



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

Date of decision: 13.09.2023

NAME OF THE BUILDER		M/S PAREENA INFRASTRUCTURES PRIVATE LIMITED	
PROJECT NAME		COBAN RESIDENCES	
S. No.	Case No.	Case title	Appearance
1	CR/4215/2021	Deepak Gupta V/s Pareena Infrastructures Private Limited	Sukhbir Yadav (Complainant) Prashant Sheoran (Respondent)
2	CR/4216/2021	Deepak Gupta V/s Pareena Infrastructures Private Limited	Sukhbir Yadav (Complainant) Prashant Sheoran (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of the 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Coban Residences situated at Sector-99A, Gurugram being developed by the same respondent/promoter i.e., M/s Pareena Infrastructures Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the unit along with interest.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Coban Residences" at sector-99A, Gurgaon, Haryana.
Project area	10.5875 acres
DTCP License No.	10 of 2013 dated 12.03.2013 valid upto 11.06.2024
Name of Licensee	Monex Infrastructures Pvt. Ltd.
RERA Registration	Registered vide registration no. 35 of 2020 dated 16.10.2020 valid upto 11.09.2024
Possession Clause: 3.1	<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>
Occupation Certificate:	Not obtained



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit adm easu ring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/4215/2021 Deepak Gupta V/s Pareena Infrastructures Private Limited DOF: 25.10.2021 Reply Status: 03.12.2021	06.04.2014 Allotment Letter: 20.11.2013	504, 5 th Floor, Tower-T-2	1997 sq. ft.	16.10.2018 (As per possession clause 3.1 of buyer's agreement)	Total Sale Consideration: Rs.1,23,47,465 Amount Paid: - Rs.41,38,847/-	Refund
2.	CR/4216/2021 Deepak Gupta V/s Pareena Infrastructures Private Limited DOF: 25.10.2021 Reply Status: 03.12.2021	02.02.2015 Allotment Letter: 27.11.2013	1002, 10 th Floor, Tower-T-3	1997 sq. ft.	16.10.2018 (As per possession clause 3.1 of buyer's agreement)	Total Sale Consideration: Rs.1,15,83,612 Amount Paid: - Rs.40,03,130/-	Refund



4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking refund of the total paid up amount.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/4215/2021 Deepak Gupta V/s Pareena Infrastructures Private Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/4215/2021 Deepak Gupta V/s Pareena Infrastructures Private Limited

S.N.	Particulars	Details
1.	Name and location of the project	"Coban Residences" and Sector-99A, Gurugram
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 (area 10.5875 acre)
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.



6.	RERA Registered/ not registered	Registered vide no. 35 of 2020 issued on 16.10.2020 and valid upto 11.03.2024 + 6 months = 11.09.2024
7.	Unit no.	504, 5 th floor tower no. T-2 (page 45 of complaint)
8.	Unit admeasuring area	1997 sq. ft. of super area
9.	Allotment letter	20.11.2013 (page 41 of complaint)
10.	Date of builder buyer agreement	06.04.2014 (page 43 of complaint)
11.	Date of start of construction	16.10.2014 (start of excavation) (as per reminder-1 dated 07.03.2016 on page 180 of reply)
12.	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>
13.	Due date of possession	16.10.2018 (The date of possession has been calculated from the commencement date of construction being later)
14.	Total sale consideration	Rs.1,23,47,465/- (page 66 of complaint)
15.	Total amount paid by the complainant	Rs.41,38,847/- (page 82 of complaint)
16.	Occupation certificate	N/A
17.	Offer of possession	N/A
18.	Cancellation Letter	03.12.2021 (Annexure R/9)



B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

8. That the complainant on representations made by representatives of respondent booked a 3BHK flat/apartment in its project named "Coban Residences" at Sector-99A, Gurugram and accordingly a unit bearing no. 504 in tower T-2, admeasuring 1997 sq.ft. was allotted to him vide allotment letter dated 20.11.2013. Thereafter a builder buyer agreement dated 06.04.2014 was executed between the parties against the said unit for a total sale consideration of Rs.1,23,47,465/- and he has paid an amount of Rs.41,38,847/- in all.
9. That as per clause 3.1 of the buyer's agreement the builder/respondent has to give possession of the flat by 16.10.2018. However, the same has not been handed over till date.
10. That on 27.06.2015, the complainant sent a letter to the respondent to cancel the allotment of unit T2/603 and made a request to transfer all the payments made for unit T2/603 (cancelled unit) to the account of unit no. T2/504 in the said project.
11. That on 31.07.2015, the respondent accepted the merger request of the complainant and adjusted the amount from the cancelled unit to the retained unit and also stated that "after adjustment and requested merger your account of flat no. T2-504 stands at a surplus of Rs.8,17,205/- and the same will be adjusted in future installments.
12. That in July 2016, the complainant asked the respondent that due to some personal financial reasons/issues the complainant is unable to continue with the project and also observed that even the construction status is very much delayed with regard to the due possession date mentioned in



- the BBA, therefore asked the respondent to cancel the unit and refund the paid amount.
13. That the complainant since 2016, making repeated request to the respondent to cancel the unit and to refund the amount paid, but till today neither the respondent has cancelled the unit, nor it has refunded the amount paid.
 14. Further, the complainant vide email dated 24.08.2019 and 20.12.2020 also requested the respondent to cancel the unit and refund the paid amount, but the respondent did not pay any heed to the just and reasonable demand of the complainant.
 15. That the main grievance of the complainant in the present complaint is that despite paying more than 35% of the actual cost of the unit and being ready and willing to pay the remaining amount, the respondent has failed to deliver the possession of unit on promised time and till date.
 16. That due to the above acts of the respondent and the unfair terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially. Therefore, the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
 17. That the complainant wants to withdraw from the project as the promoter has not fulfilled its obligation under sections 12, 11 (4), 18, and 19(4). Therefore, it is obligated to refund the paid amount along with interest at the prescribed rate.

C. Relief sought by the complainant: -

The complainant has sought following relief(s):

- I. Direct the respondent to refund the amount of Rs.41,38,847/- paid by the complainant along with prescribed rate of interest.



18. 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

The respondent has contested the complaint on the following grounds: -

19. That the construction of the said project is at an advanced stage and the structure of various towers has already been completed and the remaining work is endeavored to be completed as soon as possible. Further, the respondent is endeavoring to apply for occupation certificate quite soon and under normal circumstances will offer possession upto first quarter of year 2022 after obtaining occupation certificate.

20. That the construction of the said project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which were beyond the control of the respondent, and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

- a) Delay in construction due to various orders/restrictions passed by National Green Tribunal, Delhi and other competent authorities for protecting the environment of the country.
- b) Shortage in supply of raw material.
- c) Ban on construction due to various court orders as well as government guidelines.
- d) The major outbreak of Covid-19.

21. That the apartment in question is a part of tower consisting of several other units and the unit shall be completed along with other units which



- belong to other allottees. It is submitted that merely because the complainant had paid on time, it does not fulfill the criteria of complete payment required for construction of whole of the tower/project.
22. That the complainant had booked 4 units in the said project bearing no.s 404, 1002, 603 and 504 respectively. Out of the above stated four units, unit no. 603 was booked in the name of Mrs. Swati Gupta, wife of Mr. Deepak Gupta and the rest were booked by the complainant in his own name. However, it is pertinent to mention here that the complainant had defaulted in payment of all the above stated units and now filed the present complainant to conceal his own mistake and to get undue enrichment at the cost of respondent.
23. That out of above stated four units, 2 units bearing no.s 603 and 404 were cancelled by the complainant and get the amount paid against the cancelled unit transferred, subjected to the condition of timely future payment, into the remaining two units. Further, the complainant also agreed to the condition that he shall never withdraw from the project. However, the complainant breached the condition of time payment by not paying the demands raised by respondent, as well as non-withdrawal by filing of present complaint wherein complainant opted to withdraw from the project and seek refund. Thus, in view of breach of terms and condition of merger, the said merger stands null and void and the earnest money against the cancelled unit i.e., unit no. 603 stands forfeited.
24. That as the complainant has failed to pay the demands raised against retained unit i.e., unit no. 504 as well. Thus, the respondent is also entitled to forfeit earnest money against said unit as well. That in similar manner the respondent is also entitled to forfeit the earnest money against the remaining two unit bearing no. 404 and unit no. 1002.

25. That complainant has also concealed the facts that a similar complaint was also filed by complainant along with one more allottee namely Rajdeep Aggarwal before NCLT bearing no. IB-2393(ND)/2019, however same was withdrawn by the complainant after filing of reply by the respondent.
26. That the construction is reciprocal to amount paid and it is not possible to raise complete construction without getting complete amount. That in such cases if a refund is granted than it would be absolutely against the natural justice. Thus, keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.
27. 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

28. 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

29. As per notification no. *1/92/2017-1TCP dated 14.12.2017* issued by the 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

30. 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.

31. 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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding the delay in payments.

32. The objection raised by the respondent regarding delay in payments by the allottee is totally invalid as he has already paid an amount of Rs.41,38,847/- against the total sale consideration of Rs.1,23,47,465/- to it as per the construction linked payment plan. The fact cannot be ignored that there might be certain group of allottees who defaulted in making payments. But upon perusal of documents on record, it is observed that no default has been made by him in the instant case. Hence, the plea advanced by the respondent is rejected.

F.II Objection regarding force majeure conditions.

33. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, shortage in supply of raw material, non-payment of instalment by different allottee of the project and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 16.10.2018. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant

- I. Direct the respondent to refund the amount of Rs.41,38,847/- paid by the complainant along with prescribed rate of interest.
34. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same 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)

35. Clause 3.1 of the buyer's agreement provides the time period of handing over 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 within 4 years of the start of construction or execution of this agreement, whichever is later.

(Emphasis supplied)."

36. The complainant had booked the unit in the project of the respondent company situated at sector-99A, Gurugram for a total sale consideration of Rs.1,23,47,465/-. Further, on 27.06.2015, the complainant sent a letter to the respondent to cancel the allotment of unit T2/603 and made a request to transfer all the payments made for cancelled unit to the account of unit no. T2/504 in the said project and the said request was accepted by the respondent vide letter dated 31.07.2015. The buyer's agreement was executed between the parties on 06.04.2014. However, as per possession 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 i.e., 16.10.2014 or execution of the said agreement. Therefore, the due date for handing over of possession comes out to be 16.10.2018 being later. Thereafter, on non-fulfillment of the terms and obligations of the promoter by the respondent, the complainant vide email dated 24.08.2019





and 20.12.2020 requested it to cancel the allotment of the unit in question and to refund the paid amount alongwith interest, but the respondent despite refunding the amount paid by him illegally and arbitrarily cancelled the allotment and forfeited the amount paid by him vide cancellation letter dated 03.12.2021.

37. On consideration of the documents available on record and submissions made by both the parties, the authority is of the view that there has been a huge delay on the part of respondent in completing construction of the project in question. Further, the complainant vide email dated 24.08.2019 and 20.12.2020 requested the respondent to cancel his allotment on non-completion of the project in due time as agreed between the parties vide buyer's agreement dated 06.04.2014, but on failure of the respondent to refund the same, the complainant has filed the present complaint dated 25.10.2021 seeking refund. Subsequently, after filing of the complaint the unit in question was tactically cancelled and the paid-up amount has been illegally forfeited by it vide cancellation letter dated 03.12.2021. Therefore, the cancellation done by the respondent cannot be held valid in the eyes of the law.

38. 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 allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and 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 relevant para is reproduced as under:



".....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....."

39. 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. 2021-2022(1) RCR (c), 357** 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, 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."

40. 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 allottee 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 allottee, as 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 the unit with interest at such rate as may be prescribed.



41. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 and 72 read with section 31(1) of the Act of 2016.
42. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."
43. 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.
44. 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., 13.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
45. The authority hereby directs the promoter to return the amount received by him i.e., Rs.41,38,847/- with interest at the rate of 10.75% (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 Rules *ibid*.

H. Directions of the authority

46. 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 entire amount paid by the complainants in all the above-mentioned cases along with prescribed rate of interest @10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the 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.

47. This decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.

48. The complaints stand disposed of.

49. Files be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.09.2023