

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

Complaint no. : 2492 of 2019
First date of hearing: 18.09.2019
Date of decision : 09.02.2023

1. Rajesh Kumar Srivastava
R/o: - B-91A, Rajat Vihar, Sector-62,
Noida, Uttar Pradesh
2. Devendra Pratap Giri
R/o: - Shivalay, Shivala Nagar,
Mohaddipur, Gorakpur-273008

Complainants

Versus

M/s Pareena Infrastructures Private Limited
Office: 2, Palms Apartment, Plot no. 13-B,
Sector-6, Dwarka, New Delhi-110045

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Harpreet Singh
Sh. Prashant Shoeran

Counsel for Complainants
Counsel for Respondent

ORDER

1. The present complaint dated 10.06.2019 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 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	"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.	Earlier unit allotted	T-4/703 area admeasuring 1997 sq. ft. in super area in the project Coban Residences. An MOU dated 20.10.2016 was executed between the parties and a new unit on request of the complainant had been allotted in the project Micasa bearing no. T-7/1102 admeasuring 865 sq. ft. {MOU on page 65 of reply}



7.	New unit no.	T7-1102, 11th Floor, Tower T7 [page no. 43 of complaint]
8.	New unit admeasuring area	865 sq. ft. of super area [page no. 43 of complaint]
9.	New Allotment letter	21.10.2016 [page no. 75 of complaint]
10.	Date of builder buyer agreement	12.10.2016 [page 37 of complaint]
11.	Possession clause	13 POSSESSION <i>"That the developer shall, under normal conditions subject to the force majeure, complete construction of tower/ building in which the said flat is to be located with 4 years of the start of construction or execution of this agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee." (Page 50 of complaint)</i>
12.	Date of start of construction	Not Provided
13.	Due date of possession	12.10.2020 [Calculated from execution of agreement i.e. 12.10.2016]
14.	Cancellation of booking letter	N/A
15.	Basic sale price	Rs. 51,35,937/- {as per BBA, page 32 of reply}
16.	Total sale consideration	Rs.64,01,672/- {Excluding service tax} [As per Schedule of payment page 66 of complaint]
17.	Total amount paid by the complainant	Rs 29,50,000/- [as alleged by the complainants, on amended CAO filed by the complainants]
18.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That the complainants applied vide application dated 14.01.2013 for a unit no. T-4/703, measuring 1997 sq. ft., in project "Coban Residences", at Sector 99-A, Gurugram. They made the payment along with the application and the receipt was issued dated 30.07.2013. Thereafter, two demand letters were raised on 03.08.2013 by the respondent. The complainants made payments against these two demand letters on the same date.
- II. That the builder buyer agreement was executed between the parties on 28.04.2014. The construction of the project was not carried out as per scheduled. But the respondent kept on raising demands for payments. Keeping in view the pace of construction and the intention of the respondent, the complainants preferred not to invest more money in the project and expressed the desire to withdraw from the project. The respondent however again allured and motivated the complainants to replace the unit already allotted to them with a smaller unit.
- III. That in furtherance of the negotiations held with the respondent, a credit note was issued on 07.10.2016 for an amount of Rs. 28,73,720/- in favour of complainants. On 12.10.2016, the respondent and complainants executed a buyer agreement for another flat no. T-7/1102, measuring 865 sq. ft. in Micasa Project, Sector 68, Gurugram, at a higher rate of Rs. 5937.50, per sq. ft. An MOU for substitution of flat of lesser area was also

executed on 20.10.2016. However, an allotment letter dated 21.10.2016 was issued by the respondent in the favour of complainants w.r.t to new unit.

IV. That the construction in that project is not likely to be completed as per commitment. The complainants realized that their money is being misused by the respondent, and they are being cheated upon by the respondent, by making them to spend their hard earned money.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).

I. Direct the respondent to refund an amount of Rs. 29,50,000/- paid along with interest at the prescribed rate.

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 without prejudice to the rights of respondent and without admitting anything as alleged in the complaint, it is submitted that the present complaint is not maintainable in the present form before the authority. It is submitted that the complainants have filed the present complaint in order to seek refund of entire amount along with interest. It is submitted that as per the provisions of Act, the authority has no jurisdiction to grant compensation or refund. Even the appellate authority recently clarified the same in its latest order dated 02.05.2019 wherein a bunch of appeal



bearing no. 6/2018, 11/2018 etc. have been decided. Thus, the present complaint is liable to be dismissed in view of above stated facts and circumstances.

- b. That the respondent is in the process of developing a residential group housing colony in Sector-68, Gurugram. The said colony is being developed in the name of "MICASA".
- c. That the construction work of the said project is at an advanced stage and the structure of various towers has already been completed and remaining work is endeavored to be completed as soon as possible.
- d. That the respondent continues to bonafidely develop the project in question despite there being various instances of non-payment of instalments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions. Such as the present once is seriously hampered the capability of the respondent to deliver the project on time. The amount realized from the complainants has already been spent in the development work of the proposed project and payment of taxes. Even the brokerage charges were paid by the respondent against the booking of the complainants. The brokerage was Rs. 3,48,225/- , service tax Rs. 63,558/- & GST - Rs 86,764/- and has already been paid by the respondent.
- e. On the other hand, the respondent is still ready to deliver the unit in question, of course, subject to payment of due instalments and charges.

- f. That without prejudice, it is submitted that as is clear from the complaint itself, the complainants knew that the unit allotted to them has been cancelled in pursuance of final notice dated 10.09.2020, which has been annexed by them and the relief has been sought qua the said legal and valid cancellation. It has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question.
- g. It is submitted that since the complainants had signed the apartment buyer agreement out of their own accord and free will, they are also bound by its terms and conditions. It is submitted that as per clause 13, the date of possession will be 4 years from the start of construction or execution of this agreement, whichever is later. It is submitted that the agreement in question was executed on 12.10.2016. Thus legally, the period of offer of possession shall start from said date. In view of above stated clauses the date of possession is yet to arrive and thus the present complaint is premature and is liable to be dismissed on this ground alone.
- h. That initially, the complainant no. 1 had booked 2 units in the project of respondent namely "Coban residences" at sector 99A. Out of said 2 units, one was a 2 BHK apartment bearing number (COB-008/2013) and the other was a 3 BHK apartment bearing number (COB-286/2013). But due to certain financial issues, as pleaded and represented by the complainants themselves, complainant no. 1 requested to adjust the

amounts paid against 2 BHK unit in the 3 BHK unit. The respondent, reluctantly and at considerable loss approved the said request and adjusted the amount paid against said two units towards a single unit i.e. that is 3 BHK and issued an approval in this regard. Thus only, one unit of 3 BHK was left in the name of complainant no. 1.

- i. That, the said unit i.e. 3BHK was agreed to be sold at Rs. 1,16,34,536 plus taxes. That complainant no. 1 agreed to said price and also executed an application form in this regard. Thereafter, the complainant no. 1 requested to add complainant no. 2 as 2nd allottee in the said unit.
- j. That after some time the complainants requested the respondent to change the existing payment plan as they were finding it difficult to pay as per the existing payment plan due to some financial issues. Along with the said request of the complainants, they also executed an undertaking wherein they duly acknowledged the fact that due to certain difficulties, they cannot go by the existing payment plan. Due to said request, the respondent approved the change of payment plan.
- k. That even after change of payment plan, the complainants, as pleaded by them were not in a position to pay the amount demanded against the unit. So, they again in the year 2016 requested to change the unit from project "COBAN residences" to a new project being developed by the respondent namely "MICASA" at sector the 68. The complainants even wrote a letter to the respondent in this regard. It again approved the request of the complainants and issued an approval note in this regard.

- l. That thereafter, the complainants entered into an apartment buyer's agreement and a memorandum of understanding. The complainants clearly admitted in the memorandum of understanding that they were not in a position to discharge their financial obligation with regard to timely payment of due instalments against the previous unit in sector 99A. In the MOU, the complainants specifically agreed that they shall not request in future for cancellation or refund of the amount paid towards the unit in question.
- m. That in clause 13 of the apartment buyers agreement "the developer shall under normal conditions subjected to force majeure will complete construction of the tower of the building in which the said flat is located within four years of start of construction or execution of this agreement whichever is later" is mentioned and the complainants specifically agreed to said clause and as per the said clause the date of delivery is yet to arrive. Thus, the present complaint is not maintainable in any form. Moreover in the apartment buyers agreement, the complainants also agreed the total sale consideration of the newly allotted unit at the price of Rs. 64,01,672.50/- and the said price was agreed by the complainants out of their own free will and consent. From the aforesaid facts and circumstances, it is clear that the complainants were never in a position to pay the amount demanded by the respondent against the allotted unit and they kept on changing their units from one project to another just

because they never had the financial capacity to abide by the payment plan and to fulfil the demands raised by the respondent.

n. It is pertinent to mention here that the above sale price of previous 3 BHK unit was around Rs. 1,16,34,536 (excluding taxes) and the sale price of newly allotted unit is only Rs. 64,01,672 (excluding taxes). Thus, the difference of the amount comes to Rs. 52,32,864/-. Moreover, the plea of complainants that the newly allotted unit was allotted at higher BSP is also completely baseless as they had booked the previous unit in different project and at a different point of time i.e. in the year 2013 and the new unit was allotted on the request of complainants in different project in the year 2016. Thus, it is not possible that the BSP would remain the same in both the units allotted in different projects as well as at a gap of 3 years. A smaller and less expensive unit was allotted to the complainants only on their request as they pleaded to not have financial means to pay the amount of bigger units.

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.1 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 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(I) RCR,357, 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 case 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 an amount of Rs. 29,50,000/- paid along with interest at the prescribed rate.

14. The complainants booked the unit in the project namely "Coban residences, Sector- 99A" of the respondent whereas later on the said allotment was changed to project "Micasa, Sector- 68". The complainants submitted that



since the former project was abandoned, the unit was transferred to the later project whereas on the other hand, the respondent submitted that the complainants themselves requested to transfer the unit.

15. It is observed that a BBA with regard of newly allotted unit was executed between the parties on 12.10.2016. There is a letter dated 07.10.2016 on page no. 22 of reply wherein complainants requested the respondent to transfer their unit. (annexure R6). The complainants were allotted a new unit bearing no. T-7/1102 admeasuring 865 sq. ft. vide allotment letter dated 21.10.2016 by the respondent. As per clause 13 of the agreement dated 12.10.2016, the unit was to be handed over to the complainants within 4 years from the execution of agreement i.e. 12.10.2020. But the respondent did not deliver the possession of the unit to the complainants as per schedule.
16. The respondent submitted that as per clause 13, the date of possession would be 4 years from the start of construction or execution of this agreement, whichever is later. It is submitted that the agreement in question was executed on 12.10.2016. Thus legally, the period of offer of possession shall start from the said date. In view of above stated clause, the date of possession was yet to arrive and thus, the present complaint is premature and is liable to be dismissed on this ground.
17. Keeping in view of the above said facts and submission made by complainants, the authority observes that the complainants surrendered the unit by filing of complaint before the due date. The deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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."

18. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the deposited amount i.e. Rs 29,50,000/- after forfeiting 10% of the basic sale price of the unit being earnest money along with an interest @10.60% p.a. on the refundable amount from the date of seeking cancellation by filing the complaint on 10.06.2019 till the date of its refund. 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.

F. II. Cost of litigation

19. The complainants are also seeking relief w.r.t litigation expenses. 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

20. 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 i.e. Rs 29,50,000/- after forfeiting 10% of the basic sale price of the unit being earnest money along with an interest @10.60% p.a. on the refundable amount from the date of seeking cancellation by filing the complaint on 10.06.2019 till the date of its refund.
 - 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.
21. Complaint stands disposed of.
22. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2023


Vijay Kumar Goyal
Member