

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

Complaint no. : 1585 of 2023
Date of complaint: 17.04.2023
Date of decision : 22.03.2024

Hemant Ramchandani
R/o: - Samraat Tropicano Apartment, Serene
Meadows, E-wing, Flat no. 602, Anandwali
Gangapur Road, Nashik, Maharashtra - 422013

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. Gaurav Rawat Advocate

None

**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 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	"The Elite Residencies, Sector - 99, Gurugram, , Haryana
2.	Nature of the project	Group housing
3.	Project area	13.32 acres
4.	DTCP license no.	70 of 2011 dated 22.07.2011 valid up to 21.07.2024
5.	Name of licensee	Shivnandan Buildtech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 46 of 2019 dated 25.09.2019 area admeasuring 32425 sqm. Valid up to 31.07.2020 Registration expired
7.	Unit no.	A-707, 17th floor (Page 35 of complaint)
8.	Date of allotment	09.05.2013 (Page 29 of complaint)
9.	Date of agreement	20.10.2016 (Page 32 of complaint)
10.	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 with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans</i>
11.	Due date of possession	20.04.2021

		20.10.2020 + 6 months w.r.t. COVID (calculated from the date of execution of agreement as date of start of construction is not available in the file)
12.	Total sale consideration	Rs. 1,21,67,795/- (page 109 of reply)
13.	Amount paid by the complainant	Rs. 90,70,691/- (page 110 of reply and also as per page 4 of complaint)
14.	Occupation certificate	09.11.2022 (Page 23 of reply)
15.	Offer of possession	25.11.2022 (Page 76 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
4. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant booked a unit in the project by paying an amount of Rs. 11,00,000/- dated 21.04.2013 towards the booking of the said unit bearing no. A-707, Tower-A(T-3), in Sector 99, Gurugram, having super area measuring 1865 sq. ft. to the respondent dated 21.04.2013 and the same was acknowledged by the respondent. The respondent confirms the booking of the said unit to the complainant vide allotment letter dated 09.05.2013, asking to get submitted the relevant documents provided in the letter and the same was duly submitted by the complainant on time. Further, providing the details of the project, confirming the booking of the unit dated 21.04.2013, allotting a unit no. A-707, tower-A(T-3), admeasuring 1865 sq. ft. in the aforesaid project of the developer for a total sale consideration i.e. Rs.1,21,67,795/- including basic sale price, car

parking charges and development charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.

5. That after repeated request and reminders by the complainant and after delay of more than 3 years respondent sent a letter to the complainant along with copy of buyer's agreement and MOU requesting to sign and return all the copy. The respondent very clearly stated in the said letter that the buyer's agreement was in terms of allotment letter already sent by the respondent.
6. That an apartment buyer's agreement and MOU was executed between the parties on 20.10.2016. As per clause C of the MOU/buyer's agreement the respondent had to deliver the possession, under normal condition, 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 late. Therefore, the due date of possession comes out to be 20.10.2020. Furthermore, As per clause C of the said memorandum respondent undertake to pay pre-EMIs to bank i.e. for period of 24 months or till offer of possession and if there is delay in completing the said unit beyond the period in that case respondent further undertake to pay pre-EMIs to beyond period of 24 months to intended financial institute/buyer. That respondent had failed to fulfil the above said promise as per the said memorandum of understanding dated 20.10.2016 and burden of paying the pre-EMIs to bank has been shifted upon him. Therefore, due to the above act of the respondent, the complainant had suffered financial loss. Further, the above said act of the respondent had also led the complainant to suffer mentally and physically.
7. That bank sent letter dated 25.10.2016 to the complainant confirming the approval of the loan on the said property. Further providing the loan account

number, sanctioned loan amount, interest rate, tenure period of the loan and other terms and conditions.

8. As per the demands raised by the respondent, based on the payment plan, he had to buy the captioned unit already paid a total sum of Rs. 90,70,691.88 towards the said unit against total sale consideration of Rs. 1,21,67,795/-.
9. He contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the possession and was never definite about the delivery of the possession. It has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BA and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
10. That complainant sent various communications to the respondents raising various issues in relation to the said unit and asking the reason for delay in handing over the possession of the unit and time line within which possession will be handed over to the complainant and challenging the various illegal and one sided demands letters sent to the complainant and non-payment of the Pre-EMIS but respondents till date has failed to provide any satisfactory response to the complainant.
11. He after many requests and emails; received the demand letter on account of offer of possession dated 25.11.2022. It is pertinent to note here that along with the above said demand letter respondent raised several illegal demands on account of the following which are actually not payable as per the buyer agreement:

Interest – Rs.2,22,903/-

IFMS of Rs. 93,250/-

Advance maintenance charges of Rs. 92,429/-

Admin charges of Rs. 17,700/-

SBC-Rs.7,74,942/-

External electrification charges Rs.74,185/-

12. The complainant after losing all the hope from the respondent company, having their dreams shattered & having basic necessary facilities in the vicinity of project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s).

- i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BA.
- ii. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per rera from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.
- iii. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed/ sale deed.
- iv. Direct the respondent from raising fresh demand for payment under any head, as the construction is abundant at the project site.

- v. Direct the respondent not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
 - vi. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
 - vii. Direct the respondent not to charge penal interest of Rs. 2,22,903/- on account of delay payment as complainant never made delay in payment.
 - viii. Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like IFMS, electrification charges, advance maintenance charges etc, which in any case is not payable by the complainant.
 - ix. Direct the respondent to provide the exact lay out plan of the said unit.
14. 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

15. 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 "Elite Residencies" at Sector 99A.
 - ii. That the respondent has already completed the concerned unit as the list of and occupation certificate and thereafter offered possession to



complainant vide letter dated 25.11.2022. 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. 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 : 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.

16. 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.
17. That it is the admitted fact that the builder buyer agreement was executed between the parties on 20.10.2016.
18. The complainant has intentionally provided details of payments qua which complainant had delayed and even qua the amount which was adjusted by respondent in shape of credit notes.1. credit note against subvention interest – Rs. 6,62,748/-.
19. 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.
20. 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

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

E.I Territorial jurisdiction

22. 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

23. 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.

24. 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 handover physical lawful peaceful possession of the flat to them as per the provisions of the agreement along with delay possession interest to be paid by it.

25. In the instant case, the builder-buyer agreement was executed between the parties on 20.10.2016, 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(not available) or execution of agreement(20.10.2016) 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....."*

26. The due date of possession comes out to be 20.04.2021 (20.10.2020 + 6 months of COVID). However, the respondent obtained the occupation certificate only on 09.11.2022, and thereafter the offer of possession was made to the complainant on 25.11.2022.

27. 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."

28. **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.

29. 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.
30. 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., 22.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., **10.85%**.
31. The definition of the term 'interest' as defined under section 2(za) 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:
- "(za) "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;"*

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
33. Vide proceeding dated 12.01.2024, the counsel for the complainant stated that the due date of possession of the unit was 20.04.2021 and OC of the project has been received by the respondent on 09.11.2022 and after that an offer of possession was sent on 25.11.2022 alongwith a demand letter of Rs.40,84,246/- and stamp duty and registration charges which is Annexure A at page 78 The counsel for the respondent states that offer of possession was given well within the norms given in the RERA Act of 2016 and further stated that as regards the alleged charging of interest @ 18% it is clarified in the offer of possession itself which is at page 77 of the complaint that the interest being charges is @ 10.45% which was applicable at that point of time. The counsel for the respondent states that as per the MoU dated 20.10.2016 which is at page from 72 to 75 of the complaint as per clause 9 of which the developer had to pay pre-EMI for 24 months or up to the date of offer of possession whichever is earlier and accordingly, the respondent had paid pre-EMI on the basis of that MoU. The counsel for the respondent denies having received Rs.90,70,691/- from the complainant and states that the complainant may produce its own bank statement or receipts issued by the respondent to prove the same whereas the counsel for the respondent states that as per page 111 of the reply, it is clearly mentioned that a sum of Rs.06,62,748/- has been credited by the respondent on 02.12.2016 on account of the amount of subvention scheme amount which the respondent credited to the complainant instead of paying to the bankers and further stated that the respondent paid to the bankers/Indiabulls only for 24

months and for another 24 months, the sum was credited to the complainant.

34. 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 20.10.2016, the possession of the subject unit was to be delivered within four years from the date of start of construction(not available) or execution of agreement(20.10.2016) whichever is later. The due date is calculated from date of agreement. The due date of possession comes out to be 20.04.2021. 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. It is also to be taken on record that total amount paid as per statement of account dated 05.03.2019 is Rs. 84,07,943/- and Rs.6,62,748/- is an amount which is termed as credit note that is credited by the respondent.

35. 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., 20.04.2021 till the date of the offer of possession i.e.

25.11.2022 plus 2 months which comes to 25.01.2023 at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules after deducting an amount of credit note of Rs. 6,62,748/-.

36. The Authority observes that as per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide details of license and statutory approvals to the complainant within a period of 30 days.

Direct the respondent not to charge penal interest of Rs. 2,22,903/- on account of delay payment as complainant never made delay in payment.

Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

37. The above-mentioned reliefs have not been pressed during proceedings by either of the parties. So, no directions in this regard can be effectuated at this stage.
38. Separate proceeding to be initiated by the planning branch of the Authority for taking an appropriate action against the builder as registration of the project has been expired.

G. Directions of the Authority:

39. 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. 20.04.2021 till the offer of possession i.e. 25.11.2022 plus two months which comes to 25.01.2023 after deducting an amount of credit note of Rs. 6,62,748/-.

- II. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
 - 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. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 09.11.2022. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.
40. Complaint stands disposed of.
41. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2024