

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

Complaint no. : 6164 of 2022  
Date of complaint : 13.09.2022  
Date of decision : 08.08.2023

Jatinder Aneja  
R/o: - E-587, 2<sup>nd</sup> Floor,  
Greater Kailash-II, New Delhi-110048.

**Complainant**

Versus

1. Pareena Infrastructure Pvt. Ltd.  
**Regd. Office At:** 2<sup>nd</sup> Floor, Omaxe City Centre, Sohna  
Road, Gurgaon, Haryana-122018.  
2. Virender Verma, Managing Director,  
Pareena Infrastructure Pvt. Ltd.,  
R/o 2<sup>nd</sup> Floor, Omaxe City Centre, Sohna Road,  
Gurgaon, Haryana-122018.

**Respondents**

**CORAM:**  
Sanjeev Kumar Arora

**Member**

**APPEARANCE:**  
Apporva Thakral (Advocate)  
Prashant Sheoran (Advocate)  
None

**Complainant**  
**Respondent no.1**  
**Respondent no.2**

**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 there under 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.	RERA Registered/ not registered	<b>Registered</b> Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
6.	Unit no.	2003, T-3 (page 28 of complaint)
7.	Unit admeasuring area	1997 sq. ft. of super area (page 28 of complaint)
8.	Date of builder buyer agreement	Not executed
9.	Date of start of construction	16.10.2014 (page 35 of reply)
10.	Possession clause	<i>3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans.....</i> <b>Emphasis supplied....</b>
11.	Due date of possession	16.10.2018 [Calculated from date of construction



		i.e., 16.10.2014]
12.	Total sale consideration	Rs.1,19,40,077/- (excluding service tax) Basic Sale Price - Rs.1,01,84,700/- (as per payment schedule on page 51 of complaint)
13.	Total amount paid by the complainant	Rs.21,12,470/- (page 35 of reply)
14.	Occupation certificate	N/A
15.	Reminders/Demand Letter dated	03.08.2013, 01.10.2014, 11.11.2014, 11.12.2014, 04.02.2015, 12.10.2016, 05.01.2021, 29.01.2021
16.	Refund request	24.08.2019 (page 69 of complaint)
17.	Pre-cancellation letter	12.11.2021 (page 43 of reply)
18.	Cancellation letter	11.12.2021 (page 47 of reply)

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- I. That the complainant was desirous of purchasing an apartment and it was represented to him by the representatives of respondent that respondent no. 1 was in the process of building a group housing project named "Coban Residences" at Sector 99A, Gurgaon, Haryana and assured him that his flat would be given to him within 4 years and accordingly an expression of interest was signed between them on 03.08.2013.
  - II. That it was further represented by the respondent no. 1, that an apartment buyer agreement would be executed between them in respect of flat/unit bearing no. T3/2003 in the said project having super area of 1997 sq.ft. Therefore, on the basis of said representation the complainant made a payment of Rs.21,12,470/- on 27.07.2013 and 26.08.2013 to respondent no. 1 to confirm the



- booking of an apartment in the said project and it had been made abundantly clear by him to respondent-builder that all further payments would be made only once an agreement is executed.
- III. That the complainant had sent many communications to the respondent-builder to execute an agreement. However, despite the persistent efforts of the complainant, it has failed to execute any agreement with him.
- IV. That despite the fact that no agreement has been executed by the respondent no. 1 in his favour, the complainant received a payment request letter on 01.10.2014 requesting him to pay an additional amount of Rs.13,01,367/- upon receipt of that letter. So, the complainant requested the respondents to send him a copy of draft agreement to ensure that the same could be executed before making payment. However, the respondent failed to share any draft of the agreement, for which he was compelled to refrain himself from making any payment to it.
- V. That on 15.12.2014, the complainant received the draft agreement from the respondent no.1. alongwith a reminder dated 11.12.2014, vide which it had imposed an penalty of Rs.47,918.80/- as interest on the delayed payment for the first payment request letter. So, the complainant issued a legal notice dated 23.12.2014 to respondent no. 1 to withdraw the reminder 11.12.2014 and to issue a fresh payment request letter. Thereafter, the complainant further issued another notices dated 23.02.2015 and 17.03.2015 for revision of the draft agreement as it contained several terms and conditions that were blatantly prejudicial to him and were contrary to the spirit of the settled principle of law.



- VI. That after receiving the above legal notices the representatives of the respondents agreed to modify the terms of the agreement and to issue a fresh payment request letter to the complainant. However, without having revised the terms and conditions of the draft agreement, the complainant received another payment request letter dated 12.10.2016 from the respondents wherein he was asked to pay aggregate outstanding amount of Rs.48,35,733/- on or before 02.11.2016.
- VII. That the complainant had been constantly pursuing with the representatives of respondent no. 1 to execute the agreement and to deliver the flat to the complainant as had been promised. However, the conduct of the respondents made it clear that it never had any intention to perform its promises. So, the complainant vide legal notice dated 24.08.2019 requested the respondent no. 1 to return the amount paid by him against the said unit, but the respondent chosen not to respond to the same.
- VIII. That the complainant being aggrieved by such conduct of the respondents wishes to seek refund of the amount duly paid without any deductions along with prescribed rate of interest.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).
- I. To refund the entire amount of Rs.21,12,470/- (Rupees Twenty-One Lac Twelve Thousand Four Hundred Seventy only) along with prescribed rate of interest.
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 no.1 has contested the complaint vide its reply dated 15.06.2023 on the following grounds: -

- i. That in January 2013, the complainant has invested a sum of Rs.8,50,000/- by filing the application for registration of allotment of flat in the project of respondent named "Coban Residences" at Sector 99A, Gurugram. Thereafter, in August 2013, he paid a sum of Rs.12,62,470/-. However, the complainant failed to send back the apartment buyer agreement which was sent to him for due execution.
- ii. That even after non fulfillment of the obligation of the complainant, the complainant has approached this authority with the malafide intention of causing harassment to the respondent.
- iii. That the complainant neither executed the builder buyer agreement nor made the payment as per the payment plan as and when they became due even after being given ample of opportunities by sending various demand letters dated 03.08.2013, 01.10.2014, 11.11.2014, 11.12.2014, 04.02.2015, 12.10.2016, 05.01.2021 and 29.01.2021. Hence, the respondent was forced to cancel the allotment of the complainant vide cancellation letter dated 11.12.2021.
- iv. That in a similar case titled as "DLF Southern Towns Pvt. Ltd. Vs. Dipu C. Seminal", the Hon'ble National Consumer Disputes Redressal Commission has held that "if complainant failed to perform terms and conditions of agreement in spite of repeated reminders and the complainant neither made payment of instalments in time, nor sent



duly signed agreement, opposite party was well within its right to forfeit amount of earnest money deposited by complainant”.

- v. That present complaint has been filed after cancelation of allotment, thus for the same reason too, present complaint is not maintainable.
  - vi. That the complaint filed by the complainant is simply a tactic used by the complainant to cause harassment and has no merits to obtain the reliefs as prayed for. Hence the complaint deserves to be dismissed along with heavy costs.
7. No reply has been received from respondent no. 2 with regard to the present complaint. Therefore, the complaint will be decided as per documents available on record and submission made by the parties.
8. 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 these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

10. 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**

11. 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.*

12. 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.

## **F. Findings on the relief sought by the complainant.**

**F.I To refund the entire amount of Rs.21,12,470/- paid by him alongwith prescribed rate of interest.**

13. The complainant booked a unit having super area of approximately 1997 sq.ft. in the project named "Coban Residences" at Sector 99A, Gurgaon, Haryana and was provisionally allotted a unit bearing no. T3/2003 in the said project vide expression of interest letter dated 03.08.2013 for a total sale consideration of Rs.1,19,40,077/- and he has paid an amount of Rs.21,12,470/- at the time of booking. The respondent no.1 vide demand letters dated 03.08.2013, 01.10.2014,





11.11.2014, 11.12.2014, 04.02.2015, 12.10.2016, 05.01.2021 and 29.01.2021, requested the complainant to pay the outstanding dues as per the payment plan, before issuing pre-cancellation letter dated 12.11.2021, giving last opportunity to deposit his outstanding balance. However, despite repeated follow ups and communications, the complainant failed to act further and comply with his legal obligations and therefore the allotment of the complainant was finally terminated vide letter dated 11.12.2021. Now the question before the authority is whether the cancellation issued vide letter dated 11.12.2021 is valid or not.

14. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant had paid Rs.21,12,470/- against the total sale consideration of Rs.1,19,40,077/- at the time of booking and thereafter no payment has been made by him despite receiving several reminders. The respondent/builder sent a demand letters dated 03.08.2013, 01.10.2014, 11.11.2014, 11.12.2014, 04.02.2015, 12.10.2016, 05.01.2021 and 29.01.2021, requesting the complainant to pay the outstanding dues as per the payment plan, before issuing pre-cancellation letter dated 12.11.2021 asking the allottee to make payment of the amount due but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 11.12.2021. Further, section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions mentioned in application form annexed with reply is held to be valid. But while cancelling the unit, it was an obligation of the



respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid up amount by the respondent no.1 are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of *Maula Bux vs Union of India (1973) 1 SCR 928* and *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022, where it took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. So, it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under: -

**"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."*

15. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent/promoter is directed to refund the paid-up amount of Rs.21,12,470/- after deducting 10% of the basic sale price of Rs.1,01,84,700/- being earnest money along with an prescribed rate of interest i.e., @10.75% 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, on the refundable amount from the date of cancellation of unit i.e., 11.12.2021 till the date of realization of payment (inadvertently mentioned as date of each deposit during proceedings dated 08.08.2023) within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F. Directions of the authority**

16. 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 paid-up amount of Rs.21,12,470/- after deducting 10% of the basic sale price of Rs.1,01,84,700/- being earnest money along with an interest @10.75% p.a. on the refundable amount from the date of cancellation of unit (i.e., 11.12.2021) till the date of realization of payment.

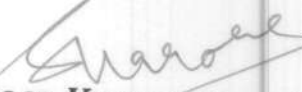


**HARERA**  
**GURUGRAM**

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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.

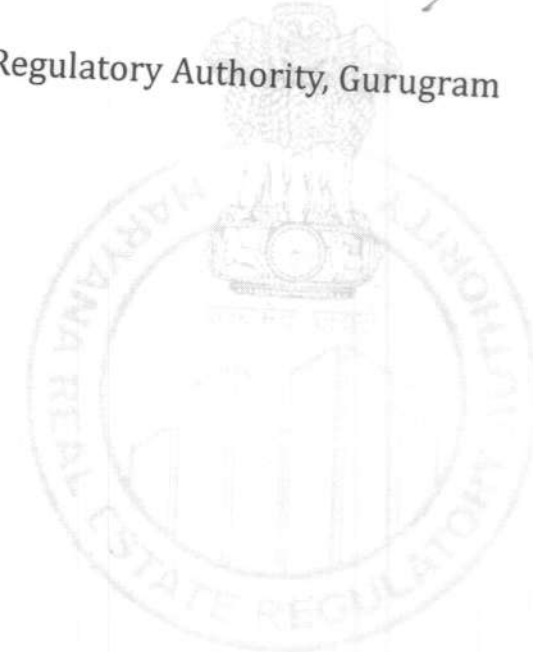
17. Complaint stands disposed of.
18. File be consigned to the registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.08.2023



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