

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

Complaint no. : 1640 of 2023
Date of complaint: 20.04.2023
Date of decision : 27.10.2023

Sanjeev Kumar Singh
R/o: - House no. 231, 43-B, Gali no. 9, North Block,
Vipul Garden, Uttam Nagar, New Delhi

Complainant

Versus

M/s Pareena Infrastructures Private Limited
Office: C7A, IInd floor, Omaxe City, Central Mall,
Sohna Road, Sec-49, Gurugram, Haryana

Respondent

CORAM:

Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Vijay Partap Singh Advocate
Sh. Prashant Shoeran Advocate

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Coban Residencies, Sector - 99A Gurugram, Haryana
2.	Nature of the project	Group housing
3.	Project area	10.59 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2024
5.	Name of licensee	Monex Infra Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 35 of 2020 dated 16.10.2020 Valid up to 11.03.2024
7.	Unit no.	T-3, 1701, 17 TH floor (Page 24 of complaint)
8.	Date of allotment	27.11.2013 (Page 19 of complaint)
9.	Date of agreement	04.04.2014 (Page 22 of complaint)
10.	Possession clause	3.1 Possession clause <i>"3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans....."</i>

		<i>Emphasis supplied...."</i>
11.	Date of start of construction	16.10.2014 (Page 14 of the complaint)
12.	Due date of possession	16.10.2018 (4 years from the date of start of construction being later)
13.	Total sale consideration	Rs. 1,79,93,000/- (Page 3 of reply)
14.	Amount paid by the complainant	Rs. 1,06,32,471/- (page 16 of complaint)
15.	Occupation certificate	13.12.2022 (Page 21 of reply)
16.	Offer of possession	14.12.2022 (As stated by counsel of complainant at bar through proceeding dated 27.10.2023)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That one-sided development agreement and inordinate delay in possession has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and buyers even if they do not agree to a term, there are no option of modifying it or even deliberating it with the builder. He booked a flat and signed application form under the construction linked plan for a sale consideration of Rs. 1,23,47,465 /-. Further he was allotted flat no 1701 at tower T-3.

- II. That the respondent to dupe the complainant in their nefarious net even executed a one-sided builder buyer agreement signed between complainant and respondent ,just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant. That a flat buyer agreement with respect to the allotted unit was executed between the parties on 03/04/2014. The total consideration of the flat was Rs1,23,47,465 /- and other taxes and charges payable. He paid the amount towards the cost of flat as and when the demand were raised by the respondent in time bound manner. As per the BBA clause no 3.1 the respondent was supposed to hand over the actual physical possession of the flat to the complainant latest by 16/10/2018. That the complainant has paid the flat payment as demanded against the total consideration amount against the flat in time bound manner as per the construction linked plan .
- III. That as per clause 3.1 of the BBA the respondent was liable to hand over the possession of a said unit on or before 16/10/2018, considering the project commencement date from the date of environment clearance date 16/09/2016 That respondent has charged illegal interest on delayed instalment @ 24 % P.A. compounded quarterly interest as per clause 1.2(vii)a of BBA compounded at the time of every succeeding installments from the due date of instalments , as per the schedule of payments as per Annexure -II till the date of payment , whereas, as per BBA the offer of delay possession penalty for the builder towards buyers is just 10%p.a. This is totally illegal, arbitrary and unilateral.
- IV. The builder buyer agreement consists very stringent and biased contractual terms which are illegal, arbitrary, unilateral and

discriminatory in nature. As every clause of the agreement is drafted in a one-sided way, even a single breach of unilateral terms of builder buyer agreement by complainant, will cost him forfeiting of earnest money and about delay payment charges 15% and also the builder buyer agreement not drafted as per the RERA act 2016.

- V. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Sector 99A, Gurugram, Haryana which is within the jurisdiction of this Hon'ble Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. **Direct the respondent to pay delayed possession charges on the amount paid.**
 - II. **Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after getting occupancy certificate.**
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
- 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 respondent has already completed the concerned unit as the list of and occupation certificate of the same is attached herein as letter dated 14th of December 2022 & email dated 15-12-2022, a letter of offer of possession was issued to the complainant. It is submitted that construction of the concerned unit as well as tower was stands

completed in the month of April 2022 itself and thereafter an application for obtaining occupation certificate was filed by the respondent before the concerned authority. Thus, the reason for filing the present complaint is absolutely baseless.

- iii. That admittedly completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfill the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds.
- iv. Thus, the situation of non -payment of amount by the allottees is beyond the control of respondent. It is submitted that even in the apartment buyer agreement it was stated that period of 4 years was subjected to normal conditions and force majeure and with any stretch of imagination situations faced by respondents are not normal.
- v. That other than above stated factor there are lots of other reason which either hamper the progress of construction of in many cases complete stoppage of construction work.
 - Date of Order : 7th of April 2015
 - Directions : National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi.
 - Period of Restriction/ Prohibition :7th of April 2015 to 6th of May 2015
 - Effect of order : The aforesaid ban affected the supply of raw materials as most of the contractors/ building material suppliers used diesel vehicles more than 10 years old.

- Date of Order : 19th of July 2017
 - Period of Restriction/ Prohibition : Till date the order is in force and no relaxation has been given to this effect.
 - Effect of order : The directions of NGT was a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravel directly affected the supply & price of ready mix concrete required for construction activity. The Hon'ble supreme court in Nov 2019 wherein it was ordered that "With respect to demolition and construction activities we direct that no demolition and construction activities take place in Delhi and NCR region.
7. That the situation of COVID pandemic is in the knowledge of everyone, that since March 2020 till now our country has seen mass migration of laborers, complete lockdown in whole of the country, curfews and several other restrictions. That present situation seriously hampers the construction progress in real estate sector.
8. That it is the admitted fact that the builder buyer agreement was executed between the parties on 19th of April 2014.
9. That from above stated figures it is clear that complainant never paid on time and complete amount since 2014 itself. It is submitted that without fulfilling ones duty no one has any right to seek any relief. It is further submitted that rights are reciprocal to duties and in order to seek possession on time allottee has a duty to pay on time but in the present payment in time out of question, since the complainant has not even bothered to pay the demands raised by the respondent over a period of time and against appropriate stage of construction. That these defaults in itself clarifies the fact that complainant himself has not come before the Hon'ble forum with clean

- hands, thus their complaint is liable to be dismissed with cost. It is submitted that allottee rights are governed through their duties and if they failed to fulfill their duties, than they have no right to seek refund as alleged in present complaint. That none is allowed to take benefit of their own mistake.
10. 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 delayed possession charges is granted than it would be absolutely against the natural justice. It is pertinent to mention here that whatsoever amount which was received by respondent qua construction as already been utilized for construction and it is the complainant who delayed in payments. Thus, he cannot put blame upon respondents. Thus, keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.
 11. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents, submissions by the parties and written submissions of the complainant.

E. Jurisdiction of the authority

12. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

14. 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.

15. 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 the respondent to pay interest on account of delay in offering possession on the amount paid by complainant from the date of payment till the date of delivery of possession.

16. In the instant case, the builder-buyer agreement was executed between the parties on 04.04.2014, and as per clause 3.1 of the said agreement, the possession was to be handed over within four years from the date of start of construction(16.10.2014) or execution of agreement(04.04.2014) whichever is later. The due date is calculated from date of start of construction being later. The said clause 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 with 4

*years of the start of construction or execution of this Agreement whichever is later, as per the said plans.....
Emphasis supplied....."*

17. The due date of possession comes out to be 16.10.2018. However, the respondent obtained the occupation certificate only on 13.12.2022, and thereafter the offer of possession was made to the complainant on 14.12.2022.
18. In the instant case, the complainant has continued with the project and are seeking DPC as provided under the proviso to sec 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."*

19. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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's 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.

20. 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.

21. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as of the date i.e., 27.10.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., **10.75%**.
22. The definition of the term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest that the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.75%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
24. On consideration of the circumstances, the documents, submissions made by the parties, and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of

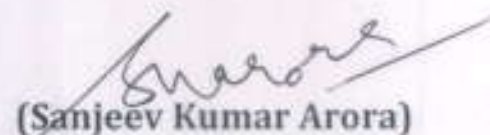
clause 3.1 of the agreement executed between the parties on 04.04.2014, the possession of the subject unit was to be delivered within four years from the date of start of construction(16.10.2014) or execution of agreement(04.04.2014) whichever is later. The due date is calculated from date of start of construction being later. The due date of possession comes out to be 16.10.2018. The respondent failed to hand over possession of the subject unit by that date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is a delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement executed between the parties.

25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of a delay from the due date of possession i.e., 16.10.2018 till the date of the offer of possession i.e. 14.12.2022 plus 2 months which comes to 14.02.2023 at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the Authority:

26. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with 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 is directed to pay delayed possession charges to the complainant against the paid-up amount for every month of delay from the due date of possession i.e. 16.10.2018 till the offer of possession i.e. 14.12.2022 plus two months which comes to 14.02.2023 at the prescribed rate 10.75% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - II. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - III. The respondent shall also charge interest on delay payment on equitable rate of interest.
 - IV. The promoter shall not charge anything which is not a part of the BBA.
 - V. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
27. Complaint stands disposed of.
28. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.10.2023