

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

Complaint no. : 4743 of 2020  
First date of hearing: 24.02.2021  
Date of decision : 08.12.2022

1. Rajan Khanna  
2. Anu Khanna  
Both RR/O: Tecom, Dubai Jewel  
Tower, Apartment No. 2301, P.O  
Box 61494, Dubai, UAE

**Complainants**

Versus

M/s Pareena Infrastructure Pvt. Ltd.  
Office: C-7A, Second Floor, Omaxe City Centre,  
Sector-49, Sohna Road, Gurugram-122018

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Ms. Tanya (Advocate)  
Sh. Prashant Sheoran (Advocate)

**Counsel for the complainants**  
**Counsel for the respondent**

**ORDER**

1. The present complaint dated 18.12.2020 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	"The Elite Residences", sector-99, Gurgaon
2.	Nature of the project	Group Housing
3.	licensed area	12.031 acres and 1.289 acres
4.	DTCP license no.	70 of 2011 dated 22.07.2011 valid up to 21.07.2024 82 of 2012 dated 27.08.2012 valid up to 26.08.2023
5.	Name of licensee	Shivnandan Buildtech Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Registered vide no. 46 of 2019 issued on 25.09.2019 up to 31.07.2020</b>
7.	Unit no.	A-1102, 11 <sup>th</sup> floor, Tower A [page no. 53 of complaint]
8.	Unit admeasuring area	2150 sq. ft. of super area [page no. 53 of complaint]
9.	Provisional allotment letter	09.05.2013 [page no. 46 of complaint]
10.	Date of builder buyer agreement	Unsigned BBA in complaint
11.	Possession clause (Taken from the similar matter of same project)	<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>
12.	Date of start of construction	Not Provided
13.	Due date of possession	Can't be ascertain
14.	Basic sale price	Rs. 1,22,00,175/- ( As per payment plan on page 53 of

		complaint)		
15.	Total sale consideration	Payment plan Rs.1,39,11,425/- {excluding taxes} [page 76 of complaint]	Statement of account Rs. 1,45,03,815/- [page 115 of complaint]	
16.	Total amount paid by the complainant	Rs.12,50,000/- [as per SOA dated 01.07.2022 on page no. 117 of complaint]		
17.	Occupation certificate	Not obtained		
18.	Demand Letters	12.05.2014, 12.10.2015,	01.12.2014, 12.01.2017	09.03.2015,
19.	Reminder Letters	01.08.2014, 09.10.2014, 09.01.2015, 07.08.2015,	21.08.2014, 08.11.2014, 26.02.2015, 02.06.2017,	08.09.2014, 17.12.2014, 11.04.2015, 19.06.2017
20.	Final Notice & Cancellation of booking letter	01.07.2020 & 07.09.2020 (Page 88 and 86 of the reply)		

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
- I. That the complainants had booked vide application dated 11.04.2013 followed by a payment of Rs. 12,50,000/- through cheque bearing no. 684206 dated 11.04.2013 towards the booking of the said apartment. The respondent thereafter issued an acknowledgement receipt dated 08.05.2013 for the same.
  - II. That upon receipt of the booking and the subsequent amount from the complainants and on consistent request made by the complainant, the respondent issued an allotment letter dated 09.05.2013. The complainants were allotted apartment no. 1102, in tower-A, 11th floor, admeasuring 2150 sq. ft. in the project.



- III. During the visit of their (Respondent) office, the complainants came to know that the location at which the project is being developed is not at all as similar as assured, promised, represented, warranted, and showcased at the time of booking by the respondent though brochure or any other means. Astonished by the untrue and dishonest promises, assurances, representations, and warranties of the respondent, the complainants expressed their resentment and asked the respondent to refund the entire amount paid or to allot a unit in a peaceful location as asked by the complainants before booking an apartment. The respondent kept on assuring the complainants that they will be provided a better location, as was assured. However, the respondent did not provide any unit as per the complainant's requirement.
- IV. Despite fulfilling the assurances, promises, representations, and warranties made, the respondent after the lapse of more than 1 year, issued a letter for execution of apartment buyer agreement on 09.05.2014 along with 2 copies and asked the complainants to sign the same and return within 15 days from the date of dispatch. By way of the agreement, the respondent again tried to compel the innocent complainants to execute the agreement having arbitrary, unfair, unlawful, and one-sided terms and conditions. The respondent also imposed a preferential location charge even the same was contested by the complainants on the account of breach of mutual agreement. Apart from levying PLC against which no service was provided, under the clause 2.24 of the agreement it was mentioned that in case of delay in remitting instalments from the side of the complainants, the respondent will become entitled to charge an interest @ 24% p.a. However, on the other hand, if the respondent fails to complete the project within



specified time-period than the complainants will be entitled for the compensation under clause 5.1 of the agreement.

- V. It is also pertinent to mention here that under clause 3.1 of the agreement, it was mentioned that the respondent will be liable to handover the flat within 4 years from the date of start of construction of the project and also a grace period of 6 months was availed by the respondent. However, till the year 2014, the construction work of the project was not even started even after lapse of 1 year from booking and the respondent neither enclosed any dated of start of construction of the project. The complainants approached the respondent various times and asked him to amend/rectify all those unfair, arbitrary and one-sided clauses of the agreement, however, the respondent remained intact on the terms mentioned in the Agreement and refused to change them.
- VI. That the complainants never executed such unfair and one-sided agreement and asked the respondent to refund the entire amount as the apartments were sold to them with the *malafide* intention harboured by the respondent since the very beginning. It is submitted that in the year 2014, the development work of the project was not even started which was contrary to the assurances and promises of the respondent. It is submitted that the respondent since the very beginning was cheating and duping the complainants by taking the benefit of the fact that the complainants are living in Dubai who cannot frequently visit to their office or site of the project.
- VII. That after not receiving any positive response from the respondents upon the consistent follow up regarding redressal of the grievances, the complainants on 29.08.2016 sent Email to the respondent and expressed his resentment. The complainants further stated that they are not satisfied with the location for which they have paid extra monies and

progress of the project as the development of the project after 2014 is going on in very lethargic manner. The complainant asked the respondent to refund the amount paid along with interest. This Email of the complainant were followed by the reminder dated 17.09.2016, 01.09.2016 and 05.10.2016. The complainant again on 04.11.2016 sent email to the respondent and asked them to reply to the concern raised vide email dated 29.08.2016.

- VIII. That finally, after much pursuance of the complainants, the respondent relied to the mail of the complainant on 05.11.2016 and asked them to visit respondent office for redressal of all the concern.
- IX. That after visiting and discussing all concerns with the respondent at their office, the complainant 25.01.2017 sent an email to the respondent reiterating all the discussions held in the meeting. The complainants mentioned that since the management of the respondent is not ready to refund the amount paid or shift the unit in another project as per the requirement of the complainants, it is agreed by the respondent that they will sell the unit of the complainants in the market and will refund the entire amount paid by the complainant thereafter. That in response to the email of the complainants, the respondent replied on 25.01.2017 accepting the contents of the email sent by the complainants. The respondent specifically mentioned that they will sell the unit of the complainants in the market to refund the amount paid by the complainants.
- X. That on 12.02.2017, 23.03.2017 & 08.05.2017, the complainant sent emails to respondent to refund the amount paid by them to him. Despite of fulfilling the assurances and promises made in the meeting and vide email dated 25.01.2017 in regard of refund of the amount of the complainants, the respondent vide email dated 14.05.2017 offered the

respondent a different payment plan and alternate unit in the same project. That in response to the email of the respondent, the complainants on 14.05.2017 sent an email to the respondent expressing his dissatisfaction on the respondent act of offering different unit or payment plan.

- XI. That to the utter shock of the complainants, the respondent, with malicious intention to cheat and dupe the complainants, sent a reminder for the payments due vide email dated 03.06.2017 in spite of knowing that the said unit is being sold by the respondent in the market to refund the amount paid by the complainants. The complainants replied to that email on the same day and humbly asked the respondent to refund the amount instead for raising demands, as has already been agreed. The respondent again on 20.06.2017 sent a reminder to the complainants for payment. This gesture of the respondent was very clear that they had no intention to redress the grievances of the complainants even after assuring him for the refund.
- XII. That astonished and startled by the fraudulent acts of the respondent, the complainants again sent an email on 06.10.2017 and asked ther to refund the entire amount paid. The complainants further asked the respondent to disclose the date on which the amount will be refunded. After getting no response, the complainants on 19.01.2018 sent reminder email to the respondent. This was further followed by the reminder dated 16.07.2018, 05.08.2018, 27.10.2018 and 23.11.2018. In spite of numerous reminders, the respondent did not pay any heed. The unlawful and dishonest acts demonstrate ill intent harboured by the respondent from the very inception.
- XIII. That despite of paying heed to the consistent request of the complainants, the respondent on 03.07.2020, sent email to the



complainants explaining the development status of the project. It is submitted that even after the lapse of more than 7 years of booking the respondent were failed to complete the project and still the development work is being carried out in very slow pace.

- XIV. That in response to the email of the respondent, the complainants replied on 04.07.2020 and asked the respondent to pay heed to the various email and reminders sent by them. The complainants further mentioned that they have been asking for refund of the amount from the since 2017 as they were not at all satisfied with the location and progress of the project from the day one after visiting the location of the project. The complainants further stated that even after 7 years, the respondent is still struggling to complete the project and the same cannot be completed in few coming years.
- XV. The respondent, by force of habit of committing illegal, unlawful and dishonest acts, again sent a final notice dated 01.07.2020 to the complainants and asked them to pay an amount of Rs. 1,37,43,758/- which is not tenable in the eyes of law since the complainants and the respondent had already agreed on refund of the amount. That since the very beginning, the respondent is trying to cheat the complainants and extract and withhold their monies. Instead of refunding the amount paid by the complainants as per the duly agreed terms and conditions. The respondent again with malafide intention on 07.09.2020 sent a cancellation letter stating that the unit booked by the complainants are being terminated and the amount paid stands forfeited. The respondent further mentioned that the complainants from now has no right, claim, etc. in the unit booked. Thereafter, also sent email for the same on 09.09.2020. In response to the cancellation letter, the complainants replied on 10.09.2020 protest the cancellation letter and asked the



respondent to refund the amount as per the earlier discussions held in the year 2017 and also referred all the reminder mails. The complainants further asked the respondent to refund the amount of Rs. 12,50,000/- immediately.

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

4. The complainant has sought following relief(s).
  - I. **Direct the respondent to refund the entire amount of Rs. 12,50,000/- paid by the complainants for allotment in the project along with prescribed rate of interest from the date of respective deposits till its actual realization.**
  - II. **To pay the compensation of Rs. 5,00,000/- for causing mental agony, harassment.**
  - III. **To pay the legal cost of Rs. 2,00,000/- for the legal costs.**
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, since the allotment of complainant had already been cancelled thus the complainant is not an allottee of respondent, thus she has no right to approach this hon'ble authority as per provisions of RERA.
  - b. That without prejudice, it is submitted that as clear from the complaint itself, the complainants knew that the unit allotted to that has been cancelled in pursuance to final notice dated 07.09.2020, which was annexed by the complainants themselves as Annexure C-20. Even the complainants themselves wanted to cancel the allotment but since





- their request was against the agreed terms and conditions, it could not be entertained.
- c. It is respectfully submitted that the respondent launched a residential project under the name and style of "The Elite Residences" in Sector 99 Gurugram, Haryana wherein the complainants in the year 2013 through their broker property Junction Realtors Pvt. Ltd. initially approached the respondent to book a flat. At that point of time complainant vide an application applied for allotment and paid an amount of Rs.12,50,000/- and in lieu of the same a receipt was issued to the complainant.
- d. That the complainants on admitting and acknowledging the terms and conditions of said application form signed it as a token of acceptance and paid an amount of Rs. 12,50,000/-. That vide said application for the complaint specifically agreed that 15% of the sale price shall be treated as earnest money to ensure terms and conditions contained in the application and buyers agreement and the complainants further admitted that in case of non-payment or breach of terms allotment shall be cancelled/terminated and said 15% along with interest shall be forfeited. That the complainants had 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 complainants out of their own free will signed the application form. It is submitted that even in the application itself it was mentioned that the complainants are required to sign standard buyer agreement. Without prejudice it is submitted that since at the time of signing of application complainants had complete knowledge of all the terms and conditions, thus plea taken by complainants qua unreasonableness of terms and conditions are untenable, moreover



the terms and conditions are not unreasonable. It is submitted that Hon'ble court will appreciate the facts 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, developer was not bound to construct one flat or apartment rather Whole of the project is to be developed and assuming out of total no. of allottees only one third allottees pay on time and remaining default in payment, then it will be extremely difficult to develop the project on time. It is submitted that conditions such as forfeiture and high interest on payment due, are necessary so that all allottees should pay on time and project can be completed on time. It is submitted that despite if such conditions several allottees kept on defaulting in payments and losses have been suffered by the developer.

- e. That the respondent issued various reminders on 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 08.11.2014, 17.12.2014, 09.01.2015, 26.02.2015, 11.04.2015, 07.08.2015, 02.06.2017, 19.06.2017 respectively. That all these reminders/demands were sent to the complainants through post as well as mails. That ultimately on 14.09.2020 respondent sent a letter to the complainants reminding them that the unit allotted in their favour are liable to be cancelled since they are gross violation of application form signed by them and granted them one more opportunity to make the balance payment and reminded them that in case of default their allotment is liable to be cancelled and amount paid will be forfeited as per agreed terms.
- f. That even after receiving of said letter complainants paid no heed to genuine requests of the respondent, thus having no other option respondent sent a final letter to the complainants whereby 15 more



days granted to them for payment and in case of default their unit shall cancelled. That even at this time complainants failed to pay, hence the allotment stands cancelled and the amount stands forfeited as per agreed terms. That a cancellation letter was also sent to the complainant on 07.09.2020. That even the complainants have mentioned said letter in their complainants but has tried to defend her on basis of baseless ground.

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 entire amount of Rs. 12,50,000/- paid by the complainants for allotment in the project along with prescribed rate of interest from the date of respective deposits till its actual realization.**

**F. II To set aside the arbitrary decision of the respondent vide cancellation letter dated 07.09.2020 to forfeit the amount paid by the complainants.**

14. The complainants submitted that they booked a flat in the project named as "The Elite Residences". On 09.05.2013 an allotment letter was issued. However, no BBA was executed between the parties. It is pertinent to mention here that respondent issued various reminders on 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 08.11.2014, 17.12.2014, 09.01.2015, 26.02.2015, 11.04.2015, 07.08.2015, 02.06.2017, 19.06.2017 respectively. Thereafter, issued final notice on 25.09.2020. After all the reminders and final notice, the respondent cancelled the allotted unit of the complainants vide letter dated 07.09.2020.

**Now the question before the authority is whether this cancellation is valid?**

On consideration of documents available on record and submission by both the parties, the authority is of the view that on the basis of provisions of allotment the complainants had paid Rs. 12,50,000/- against the total sale consideration of Rs. 1,45,03,815. The respondent/builder sent number of demand letters/reminders on 01.08.2014, 21.08.2014, 08.09.2014, 09.10.2014, 08.11.2014, 17.12.2014, 09.01.2015, 26.02.2015, 11.04.2015, 07.08.2015, 02.06.2017 and 19.06.2017 respectively and asking the allottees to make payment of the amount due but having no positive result and ultimately leading to cancellation of unit vide letter dated 07.09.2020 in view of the terms and conditions of the agreement. No doubt the complainant did not pay the amount due despite various reminders but the respondent while cancelling the unit was under an obligation to forfeit out of the amount paid by them i.e., the earnest money, refund the balance amount deposited by allottees without any interest in the manner prescribed in clause 2&4 of the application form. According to clause 4, 15% of the sale price would be considered as earnest money and the same would be forfeited in accordingly in the event of default by the allottees.

15. The complainants have paid Rs. 12,50,000/- to the respondent/builder as per statement of accounts dated 01.7.2020 and the cancellation of the allotted unit was made on 07.09.2020 by retaining the amount beyond 10% which is not legal in view of number of pronouncements of the Hon'ble Apex court.

Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, 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."*

16. Keeping in view the aforesaid legal provisions, the respondent is directed to forfeit earnest money which shall not exceed the 10% of the basic sale price of the said unit i.e. Rs. 1,22,00,175/- as per statement of account and shall return the balance amount to the complainant, if any, remains after above deduction within a period of 90 days from the date of this order.

**F II. To pay the compensation of Rs. 5,00,000/- for causing mental agony, harassment.**

**F III. To pay the legal cost of Rs. 2,00,000/- for the legal cost.**

17. 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**


18. 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 refund the deposited amount of Rs 12,50,000/- after forfeiting 10% of the basic sale price of the unit being earnest money along with an interest @10.35% p.a. on the refundable amount, if any, from the date of cancellation of unit (i.e. 07.09.2020) till the date of realization of payment.
  - 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.
19. Complaint stands disposed of.
20. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.12.2022