

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

Complaint no. : 163 of 2023
Date of complaint : 13.01.2023
Date of order : 31.01.2024

Vivek Verma,
R/o: - C-901, Pragma Apartments,
Plot-1B, Sector-2, Dwarka, New Delhi-110075.

Complainant

Versus

1. M/s Pareena Infrastructures Pvt. Ltd.
Regd. Office at: - Flat-2, Palm Apartment,
Plot-13B, Sector-6, Dwarka-110075.
2. Armed Forces Officials Welfare Organization (AFOWO)
Regd. Office at: - J-29, Jor Bagh Lane, BK Dutt Colony,
Near Jor Bagh Metro Station, New Delhi-110003.

Respondents

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Garvit Gupta (Advocate)
Prashant Sheoran (Advocate)
Ravinder Tyagi (Advocate)

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 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 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	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Date of booking	Not on record
7.	Unit allotted	701, Tower-3 (page 26 of complaint)
8.	Unit admeasuring area	1450 sq. ft. (super area) (page 26 of complaint)
9.	Date of builder buyer agreement	Not executed
10.	Date of start of construction	08.06.2016 (date of start of excavation) (page 26 of complaint)
11.	Due date of possession	Not provided
12.	Cancellation email by respondent no.2	03.02.2018 (page 28-29 of complaint)
13.	Total sale consideration	Rs.85,35,300/-

		(as per payment schedule on page 16 of complaint)
14.	Total amount paid by the complainants	Rs.15,00,000/- (as per demand letter dated 25.05.2016)
15.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent no.1 i.e., Pareena Infrastructure Pvt. Ltd. offered for sale residential units in its project named 'MICASA' at Sector 68, Gurugram which claimed to comprise of, residential units, car parking spaces, recreational facilities, gardens etc. The complainant received a marketing call from the office of respondent no.2 i.e., Armed Forces Officials Welfare Organization (AFOWO) on behalf of Respondent no.1 in the month of March, 2013 for booking in the project of the respondent no.1. It was specifically assured by the representative of respondent no.2 that the project would be ready by 2017-2018. Accordingly, Rs. 10,000/- was paid by the complainant to respondent no.2 on 07.03.2014.
- II. That on 10.03.2014, the complainant made a payment of Rs.6,00,000/- to respondent no.1 and the respondent no.2 on behalf of the respondent no.1 allotted a unit bearing no. 701, Tower -3 having total area of 1450 sq.ft. to the complainant for a total sale consideration of Rs.85,35,300/-. Thereafter, the respondent no.1 demanded and the complainant made another payment of Rs.9,00,000/- to the respondent no.1 on 14.06.2014. Thus, before the execution of the agreement in question, the complainant was compelled to make payment of more than 17% of the total sale consideration.



- III. That no updates were given by the respondents to the complainant about the status of the project and he was left clueless about the implementation of the project as a whole. Furthermore, respondent no.1 had failed to even share the copy of the builder buyer's agreement with the complainant. Therefore, the complainant requested the respondents telephonically, and by visiting the office of the respondent to update him about the date of handing over of the possession.
- IV. That the complainant met the representatives of the respondents at their office and they informed him vide minutes of meeting dated 12.07.2015, that the possession of the unit would be given within 48 months with effect from 12.07.2015 i.e by 12.07.2019 and the respondent no.1 would soon get executed a builder buyer's agreement with the complainant.
- V. That the respondent no.1 in blatant violation of law vide its letter dated 25.05.2016 demanded an amount of Rs.10,19,535/- in contradiction to the terms and conditions on the allotment. Moreover, there was no whisper of the execution of the buyer's agreement nor the same was ever shared with the complainant. The complainant made it clear to the representatives of the respondents that there was an inordinate delay on the part of the respondents and that he would not make payments until a detailed explanation as to the definite timeline is given as to when the possession of the unit would be handed over and till the time the agreement is shared with the complainant. The respondents yet again, with malafide motives, gave an assurance that it would soon do the needful. However, yet again, the assurances made by the respondents turned out to be false. No concrete steps were taken by the respondents for completion of the



unit in question and the complainant therefore sought refund of the total amount paid by him along with interest. Thus, there was complete breach of trust and misrepresentation and the same is covered within the ambit of Sections 11 and 12 of the Act, 2016.

- VI. That to the complete shock and dismay of the complainant, he received an email dated 03.02.2018 from the representative of respondent no.2 wherein it was informed that the unit has been cancelled. The respondent no.2 completely overlooked the fact that there were absolutely no construction updates from the respondent builder and that even builder buyer's agreement was not executed as the same was never shared. Hence, there was no locus standi to even terminate the allotment by respondent no.2.
- VII. That the complainant immediately on 03.02.2018 confronted the representatives of respondent no.2. Understanding that the complainant was duped by the false representations made by the respondents, the complainant once again sought refund of the amount paid by him along with interest vide legal notice dated 17.09.2021. However, the respondents failed to respond to the same for the reasons best known to them.
- VIII. That the complainant was left with no other option but to approach this Authority to seek justice.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire paid-up amount 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 respondents.

6. The respondent no.1 has contested the complaint by way of reply dated 08.11.2023 on the following grounds: -
- i. That the AFOWO i.e., respondent no.2 has already cancelled his unit in 2018 itself, thus after passing of more than 3 years present complaint cannot be filed being time barred.
 - ii. That the respondent no.2 cannot be termed as agent in any manner in the provisions of RERA and the complaint approached respondent no.2 for booking of a unit in the project of respondent no. 1. That the process of booking through respondent no.2 is that AFOWO approach respondent no 1 for booking of a unit and any interested person will file application through AFOWO and thereafter said person will pay amount to AFOWO which in turn pays to respondent no. 1. However, in the present case as alleged that complainant pay Rs.15,00,000 directly to builder is absolutely incorrect. It is submitted that in case of members of AFOWO, payment never remitted to builders and whatsoever payment was made was done through AFOWO only.
 - iii. That respondent no.1 allotted units to respondent no.2 who in turn allots unit to their members, thus present complaint is legal not maintainable as the complaint was not filed by AFOWO, rather by one of its members in individual capacity. That said fact is also cleared from the documents attached by complainant himself, wherein it is stated that AFOWO had already cancelled its allotment and forfeited his money, thus if the money was already stands forfeited by AFOWO same cannot be recovered from respondent no.1. Further, AFOWO is neither a builder nor a promoter, rather an independent organization

for the welfare of armed personnels/officials, thus they can't be brought under the purview of RERA.

- iv. That as it's a matter between AFOWO and complainants, RERA has no jurisdiction to entertain present complaint.
 - v. That in view of above stated facts and circumstances, the present complaint may kindly be dismissed in the interest of justice.
7. The respondent no.2 has contested the complaint by way of reply dated 28.04.2023 on the following grounds: -
- i. That the respondent no.2 helps in providing housing facility/solutions to its member in the form of houses/flats by selecting reputed builder keeping the price factor in mind. Therefore, it plays the role of introducer between the builder and its member.
 - ii. That the respondent no.2 is not a necessary party as the complainant has paid all the monies towards the unit to respondent no.1. Therefore, the complainant is liable to be dismissed at the threshold for misjoinder of party.
 - iii. That the complainant became a member of respondent no.2 by paying Rs.10,000/- as membership fees for demand survey for housing projects and it has only introduced the desirous person/its members with the builder.
 - iv. That the respondent no. 2 has neither promised to deliver the flat to the complainant nor received any payment for construction of the same from the complainant and he has directly made the payment to builder i.e., respondent no.1.
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 those undisputed documents and submissions made by the parties.



E. Jurisdiction of the authority

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

9. 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

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(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*** 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 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 objections raised by the respondents.

F.I Objection regarding complaint being barred by limitation.

14. The respondent no.1 has contended that the present complaint is not maintainable and barred by the law of limitation as the AFOWO i.e., respondent no.2 has already cancelled his unit in 2018 itself, thus after passing of more than 3 years, the present complaint cannot be filed being time barred. However, as per the admitted facts, the respondent no.2 i.e., AFOWO is neither a builder nor a promoter, rather an independent organization which allegedly helps in providing housing facility/solutions for the welfare of armed personnels/officials by introducing the desirous person/its members with the builder, but the respondents have failed to satisfy this Authority that in what capacity the allotment of the unit was cancelled by respondent no.2. Moreover, the respondents have failed to refund the amount to the complainant so far, which clearly shows a subsisting liability. Further, the law of limitation is, as such, not applicable to the proceedings under the Act and has to be seen case to case. Thus, the objection of the respondent no.1 w.r.t. the complaint being barred by limitation stands rejected.

F. II. Objection regarding maintainability of complaint against respondent no.2.

15. The respondent no.2 has contended that the present complaint is not maintainable against it as it is an independent organization who helps in providing housing facility/solutions for the welfare of armed personnels/officials by introducing the desirous person/its members with the builder. However, after perusal of the documents available on record, it appears that the respondent no.2 has encouraged the



complainant to become a member of the organisation by paying an amount of Rs.10,000/- and has induced him to buy a unit in the project of respondent no.1. Moreover, vide demand letter dated 25.05.2016, the respondent no.1 in pursuance of the application form submitted by the complainant with AFOWO, made a request to the complainant to remit a sum of Rs.10,19,535/- in its favour in terms of the application form and as per the agreement with the AFOWO. The relevant portion of the demand letter dated 25.05.2016 is reproduced as under for ready reference:

"Total above mentioned demand is in pursuance of the application form submitted by you, being member of AFOWO, seeking allotment of a residential unit in the Mi casa Sector-68, Gurgaon, and in furtherance of the allotment of Unit No. 701 in Tower-3 of the above named project, the present letter is being issued seeking payment of the above mentioned installments. The present letter is in terms of the application form and as per the agreement with AFOWO".

16. Further, the respondent no.1 has submitted that no payments were directly made to it, and it has only allotted units to the respondent no.2 who in turn allots units to their members. However, the complainant has placed on record two payment receipts issued by respondent no.1 vide which it acknowledged the receipt of payment from the complainant amounting to Rs.15,00,000/-. Also, as per the above-said demand letter dated 25.05.2016, the respondent no.1 has requested the complainant to remit the due installment in its favour. Therefore, after going through the above-said demand letter and submissions made by the parties, prima facie it appears that the respondent no.2 has actively participated towards allotment of unit in question and it must have some collaboration agreement with the respondent no.1 regarding allotment of some units including the unit of the complainant in the



project of the respondent no.1. Thus, in view of the above, the contention/objection of respondent no.2 stands rejected and the respondent no.1 & 2 are jointly and severally held liable.

G. Findings on the relief sought by the complainant.

G.I To refund the entire amount paid by the complainant along with prescribed rate of interest.

17. The complainant booked a unit in respondent's upcoming project situated at sector-68 Gurugram. The respondent no.2 on behalf of the respondent no.1 allotted a unit bearing no. 701, Tower -3 having total area of 1450 sq.ft. to the complainant for a total sale consideration of Rs.85,35,300/-. He has paid Rs.15,00,000/- i.e., 17.57% of the total consideration but respondents failed to execute any buyer's agreement and also no updates were given by the respondents to the complainant about the status of the project and he was left clueless about the implementation of the project as a whole. Despite receipt of more than 17% of the sale consideration, the respondents have failed to execute a builder buyer agreement with the complainant and have further raised a demand of Rs.10,19,535/- from the complainant vide demand letter dated 25.05.2016. Thus, the complainant denied to make any payment to the respondents and made a request for refund of the amount paid along with interest. Thereafter, the respondent no.2 vide email dated 03.02.2018 arbitrarily cancelled the allotment of the unit which cannot be held valid in the eyes of law. Moreover, the respondents have failed to satisfy this Authority that in what capacity the allotment of the unit was cancelled by respondent no.2.
18. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of



agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

"Every promise and every set of promise forming the consideration for each other is an agreement."

19. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

20. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither, it issued any allotment letter nor executed any builder buyer's agreement. Even in some cases, the builder accepted more than 50 lacs either in cash or through cheque and promising to allot an apartment/plot in the upcoming or existing projects and then vanishing or not taking any further steps with regard to either allotment of the unit of the property in any project or refunding the amount received. The holders of those receipt/allotments are harassed a lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre-RERA cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

21. The document/receipt so issued in favour of a person can be termed as an **agreement for sale** to put the developer before RERA Authority, compelling it to fulfil its obligations against the holder of that document.



The promoter is duty bound to explain the reasons for which it has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non-banking financial company (NBFC). In case of failure on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.

22. The complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

23. **Admissibility of refund along with interest at prescribed rate of interest:** The allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.

24. 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.
25. 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., 31.01.2024 is **08.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
26. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1) of the Act, 2016.
27. In the instant matter even after lapse of more than 8 years from the date of payment till the filling of complaint, no buyer's agreement has been executed inter- se parties. Therefore, the due date of possession cannot be ascertained and the complainant cannot be expected to wait endlessly for the 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....."

28. 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). The promoter has failed to complete or 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
29. 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 respondents is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @10.85% 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*.

H. Directions of the authority

30. 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 no.1 & 2 are jointly and severally held liable for non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act and are directed to refund the paid-up amount of Rs.15,00,000/- received by them from the complainant along with interest at the rate of 10.85% 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.
 - iii. The Secretary of the Authority is directed to identify and check the antecedents of respondent no.2 and to take appropriate action.
31. Complaint stands disposed of.
32. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.01.2024

HARERA
GURUGRAM