

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

Complaint no. : 4691 of 2020  
First date of hearing: 24.02.2021  
Date of decision : 08.12.2022

Renu  
R/O : P.O. Box 28803,  
Abu Dhabi, U.A.E

**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 Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

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

**APPEARANCE:**

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

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

**ORDER**

1. The present complaint dated 23.12.2020 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	"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-1002, 10 <sup>th</sup> floor, Tower A [page no. 41 of complaint]
8.	Unit admeasuring area	2150 sq. ft. of super area [page no. 41 of complaint]
9.	Provisional allotment letter	08.10.2013 [as alleged by the complainant on page no. 7 of complaint]
10.	Date of builder buyer agreement	Not mentioned 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 <b>with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans.....</b></i> <b>Emphasis supplied....</b>
12.	Date of start of construction	Not Provided
13.	Due date of possession	Can't be ascertain
14.	Basic sale price	Rs. 1,22,01,250/- (As per payment plan on page 81 of complaint)

15.	Total sale consideration	As per payment plan Rs.1,39,12,500/- {excluding taxes} [page 64 of complaint]	As per SOA Rs. 1,45,17,433/- [page 82 of complaint]
16.	Total amount paid by the complainant	Rs.12,62,500/- [as per SOA dated 25.09.2022 on page no. 82 of complaint]	
17.	Occupation certificate	Not obtained	
18.	Demand Letters	12.05.2014, 01.12.2014, 09.03.2015, 12.10.2015, 12.01.2017	
19.	Reminder Letters	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	
20.	Final Notice & Cancellation of booking letter	25.09.2020 & 10.10.2020 (page 77 of the complaint)	

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- I. That the complainant was lured into executing an application form for provisional allotment of apartment no. 1002-A, 10<sup>th</sup> floor admeasuring super area 2150 sq. ft. in the project. The complainant paid a booking amount of Rs. 12,50,000/- via cheque no. 400231 dated 04.06.2013.
  - II. That thereafter, the respondent sent an allotment letter dated 08.10.2013 for provisional allotment. The basic sale price of the unit was Rs. 1,22,01,250/-. The monies for PLC, Parking, IFMS, IDC-EDC, fire-fighting, Club membership, and others were separately charged and hence amounting the total sale consideration to Rs. 1,39,12,500/-.
  - III. That thereafter, the respondent sent a model agreement for sale, however, the same was not executed, as the contents of the agreement were lopsided, materially advantaging the respondent at the costs of the

complainant. It provides for keeping 15% as earnest amount instead of lawful 10% in clause no. 1.2(e); it allows for forfeiture of the amounts of the allottee without prior notice in clause no. 1.2(ii); it makes structural changes without approval of the allottees in clause 2.22; it calculates the total sale consideration on basis of super area and not carpet area in clause no. 1.2(c)(i); the clause 2.24 of the agreement mentions that in case of delay in remitting instalments from the side of the complainant, 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 complainant will be entitled for the compensation of Rs. 5/sq. ft. p.m. under clause 5.1 of the agreement. etc. The complainant contested the contents at various occasions and requested the respondent to execute a fair agreement. However, till date, the respondent has not cleared the defects of the agreement and has not attempted in executing the agreement.

- IV. That, furthermore, the respondent has taken more than 10% of the basic cost of the unit before executing the agreement and hence has violated section 13 of the Act. That from the very beginning, the respondent has had such unlawful conduct and has presented false assurances, representations, and warranties to the complainant.
- V. That, moreover, the development of the project was not moving as per the construction plan, yet the respondent continuously demanded the monies *in lieu* of the development. Noting no construction in the project, the complainant was hesitant in disbursing the payments to the respondent, however, keeping his faith in the respondent and his goodwill, the complainant paid a total amount of Rs. 12,50,000/- till date. The complainant stopped making the payments as there was no development

in the project and suspected misappropriation of funds by the respondents since the respondents had collected a hefty amount but had shown no development in the project. The pictures of the development of the project portraying the true condition of the construction status.

- VI. That in the context of misappropriation of funds, it is pertinent to note that a *suo-moto* action was taken by the hon'ble authority against the respondent (RERA-GRG-2241-2020) for non-compliance of section 4(2)(I)(D) of the Act. The matter is presenting *sub-judice* with the hon'ble authority.
- VII. That furthermore, it is pertinent to note that the respondent assured, represented and warranted the complainant that the project would be completed in 4 years, i.e. by 09.05.2017, however, even after over 3 years of delay, the project is nowhere near completion. The respondent has attempted to elude his responsibility of development and has yet continuously demanded the proceeds against the same.
- VIII. That, to the utter shock of the complainant, the respondent with malicious intention to cheat and dupe the complainant, sent a payment request letter dated 12.05.2014 to pay the amount of Rs. 12,80,734.24/-.
- IX. That the respondent through telephonic conversation humbly asked the respondent to show the tenable progress in the project and then the complainant will transfer the amount due. But, the respondent, without showing any progress, again on 21.08.2014, and 09.10.2014 sent a reminder to the complainant for the payment of dues against the unit. This gesture of respondent was very clear that they had no intention to redress the grievances of the complainant. The respondent, by force of habit of committing illegal, unlawful and dishonest acts, sent a final notice dated 25.09.2020 to the complainant and asked them to pay an amount of Rs.



1,40,03,358/- which is not tenable in the eyes of law. Thereafter, the respondent arbitrarily and unilaterally cancelled the allotment of the complainant.

- X. That on account of inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the Respondent Company and the complainant has rightly claimed to withdraw from the project and claimed total refund of amount along with other interest as per the act along with other compensations.

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

4. The complainant has sought following relief(s).

- I. **Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of allotment i.e. 08.10.2013 till its actual realization.**
- II. **To pay the compensation of Rs. 10,00,000/- for causing mental agony, harassment.**
- III. **To pay the legal cost of Rs. 3,00,000/- 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 complainant knew that the unit allotted to her has been





cancelled in pursuance to final notice dated 25-09-2020, which was annexed by the complainant herself as Annexure C-6 and no relief has been sought qua the cancellation.

- 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 complainant in the year 2013 through her 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 complainant 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 the said amount was paid by her husband who accompanied her at the time of signing of application. 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 buyer's agreement and 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 even the complainant 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 complainant out of her own free will signed the application form. It is submitted that even in the application itself it was mentioned that the complainant is 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 plea taken by complainant 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 only duty 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 allottee 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 ultimately on 14.09.2017, respondent sent a letter to the complainant reminding her that the unit allotted in her favour is liable to be cancelled since she is gross violation of application form signed by her and granted her one more opportunity to make the balance payment and reminded her that in case of default her allotment is liable to be cancelled and amount paid will be forfeited as per agreed terms.
- f. That even after receiving of said letter complainant paid no heed to genuine requests of the respondent, thus having no other option





respondent sent a final letter to the complainant whereby 15 more days granted to her for payment and in case of default her unit shall cancelled. That even at this time complainant 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 10.10.2020. That even the complainant has mentioned said letter in her complainant 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.1 Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of allotment i.e. 08.10.2013 till its actual realization.**

14. The complainant submitted that he booked a flat in the project named as "The Elite Residences". On 11.06.2013 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 complainant vide letter dated 10.10.2020.

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

15. 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 complainant had paid Rs. 12,62,500/- against the total sale



consideration of Rs. 1,45,17,433. 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 allottee to make payment of the amount due but having no positive result and ultimately leading to cancellation of unit vide letter dated 10.10.2020 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 allottee 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 allottee.

16. The complainant has paid Rs. 12,62,500/- to the respondent/builder as per statement of accounts dated 25.09.2022 and the cancellation of the allotted unit was made on 10.10.2020 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."*

17. 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. 1,22,01,250/- 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. 10,00,000/- for causing mental agony, harassment.**

**F III. To pay the legal cost of Rs. 3,00,000/- for the legal cost.**

18. The complainant is also seeking relief w.r.t compensation *Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**F. Directions of the authority**

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

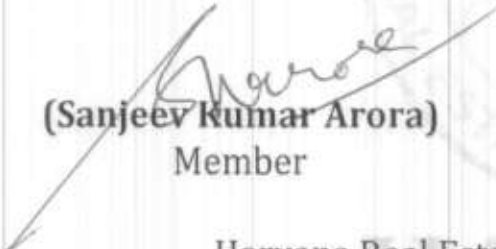


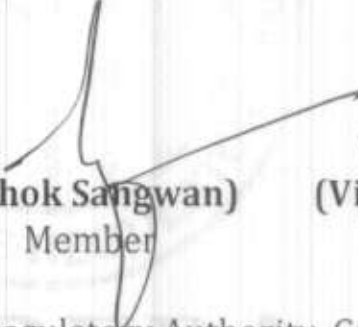
cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the deposited amount of Rs 12,62,500/- 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. 10.10.2020) 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.

20. Complaint stands disposed of.

21. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
V.l  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 08.12.2022**