view the fact that the allottee/complainant wish 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. 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 3 years 5 months and 8 days on the date of filing of the complaint.
18. 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 allottee 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....."

19. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)*** 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 observed as under:

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

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 wish to withdraw from the project, without prejudice to any other remedy available, to return the

amount received by him in respect of the unit with interest at such rate as may be prescribed.

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 i.e. Rs. 29,82,310/- along with interest at the rate of 10.35% (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. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
 - i) The respondent/promoter is directed to refund the amount received i.e., Rs. 29,82,310/- from the complainant along with interest at the rate of 10.35% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.



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- ii) A period of 90 days is given to the respondent-builder 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 the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.12.2022



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