

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

<b>Complaint no.</b>	:	<b>5225 of 2022</b>
<b>Date of filing complaint:</b>		<b>27.07.2022</b>
<b>First date of hearing:</b>		<b>04.11.2022</b>
<b>Date of decision</b>	:	<b>14.09.2023</b>

1. Smt. Shuchi Tandon 2. Sh. Vinod Tandon <b>Both R/O:</b> House no. 1001, GPL Eden Heights, Sector - 70, Gurugram- 122018	<b>Complainants</b>
Versus	
Pareena Infraheights Private Limited <b>Regd. office:</b> Flat No.-2, Palms Apartment, Plot No.-13B, Sector-6, Dwarka, New Delhi-110075	<b>Respondent</b>

**CORAM:**

Shri Ashok Sangwan

**Member****APPEARANCE:**

Sh. Sukhbir Yadav (Advocate)

Complainants

Sh. Prashant Sheoran (Advocate)

Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under

the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

### A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no	Heads	Information
1.	Name and location of the project	"Mi Casa", Sector 68, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Area of the project	12.250 acres
4.	DTCP License	i. 111 of 2013 dated 27.12.2013 valid up to 12.08.2024 ii. 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 iii. 94 of 2014 dated 13.08.2014 valid up to 12.08.2024
	Licensee name	Pareena Infrastructure Pvt. Ltd. and others
5.	RERA registered/ not registered	99 of 2017 dated 28.08.2017
	Valid up to	30.06.2022
6.	Allotment letter	12.12.2015 (As per page no. 53 of the complaint)
7.	Unit no.	503 on 5 <sup>th</sup> floor, tower 4 (As per page no. 58 of the complaint)
8.	Super area admeasuring	1483 sq. ft. (As per page no. 58 of the complaint)
9.	Payment plan	Construction linked payment plan (As per page no. 70 of the complaint)
10.	Date of execution of Apartment Buyer's Agreement	25.01.2016

		(As per page no. 55 of the complaint)
11.	Possession clause	<b>13.Completion of Project</b> <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 of execution of this Agreement, whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee(s).....</i> <b>(Emphasis supplied)</b>
12.	Due date of delivery of possession	<b>25.10.2020</b> (Calculated from start of construction i.e., 25.04.2016 with grace period of 6 months as per clause 13) <b>(Grace-period is allowed)</b>
13.	Total consideration	Rs. 1,00,96,452/- (As per Annexure II on page no. 70 of complaint)
14.	Total amount paid by the complainants	Rs. 90,31,995/- (As per statement of account dated 30.06.2021 on page no. 79 of complaint)
15.	Occupation certificate	Not obtained
16.	Date of offer of possession to the complainants	Not offered

**B. Facts of the complaint:**

3. That in March 2014, a real estate agent approached the complainants for the booking of a flat in an upcoming project of Pareena Infrastructures Pvt. Ltd. in the sector - 68, Gurugram. The complainants visited the marketing office of respondent along with the real estate agent. Office bearers of respondent represented and allured to the complainants by quoting

various specifications i.e. special size, minimum loading, modern amenities, and timely delivery of the project.

4. That relying on representation and assurance of office bearers/ marketing staff of the respondent, the complainants signed a pre-printed application form **2BHK + Study Layout**, admeasuring **1250 sq. ft.** flat, and issued two cheques of Rs. Rs.2,50,000/- dated 31.03.2014 and Rs. 3,50,000/- dated 12.04.2014 in favour of "**Pareena Infrastructures Private Limited**". Subsequently, in July 2014, the Complainants issued another cheque dated 31.07.2014 amounting to Rs 1,50,000/- drawn on HDFC Bank in favor of respondents against which respondent issued undated payment receipt vide receipt no. 514.
5. That in the second week of May 2015, the respondent approached the complainants and asked for the upgradation of the flat size. Thereafter, on 21.05.2015, complainants signed a new application form for a 3 BHK flat, bearing no.-503 in Tower-4, in the project of the respondent and issued two cheques of Rs. 6,70,000/- dated 26.05.2015 and Rs.2,32,660/- dated 05.06.2015 respectively. It is pertinent to mention here that as per clause no. 13 of the application form, the respondent has to give possession of the flat within 48 months from the date of signing of the apartment buyer's agreement or commencement of construction, whichever is later. The total consideration for the unit is Rs.1,00,96,452/- and respondent issued a provisional allotment letter dated 12.12.2015/-.
6. That on 25.01.2016, a pre-printed, arbitrary, unilateral apartment buyer's agreement/agreement to sell was executed between respondent and complainants. As per clause 13 of the ABA, respondent has to give the possession of the flat within 4 years of the start of construction or

execution of this agreement, whichever is later. The agreement to sell was executed on 25.01.2016, and construction commenced on 26.04.2016, therefore, the due date of possession was 25.04.2020.

7. That the complainants continued to pay the remaining instalment as per the payment schedule of the builder buyer agreement and have already paid 89% amount i.e., **Rs.90,31,995/-** along with GST/Service tax and other allied charges of the actual purchase price, but when the complainants observed that there is no progress in the construction of said flat for a long time, he raised his grievance to the respondent. They were always ready and willing to pay the remaining instalments.
8. That since June 2020 the complainants regularly visited the office of the respondent as well as the construction site and made efforts to get the possession of allotted flat, but all in vain, despite several visits by the complainants. They have never been able to understand/know the actual status of construction. Though towers seem to be built up, no progress is observed on finishing and landscaping work, moreover, construction of adjoining towers is still at the middle level.
9. That on 06.05.2022, the complainants sent a grievance email to respondent and asked for a project completion date.
10. That the respondent has miserably failed to hand over the possession as per terms of BBA and as per the undertaking given before Authority. As per HARERA registration, the respondent has to complete the project by 30.06.2022.
11. That on 09.07.2022, the complainants sent an email to the respondent and asked for a refund of paid amount along with interest.

12. That the complainants had purchased the flat with the intention that after purchase, his family will live in their own flat. That it was promised by the respondent party at the time of receiving payment for the flat that the possession of a fully constructed flat along with split Ac unit in all bedroom, drawing & dining area, modular kitchen, wooden/vitrified tiles in bedroom, CCTV In common area and wi-fi enabled towers, etc. as shown in the brochure at the time of sale, would be handed over to the complainants as soon as construction work is complete i.e., by April 2020.
13. That the work on other amenities, like External, and Internal MEP (Services) not yet completed. Now it is more than 8 years from the date of booking and even the construction of only half of the towers is not completed. These towers are non-continuous meaning that the construction work continues in intermittent towers, and hence the other half remains non-liveable even if complete. It clearly shows the negligence on the part of the builder. As per conditions of the project, it seems that the project will take furthermore than a year to complete in all respect, subject to the willingness of respondent to complete the project.
14. That the facts and circumstances as enumerated above would lead to the only conclusion that service is deficient on the part of the respondent party and as such, they are liable to be punished and compensate the complainants.
15. That due to the above acts of the respondent and the terms and conditions of the builder buyer's agreement, the complainants have been unnecessarily harassed (mentally as well as financially) by the respondent, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.

16. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others is prima facie clear on the part of the respondent which makes them liable to answer the Authority.
17. That there is an apprehension in the mind of the complainants that the respondent has been playing fraud and there is something fishy that the respondent is not disclosing to the complainants just to embezzle the hard-earned money of the complainants. That nowadays many builders are being prosecuted by a court of law for siphoning off the funds and scraping the project mischievously. A probe needs to initiate to find out the financial and structural status of the project.
18. That for the first time cause of action for the present complaint arose **in January 2016**, when the buyer's agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose **in April 2020**, when the respondent failed to hand over the possession of the flat as per the buyer's agreement. Further, the cause of action again arose on various occasions, including on: **a) June 2020; b) October 2021; c) November 2021, and many times till date**, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time.
19. That the present complainant is not for seeking compensation, without prejudice, the complainants reserve the right to file a complaint before Adjudicating officer for compensation.

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

20. The complainants have sought following relief(s):

- i. Direct the respondent to refund Rs.90,31,995/-, the amount paid by the complainants to the respondent till date along with interest at the prescribed rate under Act of 2016.
  - ii. To refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the Apartment Buyer Agreement.
21. The authority issued a notice dated 06.08.2022 of the complaint to the respondent by speed post and also on the given email address at [info@pareena.in](mailto:info@pareena.in) and [parveen.soni@pareena.in](mailto:parveen.soni@pareena.in). The delivery reports have been placed in the file. The counsel for the respondent put in appearance on 07.03.2023 and 24.08.2023 but did not file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to strike off the defence of the respondent and decide the complaint on the facts submitted by the complainant which are not disputed by the respondent.

**D. Jurisdiction of the authority:**

22. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**

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.

## D.II Subject matter jurisdiction

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)(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.*

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.

23. 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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."*

24. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

**E. Entitlement of the complainants for refund:**

- E.1 Direct the respondent-builder to refund the entire amount paid by the complainants along with interest.

25. In the present complaint, the complainant intend to withdraw from the project and is seeking refund of the paid-up amount as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

**"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, —*

.....

*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)*

26. The project detailed above was launched by the respondent as group housing project and the complainants was allotted the subject unit in tower 4 on 12.12.2015 against total sale consideration of Rs.1,00,96,452/- and paid a total amount of Rs.90,31,995/-.
27. The authority has gone through the possession clause of the apartment buyer's agreement of the project and observed that the respondent-developer proposes to handover the possession of the booked unit within a period of 48 months from the date of signing of apartment buyer's agreement or commencement of construction, whichever is later. In the present case, the apartment buyer's agreement was executed on 25.1.2016 and construction of the project was commenced on 25.04.2016 as per the documents placed on file. The due date is calculated from the date of commencement of construction being later, so, the due date of subject unit comes out to be 29.04.2020. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being booked by the complainant is 25.04.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **25.10.2020.**
28. Due to delay in handing over of possession by the respondent-promoter, the complainants-allottee wishes to withdraw from the project of the respondent and filed the present complaint. Thus, keeping in view the fact

that the allottee- complainants wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per the apartment buyer's agreement is 26.10.2020 and there is delay of more than 01 year 09 months 01 day on the date of filing of the complaint i.e., 27.07.2022.

29. 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 they have 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 occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottee 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....."

30. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),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 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*

31. 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). 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 the allottee wish 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.
32. This is without prejudice to any other remedy available to the allottee(s) including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
33. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 90,31,995/- with interest at the rate of 10% (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*.

**F. Directions of the Authority:**

34. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent/promoter is directed to refund the amount i.e., **Rs.90,31,995/-** received by him from the complainants along with interest at the rate of 10% 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 amount.
  - ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
  - iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
35. Complaint stands disposed of.
36. File be consigned to the registry.

  
**(Ashok Sangwan)**  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2023