

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

Complaint no. : 1114 of 2021
First date of hearing: 28.04.2021
Date of decision : 30.05.2023

Avanindra Batra
R/o: - R/o B-247 A, 2nd Floor, Greater Kailash-I,
New Delhi-110048

Complainant

Versus

M/s Pareena Infrastructures Private Limited
Office: 2, Palm Apartment, Plot No. 13B, Sector - 6,
Dwarka New Delhi DL 110075

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Sanjeev Kumar Sharma Advocate
Sh. Prashant Shoeran Advocate

**Complainant
Respondent**

ORDER

1. The present complaint dated 04.03.2021 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-99 ^a , 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 = 11.09.2022
7.	Unit no.	1502, 15 th Floor, Tower T-1 [Page 15 of complaint]
8.	Unit admeasuring area	1997 sq. ft. of super area [Page 15 of complaint]
9.	Allotment letter	27.11.2013 [Page 30 of the reply]
10.	Date of builder buyer agreement	08.07.2014 [Page 13 of complaint]
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.	Date of start of construction	16.10.2014 [as per demand letter dated 05.01.2021 page 68 of the reply]
13.	Due date of possession	16.10.2018 [Calculated from start of construction i.e., 16.10.2014]

14.	Total sale consideration	Rs. 1,27,02,257/- (excluding service taxes) [page 22 of the reply]
15.	Total amount paid by the complainant	Rs. 31,13,554/- [as per demand letter dated 05.01.2021 page 69 of the reply]
16.	Occupation certificate	N/A
17.	Demand/Reminder Letters	19.08.2016, 11.07.2017, 13.07.2018, 05.01.2021
18.	Cancellation Letter	23.02.2021 [page 74 of the reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the application form for the booking of the unit in question was executed on 12.01.2013 wherein the complainant paid the booking amount of Rs. 8,50,000/- through cheque no. 347013 drawn from Bank of India. A provisional allotment of the unit was issued by the respondent on 27.11.2013. Thereafter, the respondent entered into the builder buyer agreement with the complainant on 08.07.2014 after an illegal gap of 1 year and 6 months.
- II. That as per the clause 3.1 of the builder buyer agreement, the possession was to be handed over within 4 years from the start of construction or execution of the builder-buyer agreement and which was later. It is pertinent to note that the possession was to be handed over by 08.07.2018 and till date, the possession has not been handed over by the respondent. The complainant has made a total payment of Rs. 31,13,854/-.
- III. That the complainant had made several attempts to settle the dispute with the respondent, but it did not pay any heed to it.

IV. That the complainant aggrieved of having not received possession on time is filing the present complaint before this authority for refund along with interest/compensation.

C. Relief sought by the complainant:

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

I. Direct the respondent to refund the entire monies paid by the complainant.

II. Direct the respondent to pay Rs. 5,00,000/- as compensation for mental harassment and Rs. 2,00,000/- as litigation charges.

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 a residential project under the name and style of "Coban Residences" in Sector 99A Gurugram, (Haryana) was launched wherein the complainant in the year 2013 came to know that the respondent is in process of launching the said project. Thus, out of his own accord through his broker Axiom Landbase Pvt. Ltd. initially approached the respondent in order to invest money in said project and paid an amount of Rs. 8,50,000/- as advance booking. The complainant was merely an investor in the project, who was looking to earn profit in case the respondent could not able to launch the project on time. As per application form if the respondent was not able to make any offer of allotment within 9 months due to any reason whatsoever than, he was entitled to simple interest @9% p.a. on the amount paid. The said amount was only paid as an investor with a profit motive and not as a homebuyer.



On the other hand, the respondent wanted to develop the project and allot a unit to the complainant. However, the respondent well within time limit obtained sanctions of building plans from the concerned authority on 25.07.2013 and offered a unit for allotment on 03.08.2013 and requested to pay an amount of Rs.13,03,559/-. Accepting the said offer, complainant again filed an application 08.08.2013 whereby he accepted the offer and paid an amount of Rs.13,03,559/- vide cheque bearing no. 347037 dated 03.09.2013 drawn on Bank of India.

- b. That after the above stated entire process, the respondent issued a provisional allotment letter dated 27.11.2013 in favour of complainant whereby an apartment bearing no. 1502, T-1 was allotted to him. Thereafter on 08.07.2014, an apartment buyer agreement was executed between the parties. It is submitted that complainant at that point of time agreed a payment plan itself and assured that he will pay all the dues as per said payment plan.
- c. That after execution of said apartment buyer agreement, the respondent raised a demand against "start of excavation" plus taxes for an amount of Rs. 13,21,911/-. However, said demand was not met by the complainant. Again, the respondent sent said demand as reminder 1 vide letter dated 11.11.2014. Even at this time, complainant failed to adhere the genuine request of respondent and the amount demanded was not paid. Thereafter, the respondent sent another reminder on 11.12.2014. However, no payment was made by complainant against said remainder as well. Hence, the conduct of complainant since very inception was indifferent and remained same for subsequent demands as well.
- d. That as complainant was unable to pay the demands raised. Thus, he contacted the respondent and on 15.12.2014, requested a different

- payment plan, so as to arrange fund in timely manner and assured that he will not default in future and accordingly paid an amount of Rs.9,29,241/- vide cheque dated 15.12.2014. Thereafter, the said request was accepted by the respondent and a fresh payment plan was approved.
- e. That after approval of fresh payment plan, respondent achieved various milestones of construction and raised demand letters accordingly. But surprisingly, even after the changing payment plan, not even a single payment was made thereafter.
 - f. That the list of defaults committed by the complainant were quite long and the same have been i.e. 06.02.2016, 03.06.2016, 13.06.2016, 19.08.2016, 11.07.2017, 13.07.2018 and 05.01.2021 respectively.
 - g. That the development of the project was not an easy task and to develop a project in a timely manner, the developer needs continuous flow of money. In the project like the present one developer was not only duty bound to construct one flat or apartment rather whole of the project. Moreover, assuming out of total no. of allottees only one third allottees pay on time and remaining default in payment, then it would be extremely difficult to develop the project on time. It is submitted that conditions such as forfeiture and high interest on payment due, are necessary so that all allottee should pay on time and project can be completed on time. It is submitted that despite of such conditions several allottees kept on defaulting in payments and losses have been suffered by the developer. Even the present complainant falls in the category of such allottees who were habitual defaulters.
 - h. That all these reminders/demands were sent to the complainant through post as well as mails. Ultimately on 23.01.2021, respondent sent a letter to the complainant whereby last opportunity was given to him failing

which the unit allotted in his favour shall stand cancelled. Even after receiving said letter, the complainant failed to pay the balance amount. Thus ultimately, respondent cancelled the allotment of complainant vide letter dated 23.02.2021 as he was in gross violation of agreed terms and failed to pay several demands and despite of availing several opportunities for payment.

i. Thus, from the above stated facts and circumstances, it is crystal clear that present complaint is not maintainable and is liable to be dismissed.

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 those undisputed documents, submissions by the parties and written submissions of the complainant.

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.I 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 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 complainant 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 (Civil), 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 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 the paid money with interest as per the Act.

14. The complainant booked a unit in the project named "Coban Residencies" by paying a booking amount of Rs. 8,50,000/-. Thereafter, on 03.08.2013, the complainant paid Rs.9,53,922/- against demand raised by the respondent after which it issued the provisional allotment letter dated 27.11.2013. On 08.07.2014, a BBA was executed between the parties. The contention of the complainant is that the respondent has not offered the possession of the unit as per the BBA and hence, a case for refund is made out.
15. The respondent, on the other hand, is that the complainant has defaulted in payment of installments. It has placed on record various demand/reminder letters dated 05.01.2021, 11.07.2017 and 13.07.2018. After issuance of those letters, a pre-cancellation letter was issued on 23.01.2021 before finally canceling the unit vide letter dated 23.02.2021.
16. During proceedings dated 30.05.2023, the counsel for the respondent stated that a letter was issued on 23.02.2021 cancelling the unit and deducting the amount of earnest money besides GST, interest accrued and other administrative expenses. The counsel for the complainant stated that the above mail was never received rather, a subsequent email dated 10.03.2021 was received vide which the demand on completion of flooring work was raised by it condoning the cancellation done and demanding further

installment from him post filing of this complaint. However, on this plea of complainant, an affidavit on behalf of respondent was filed clarifying that the copy of mail seeking demand of the amount post cancellation was never issued in respect of the unit of complainant and was inadvertently sent which otherwise was meant for Aviral Batra allottee of unit no. T2-203. The counsel for complainant further contended that the temp. ID/proforma-B of the above complaint seeking refund was generated on 22.02.2021. So, the intention of the complainant/allottee was amply clear while generating it. However, the generation of said proforma does not makes it clear that the complaint will be filed for refund or delay possession charges. Further, the date of generation of proforma-B cannot be treated as date of filing of complaint. The counsel for respondent further contended that a complaint seeking same relief has been filed by the complainant in NCLT, but there is nothing on record to support his claim. Accordingly, the authority is proceeding further to decide the present complaint. Now the question before the authority is whether the cancellation issued vide letter dated 23.02.2021 is valid or not.

17. 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.31,13,554/- against the total sale consideration of Rs.1,27,02,257/-. The respondent/builder sent a demand letter dated 19.08.2016 followed by reminder letters dated 11.07.2017, 13.07.2018 and 05.01.2021 respectively before issuing a pre-cancellation letter dated 23.01.2021 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 23.02.2021. Further, section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary

payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the agreement dated 08.07.2014 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 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 1969(2) SCC 554*** and where in it **was held that** a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing 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."

18. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs.31,13,554/- after deducting 10% of the basic sale price of Rs.1,10,31,827.4/- being earnest money along with an interest @10.70%

p.a. on the refundable amount from the date of cancellation of unit (i.e. 23.02.2021) till the date of realization of payment.

F. II Direct the respondent to pay Rs. 5,00,000/- as compensation for mental harassment and Rs. 2,00,000/- as litigation charges.

19. The complainant is 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 complainant is 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):
- The respondent is directed to refund the deposited amount of Rs 31,13,554/- after deducting 10% of the basic sale price of Rs.1,10,31,827.4/- being earnest money along with an interest @10.70% p.a. on the refundable amount from the date of cancellation of unit (i.e. 23.02.2021) till the date of realization of payment.



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: 30.05.2023


(Vijay Kumar Goyal)
Member

