



HARERA
GURUGRAM

Complaint No. 2449 of 2022

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

Complaint no. : 2449 of 2022
Date of complaint : 09.06.2022
Date of order : 08.08.2023

1. Pratibha Tiwari,
2. Vishnu Tiwari,
Both R/o: - Flat no.181, Nuovo Apartments,
Plot no. 25, Sector-10, Dwarka Phase-I,
New Delhi- 110075.

Complainants

Versus

1. Pareena Infrastructure Pvt. Ltd.
Regd. Office at: 2, Palms Apartments,
Plot no. 13B, Sector-6, Dwarka,
New Delhi- 110075.
Also at: C-1(7A), 2nd Floor,
Omaxe City Centre, Sohna Road, Gurgaon,
Haryana-122018.
2. Surender Kumar Verma,
R/o Flat no.3, The Palms Apartments,
Plot no. 13B, Sector-6, Dwarka,
New Delhi- 110075.
3. Virender Verma,
R/o Flat no.2, The Palms Apartments,
Plot no. 13B, Sector-6, Dwarka,
New Delhi- 110075.

Respondents

CORAM:

Sanjeev Kumar Arora

Member

APPEARANCE:

Complainants in person
Prashant Sheoran (Advocate)
None

Complainants
Respondent No.1
Respondent No. 2&3



ORDER

1. The present complaint 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 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	"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	Registered Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
6.	Unit no.	901, T-4 (page 43 of complaint)
7.	Unit admeasuring area	1997 sq. ft. of super area (page 43 of complaint)
8.	Provisional allotment letter	12.02.2014 (page 43 of complaint)



9.	Date of builder buyer agreement	29.04.2014 (page 45 of complaint)
10.	Date of start of construction	16.10.2014 (taken from other file of same project)
11.	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> Emphasis supplied....
12.	Due date of possession	16.10.2018 [Calculated from date of construction i.e., 16.10.2014]
13.	Total sale consideration	Rs.1,29,78,517/- (excluding service tax) (as per payment schedule on page 70 of complaint)
14.	Total amount paid by the complainant	Rs.28,64,166/- (as per receipts on page 82-90 of complaint)
15.	Occupation certificate	N/A
16.	Refund request	23.01.2020 (page 100 of complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the complainants were allured by the advertisements and assurances given by the officials of respondent and booked a unit no. 901 Tower T-4, having super area measuring 1997 sq. ft. in the project of respondent named "Coban Residence" at Sector-99A, Gurgaon, Haryana vide provisional allotment letter dated 12.02.2014. Thereafter, a one sided buyer's agreement dated 29.04.2014 was



executed between the parties for a total sale consideration of Rs.1,29,78,517/- and they have paid an amount of Rs.28,64,166 in all.

- II. That in the end of November 2019, complainants visited the site to see the final expected/anticipated look of the flat before expected possession, but they were shocked to see that only 3 to 4 feet high RCC columns above the ground level were standing at this T4 Tower location and nothing else. Therefore, the complainants sent a notice dated 06.12.2019 to the respondent-builder seeking information regarding the project and received a mail dated 24.12.2019 from its office to visit the corporate office of it so as to resolve the queries of the complainant regarding the project and its completion.
- III. That till 07.01.2020 the construction was not completed even the facilities like club, central garden, swimming pool, parking space etc were not completed. So, the complainants vide notice dated 23.01.2020 requested the respondent-builder to refund the amount that has been paid by them against the said allotment. Thereafter, the complainants again sent a mail dated 02.08.2020, 13.04.2021 to the respondent-builder regarding refund of the paid-up amount but no positive reply was received from it.
- IV. That the complainants after losing all their hope from the respondent-builder are constrained to approach this Authority for redressal of their grievance. Hence this Petition.

C. Relief sought by the complainant:

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



I. To refund the entire amount of Rs.28,64,166/- (Rupees Twenty-Eight Lac Sixty Four Thousand One Hundred and Sixty-Six only) along with prescribed rate of interest.

II. To pay an amount of Rs.1,25000/- towards cost of litigation.

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 respondents.

6. The respondent no. 1 vide reply dated 19.10.2022 contested the complaint on the following grounds: -

- i. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residences" at Sector 99A, Gurgaon.
- ii. That the unit in question pertains to Tower no. 4 of the project in question. It is submitted that the tower in which complainants have booked their unit consisted of 72 flats and out of those only 12 units as of now were sold and remaining 60 flats still remains unsold and practically it is not possible to construct a whole tower when only 20% units were sold.
- iii. That in order to complete a construction of tower at least such numbers of units must be sold as to complete the construction work, but in the present case since only 12 units were sold, the concerned tower could not be constructed.



- iv. That the respondent has already applied for obtaining occupancy certificate and soon enough same will be granted to it and accordingly it will offer alternative flat to the complainants.
7. No reply has been received from respondent no. 2 & 3 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 submission made by the parties.

E. Jurisdiction of the authority

9. The respondents have raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondents 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

10. 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

11. 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.

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.
13. 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* and 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."

14. 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.28,64,166/- paid by them alongwith prescribed rate of interest.

15. The complainants intends to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit 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)

16. Possession clause 3.1 of the apartment buyers agreement annexed in complaint provides for handing over of possession and the same 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 with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans....."

(Emphasis supplied)

17. **Due date of handing over possession:** The promoter has proposed to hand over the possession within 4 years from the date of start of construction i.e., 16.10.2014 or date of execution of buyer's agreement i.e., 29.04.2014 whichever is later. Therefore, the due date of handing over possession of the said unit comes out is 16.10.2018.

18. **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."

19. 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.
20. 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., 08.08.2023 is **08.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
21. 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;"*

22. The authority has observed that even after a passage of more than 9 years (i.e., from the date of allotment till date) neither the construction is complete nor the offer of possession of the allotted unit has been



made to the allottees by the respondent/promoters. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them. Further, the respondent also shows its inability to deliver the unit to the allottees due to non-booking of flats by prospective buyers in the tower in question. The authority observes that there is no document placed on record from which it can be ascertained that whether the respondent-builder has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

23. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted 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....."

24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. reiterated in case of M/s Sana Realtors Private***

Limited & other Vs Union of India & others (Supra), it was observed as under: -

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*
25. 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) of the Act. The promoter has failed to complete or is 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 them in respect of the unit with interest at such rate as may be prescribed.
26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) 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., @10.75% 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 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*.

G. Directions of the authority

27. 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 amount i.e., Rs.28,64,166/- received by it from the complainants alongwith interest at the rate of 10.75% 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.

28. Complaint stands disposed of.

29. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.08.2023