

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

Complaint no.	:	1296 of 2021
Date of complaint	:	18.03.2021
Date of order	:	20.09.2023

Vishal Gupta,  
R/o: - 84-B, Rajguru Nagar,  
Ludhiana, Punjab-141012.

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Rajan Kumar Hans (Advocate)

Prashant Sheoran (Advocate)

Complainant

Respondent

**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 thereunder 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 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.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Registered</b> Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2024 + 6 months = 11.09.2024
7.	Unit no.	1202, 12 <sup>th</sup> Floor, Tower T-4 [Page 15 of reply]
8.	Unit admeasuring area	1997 sq. ft. of super area [Page 15 of reply]
9.	Allotment letter	18.04.2014 [Page 18 of the complaint]
10.	Date of builder buyer agreement	Not executed
11.	Due date of possession	18.04.2017 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
12.	Total sale consideration	Rs.1,30,22,451/- (excluding service tax) [page 16 of the reply]
13.	Total amount paid by the complainant	Rs.10,85,000/- [as per reminder-1 letter dated 07.03.2016 page 28 of the reply]

14.	Occupation certificate	Not obtained
15.	Cancellation Request	21.05.2015 [page 26 of complaint]

**B. Facts of the complaint:**

- I. That the complainant vide letter dated 08.03.2014 shows his interest to book a 2 BHK unit particularly in Tower-6 of the project named "Coban Residences" at Sector-99A, Gurugram. Thereafter, vide provisional allotment letter 18.04.2014, a unit bearing no. T4-1202, 12<sup>th</sup> floor having super area of 1997 sq.ft was allotted to him, but incidentally the unit allotted was of 3 BHK+SQ and not 2 BHK+Study for which the complainant had specifically requested.
- II. That the complainant got in touch with the respondent and conveyed his unhappiness regarding the said issue on which a verbal assurance was given by it that the unit will be shifted during the course of time.
- III. That as per the sales mail and calculations done per se the application form, the cost of 2 BHK+Study unit was arrived at Rs.1,04,11,900/- and the complainant has paid an amount of Rs.10,85,000/- against the same.
- IV. That the complainant got in touch with the respondent and its representatives many times and requested them many times regarding the change of the unit from 3 BHK+Sq to 2 BHK+study, but the respondent did not relent and did not change the unit.
- V. That annoyed of the fact that the respondent is ignoring his continuing request, the complainant vide email dated 21.05.2015 sent a cancellation letter of the unit. However, even after rigorous follow ups by way of visits and calls, the respondent has failed to refund the paid-up amount back to the complainant till date.

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- VI. That the respondent even failed to furnish any builder buyer agreement with the complainant and as the unit was provisionally allotted to the complainant, so he is entitled to get the refund as and when he desires, before execution of the builder buyer agreement.
- VII. That even after so many years the respondent has failed to even complete the structure and is very far away from giving the possession of the said unit. Therefore, the complainant does not want to further deal with the respondent anymore and wishes to cancel the unit and wants a full refund of the payment with interest.

**C. Relief sought by the complainant:**

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

- i. Direct the respondent to refund an amount of Rs.10,85,000/- along with interest.

**D. Reply by respondent:**

4. The respondent vide reply dated 17.08.2021 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.
- ii. That the construction of the said project is at an advance stage and the structure of various towers has already been completed and remaining work is endeavoured to be completed as soon as possible and thereafter possession shall be offered after obtaining occupancy certificate.
- iii. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees.



- iv. That in the year 2014, complainant contacted the respondent and requested to allot a unit in the project of respondent and paid an booking amount of Rs.1,00,000/- in this regard. Further, the complainant at the time of applying for allotment of unit had asked for 2 BHK unit, but he intentionally concealed the fact that after some time complainant again approached the respondent and requested for a 3 BHK unit in the said project.
- v. That in lieu of said request, complainant executed an application form dated 17.04.2014, whereby he duly accepted the allotment of a 3 BHK unit and even paid an amount of Rs.4,85,000/- via RTGS. Thereafter, as per the demand of the complainant a 3 BHK unit measuring 185.53 sq.mts. was allotted to him vide provisional allotment letter dated 18.04.2014.
- vi. That after issuance of allotment letter, respondent sent a demand letter whereby an amount of Rs.11,67,107/- was demanded from the complainant against payment within 60 days of booking and the same was duly received by him and in lieu of the same, he had paid an amount of Rs.5,00,000 vide cheque bearing no. 15205 dated 03.02.2015 i.e after a delay of approximately 9 months and the same was the last payment which was made by him against the demand raised by the respondent.
- vii. That as the amount paid by the complainant was deficient. Thus, the respondent vide reminder dated 07.03.2016, requested the complainant to pay an amount of Rs. 10,53,417/- against the amount due + interest. However, despite receipt of the said letter, no payment in this regard was ever made by the complainant.

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viii. That the complainant himself agreed in the application form that in the event of non-payment, the allotment is liable to be cancelled and the earnest money shall stand forfeited. Also, as per the provisions of RERA regarding forfeiture of earnest money, the respondent is entitled to deduct 10% of the sale consideration and other charges as per agreement. However, the amount paid by the complainant is much less than the 10% of the sale consideration. Thus, the complaint is not maintainable.

5. 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:**

6. 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**

7. 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**

8. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

9. 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 Direct to the respondent to refund the paid-up amount of Rs. 10,85,000/- along with interest.**

10. The complainant was allotted a unit in the project of respondent named "Coban Residences" at Sector 99A, Gurugram vide provisional allotment letter dated 18.04.2014 for a total sale consideration of Rs.1,30,22,451/-. Though no buyer's agreement was executed between the parties, but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.10,85,000/-. It was pleaded by the complainant that respondent sent various demand letters demanding outstanding amount, which was due, but he refused to pay

such instalments as the complainant while booking in the project in question specifically requested the respondent to allot a 2 BHK unit in Tower-6, but incidentally the unit allotted to him was of 3 BHK+SQ. Thereafter, he made several verbal communications to the respondent to change the unit from 3 BHK+Sq to 2 BHK+study, but the respondent did not pay any heed to the just and genuine request of the complainant. Therefore, the complainant vide email dated 21.05.2015, requested the respondent to cancel the allotment of the unit and refund the amount paid.

11. On the contrary, it was submitted by the respondent that after issuance of allotment letter, it has sent a demand letter whereby an amount of Rs.11,67,107/- was demanded from the complainant against sale consideration and in lieu of the same, he had paid an amount of Rs.5,00,000/- vide cheque bearing no. 15205 dated 03.02.2015 i.e. after a delay of approximately 9 months and the same was the last payment which was made by him against the demand raised by the respondent. However, the said payment was made by the complainant after receipt of provisional allotment letter dated 18.04.2014 which clearly mentions that the unit allotted to him was a 3BHK unit. Further, no flat buyer's agreement was executed by the respondent for the apartment with the complainant. That such act of the respondent company amounts to unfair trade practices.
12. In the instant case, the complainant signed an application for booking dated 17.04.2014 and was provisionally allotted unit no. T4-1202, 12<sup>th</sup> floor, Tower 4 vide allotment letter dated 18.04.2014. No BBA has been executed between the parties.



13. That after the acceptance of the booking and issuing the allotment letter, the respondent should have handed over the possession of the apartment within the reasonable time period. It can be said that in the matter of the reasonable time for delivery of possession would be 3-4 years from the booking of apartment. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Since possession clause has not been annexed in the file, the due date has been calculated keeping in view the judgment of the Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018** observed that:

*"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014."*

14. In the instant case, the apartment was provisionally allotted vide provisional allotment letter dated 18.04.2014, In view of the above-mentioned reasoning, the date of signing of allotment letter, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 18.04.2017. However, it is observed that the complainant vide email dated 21.05.2015 requested the respondent for cancellation of allotment even before filing of the complaint. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of



earnest money by the builder) Regulations, 11(5) of 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 consideration amount of the real estate i.e. apartment /plot/building as the case may be in all cases 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 factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and is directed to refund the paid-up amount of Rs.10,85,000/- after deducting 10% of the basic sale consideration of Rs.1,12,63,080/- being earnest money. However, the amount paid by the complainant constitutes only 9.63% of the basic sale consideration. Thus, no direction to this effect.

**G. Directions of the Authority:**

16. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
17. Complaint stands disposed of.
18. File be consigned to the registry.

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 20.09.2023