

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

Complaint no. : 3966 of 2021
Date of complaint : 06.10.2021
Date of order : 05.05.2023

Anurag Chhabra,
R/o: - 4B, Fourth Floor,
South Wing, Shalimar Heights,
28, Jopung Road, Lucknow-226001, U.P.

Complainant

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 Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Venkat Rao (Advocate)
Shri Prashant Sheoran (Advocate)

**Complainant
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 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 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	"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-2, 503 (page 33 of complaint)
8.	Unit admeasuring area	5100 sq. ft. of super area
9.	Allotment letter	09.09.2015 (page 68 of complaint)
10.	Date of builder buyer agreement	29.04.2014 (page 31 of complaint)
11.	Possession clause	3.1. Possession <i>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 within 4 years of the start of construction or execution of this agreement, whichever is later. (Emphasis supplied)</i>
12.	Date of start of construction	16.10.2014 (annexure C-1, page 28 of complaint)
13.	Due date of possession	16.10.2018 (calculated from the date of start of construction)



14.	Total sale consideration	Rs.1,22,45,618/- (annexure II, page 56 of complaint)
15.	Total amount paid by the complainant	Rs.67,54,154/- (as per applicant ledger dated 14.12.2020, annexure C1-page 28 of complaint)
16.	Occupation certificate	13.12.2022
17.	Offer of possession	N/A
18.	Cancellation letter dated	12.11.2021 (attached with sec 36 application)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That believing the claims and assurances of the representatives of the respondent regarding timely completion of the project named 'Coban Residences' at Sector 99A, Gurgaon, (Haryana), the complainant booked a unit in the said project. Vide allotment letter dated 09.09.2015, a unit bearing no. T2-503, having super area 1997 sq.ft. was allotted to him for a total sale consideration of Rs.1,22,45,618/-. He paid a sum of Rs.67,54,154/- in all.
- II. That a buyer's agreement was executed between the parties on 29.04.2014. As per clause 3.1 of buyer's agreement, the respondent was required to deliver the possession of the unit on 16.10.2018.
- III. That in compliance of the payment schedule, the complainant applied for a housing loan from the HDFC bank and the same was approved by it vide letter dated 03.09.2015. Thereafter, a tripartite agreement dated 23.10.2015 was executed between the parties and HDFC bank and vide which, the bank agreed to grant a loan of Rs.90,00,000/- towards the agreed sale price of the allotted unit.



- IV. That considering the timely payments made by him, the respondent vide letter dated 24.11.2016, intimated that the allotted unit was eligible for timely payment rebate of Rs.110/- per sq.ft. and the same would be adjusted in the last instalment at the time of offering possession letter. Further, the respondent vide letter dated 24.11.2016 decided to provide a loyalty bonus of Rs.5,99,100/- to the complainant.
- V. That on 09.03.2017, the respondent by virtue of the scheme 'Pareena Honours' provided a credit voucher bearing no. COB/CV/776, amounting to Rs.1,49,776/- to him towards the total sale consideration of the allotted unit. Thereafter, considering the progress of work at the project site, the HDFC bank vide email dated 11.01.2021 refused to disburse any such amount in favour of the respondent.
- VI. That despite receiving substantial amount of money from him, neither the project was completed by the respondent, nor any tentative date was provided to him for possession of the unit. Thus, it is liable to refund the amount received in view of Section 18 of the Act.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s):
- I. To refund the entire amount of Rs.67,54,154/- (Rupees Sixty-Seven Lac Nineteen Thousand Nine Hundred and Fifteen only) along with prescribed rate of interest.
 - II. To pay an amount of Rs.10,00,000/- towards compensation and Rs.3,00,000/- towards legal expenses.



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 contested the complaint by way of reply dated 18.11.2021 on the following grounds: -

- i. That the respondent is developing a residential project named "Coban Residences" at Sector 99A, Gurugram and the construction of the said project is at an advanced stage. The structure of various towers has already been completed and the remaining work is endeavoured to be completed as soon as possible.
- ii. That non-payments of installments by various allottees including complainant resulted delay in completion of the project. But the respondent is trying to complete the project as soon as possible by managing available funds.
- iii. That as per clause 3.1 of the buyer's agreement, the possession of the unit was to be handed over within 4 years from the date of start of construction or execution of buyer's agreement whichever is later i.e., 16.04.2018 under normal conditions, subject to force majeure. However, the situations faced by the respondent are not normal as more than 30% payment was not received by it and yet the work at the site is completed approximately 90 to 95%.
- iv. That other than the above stated factor there are lot of other reasons like non-availability of raw material, shortage of labour, stoppage of construction works by competent authorities/court, rise in pollution, nationwide lockdown due to the major outburst of Covid cases etc.

seriously hampering the construction progress at site which were absolutely beyond the control of it.

- v. That whatsoever amount which was received by it qua construction has already been utilized for construction and it is the complainant who delayed in payments. Therefore, he should not be allowed to take benefit of his own mistakes. Keeping in view of the above-stated facts and circumstances, this complaint is not maintainable and deserves to be dismissed.
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.

E. Jurisdiction of the authority

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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.

10. 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.
11. 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."

12. 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 To refund the entire amount of Rs.67,54,154/- paid by the complainant with prescribed rate of interest.

13. The complainant is seeking refund of the paid-up amount of Rs.67,54,154/- due to non-completion of the project in agreed time. As per buyer's agreement, the possession of the unit was to be handed over till 16.10.2018, but the same has not been handed over till filing of this complaint as occupation certificate was not obtained by the respondent from the competent authority. However, vide proceedings dated 05.05.2023, the counsel for the complainant confirmed that OC of the project dated 13.12.2022 has been duly obtained by it and if the respondent gives him the delay possession charges, he is still willing to take the possession and is ready to pay the balance after adjusting DPC till the actual date of possession which is not denied by the respondent. Hence, in view of the same, this complaint becomes the case of delay possession charges.



14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"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, —

.....
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."

15. Clause 3.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

"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 within 4 years of the start of construction or execution of this agreement, whichever is later..."
(Emphasis supplied)

16. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

17. 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.
18. 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., 05.05.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
20. Therefore, interest on the delayed payments from the complainant shall be charged at the prescribed rate i.e., **10.70%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
21. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority

regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on 29.04.2014, the possession of the subject apartment was to be delivered within 4 years from the date of start of construction or execution of the buyer's agreement, whichever is later. Therefore, the due date of handing over possession was 16.10.2018. The respondent has failed to handover possession of the subject apartment within prescribed time. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 29.04.2014 executed between the parties.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from the due date of possession i.e., 16.12.2018 till actual handing over of possession at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F. II Cost of compensation and litigation expenses.

23. The complainant is seeking above mentioned relief w.r.t. compensation and litigation. 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

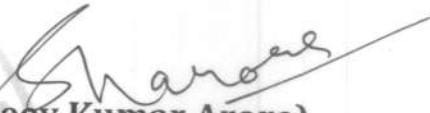


allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the authority

24. 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 hand over possession of the subject unit and pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 16.10.2018 till actual handing over of possession at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to give a revised statement of account to complainant after incorporating the delay possession charges along with valid offer of possession.
 - iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which

- the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - vi. 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.
25. Complaint stands disposed of.
26. File be consigned to registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.05.2023

HARERA
GURUGRAM