

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

Complaint no. : 1589 of 2019
Order reserved on : 10.03.2023
Order pronounced on: 23.05.2023

1. Neil Acharya, S/o Nihar Ranjan Acharya,
2. Nandini Acharya, W/o Neil Acharya,
both R/o: - Flat no. E113, Jalvayu Tower,
Sector-56, Gurugram, (Haryana).

Complainants

Versus

M/s Pareena Infrastructures Pvt. Ltd.
Regd. Office at: - C-7A, 2nd floor,
Omaxe City Centre Mall, Sohna Road,
Gurugram, (Haryana).

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Gaurav Madan (Advocate)
Shri Prashant Sheoran (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 24.04.2019 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 provisions of the



Act or the Rules and regulations made thereunder or to the allottees 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	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Booking application dated	28.02.2014 (page 36 of complaint)
7.	Unit allotted	Not allotted
8.	Unit admeasuring area	1000 sq. ft. (page 34 of complaint)
9.	Date of builder buyer agreement	Not executed
10.	Date of start of construction	Not Provided
11.	Due date of possession	Not Provided
12.	Cancellation of booking letter	Not Provided
13.	Basic sale consideration	Rs.56,35,000/-
14.	Total amount paid by the complainants	Rs.12,19,915/-
15.	Occupation certificate	Not obtained



B. Facts of the complaint

3. The complainants made the following submissions: -

- I. That the respondent published a very attractive brochure highlighting the dwelling units in upcoming project at Sector 68, Gurugram, Haryana in order to lure prospective customers to buy flats/apartments. An application form was signed by the complainants on 28.02.2014 and they paid Rs.12,19,925/- against the total sale consideration of Rs.56,35,000/- i.e., around 22% of the total consideration in the span of 5 months on promises and commitments that the project would be started or launched within 6 months. But no offer for execution of buyer's agreement was given by the respondent till date. Even it did not start any construction or launched the project even after 9-10 months due to some legal problems as said by its representative.
- II. That when the complainants visited the office of respondent to know about the status of the project, it did not give satisfactory answer to them. Even they were not in a condition to tell the name of project. Then the complainants have no other option except to seek refund of the money paid by them toward the dwelling unit in its upcoming project. But it did not give any justified reply to their letters, emails, personal visits, telephone calls seeking information about the refund.
- III. Thereafter, the complainants proceed for cancellation of the said booking through broker i.e., Investors Clinic Infratech Pvt. Ltd. vide NOC No. 02117 dated 23.12.2014 addressed to the respondent.
- IV. That the complainants have lost complete faith in the respondent. Thus, they are seeking immediate refund of their hard-earned amount paid towards the flat/dwelling unit, along with the interest at the prescribed rates as per the RERA Act, 2016 on the amount deposited. Further, the



complainants reserve their right to seek compensation from the promoter for which they shall make a separate application to the adjudicating officer, in case if it is required.

C. Relief sought by the complainants:

4. The complainants sought following relief(s):

I. To refund the entire amount of Rs.12,19,915/- (Rupees Twelve Lac Nineteen Thousand Nine Hundred and Fifteen only) along with prescribed rate of interest.

II. To pay legal expenses of Rs.1,00,000/-.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint by way of reply dated 20.05.2019 on the following grounds: -

- i. That two projects named "Coban Residences" at Sector-99A, Gurgaon and "Micasa" at Sector-68, Gurgaon were being developed by the respondent.
- ii. That initially the complainants booked a unit in the project at Sector-99A and later on requested for substitution of the allotment from the said project to the project being developed in Sector-68, Gurgaon after filing a letter of substitution and booking amount paid against the same was adjusted in the new unit.
- iii. That the complainants had paid the monies against the project at Sector-99A and not even a single penny was paid by them after applying for substitution in Sector-68 project.



- iv. That the 'Coban Residencies' project had been initially launched by the respondent in collaboration with Monex Infrastructure Pvt. Ltd. The license from DTCP for the said project was received on 12.03.2013 and even building plans were approved on 25.07.2013 and the license and building plans for the project 'Micasa' had already been obtained by it and project started soon after obtaining environmental clearance on 20.05.2016.
- v. That the application form of the complainants was forwarded to the respondent through a broker namely Investors Clinic Infratech Pvt. Ltd. and the one attached with the complaint is not the actual application form received by it as the acceptance stamp and signatures of respondent are not present.
- vi. That the complainants have concealed the fact from the Authority that they had filed another complaint bearing no. CC/144/2016 before the District Consumer Forum. Since the complainants themselves are at fault so they are not entitled to any relief of refund as claimed.
- vii. All other averments in the complaint are denied in toto.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submission made by the parties.
8. The present complaint seeking refund was disposed of by the Adjudicating Officer vide order dated 15.09.2021. Feeling aggrieved with the same, respondent preferred an appeal before the Hon'ble Appellate Tribunal bearing no. 610 of 2021 on ground of jurisdiction and the same was allowed in its favour vide order dated 17.10.2022 and the case was remanded back to the Authority for fresh decision in view



of the law laid down by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C), 357.*

E. Jurisdiction of the authority

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as 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, 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.

E.II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the



allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C), 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 complainants.

F.I To refund the entire amount of Rs.12,19,915/- paid by the complainants with prescribed rate of interest.

14. The complainants booked a flat in respondent's upcoming project situated at sector-68 Gurugram on 28.02.2014 and made a payment of Rs.1,00,000/- as booking amount for a unit admeasuring 1000 sq. ft. against basic sale consideration of Rs.56,35,000/-. They have paid an amount of Rs.12,19,925/- but the respondent failed to execute any buyer's agreement and give any information about the commencement and progress of construction work of the project. In such circumstances, they had no other option but to cancel the booking. They approached broker of respondent and cancelled the booking of unit through the broker vide NOC dated 23.12.2014 and sought refund of amount paid by them along with interest at prescribed rate. However, the respondent in its reply stated that two projects were being developed by it i.e., Coban Residences in sector- 99A, Gurugram and Micasa in sector- 68 Gurugram. The complainants initially booked a flat in the project Coban Residences. The license from DTCP for the said project was received on 12.03.2013 and even building plans were approved on 25.07.2013. The complainants later transferred said booking to another project i.e., Micasa on 08.08.2015. At the time of accepting the transfer request of complainants, the license and building plans for said project



i.e., Micasa had already been obtained by it. No new booking amount was charged from the complainants for the said change of the booking from Coban Residences to Micasa. The allotment of any specific unit in the project was still awaited and the same was to be allotted through formal allotment letter.

15. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

"Every promise and every set of promise forming the consideration for each other is an agreement."

16. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

17. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the existing or in its upcoming project at Gurugram. Neither, it issued any allotment letter nor executed any builder buyer's agreement. Even in some cases, the builder accepted more than 50 lacs either in cash or through cheque and promising to allot an apartment/plot in the upcoming or existing projects and then vanishing or not taking any further steps with regard to either allotment of the unit of the property in any project or refunding the amount received. The holders of those receipt/allotments are harassed a lot failing to act on the basis of the



documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre-RERA cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

18. But the document/receipt so issued in favour of a person can be termed as an **agreement for sale** to have up the developer before RERA Authority, compelling it to fulfil its obligations against the holder of that document. It is also pertinent to mention in many cases, the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, they do not make any effort to get the agreement executed; and is having no proof of any request or reminder in this regard made by them to the promoter with the complainants. However, the promoter is duty bound to explain the reasons for which it kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottees.
19. The complainants intend to withdraw from the project and are seeking return of the amount paid by them along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation.

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

(a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or



(b). due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

20. **Admissibility of refund along with interest at prescribed rate of interest:** However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as



on date i.e., 23.05.2023 is **08.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

23. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(b) of the Act, 2016.
24. The instant matter falls in the category where the promoter has failed to allot a plot in any of the upcoming project as detailed earlier despite receipt of Rs.12,19,925/- made in the year 2014. So, the case falls under section 18(1)(b) of the Act of 2016.
25. In the instant matter even after lapse of 5 years from the date of payment till the filing of complaint, no buyer's agreement has been executed inter- se parties. Therefore, the due date of possession cannot be ascertained and the complainants cannot be expected to wait endlessly for the unit as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

26. 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 allottees 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 allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @10.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F. II Cost of litigation.

28. The complainants are seeking above mentioned 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.

H. Directions of the authority

29. 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/promoter is directed to refund the paid-up amount of Rs.12,19,925/- received by it from the complainants along with interest at the rate of 10.70% 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 deposited amount.
- 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.

30. Complaint stands disposed of.

31. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.05.2023