

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

Complaint no. : 5403 of 2023
Date of complaint : 21.11.2023
Date of order : 03.07.2024

1. Rajat Walia,
2. Nidhi Walia,
Both R/o: - H. No. 39B, Pocket A-9,
Kalka Ji Extn., New Delhi-110019.

Complainants

Versus

M/s Pareena Infrastructures Pvt. Ltd.
Regd. Office at: - C-7A, 2nd floor,
Omaxe City Centre Mall, Sohna Road,
Gurugram, Haryana.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Pankaj Yadav (Advocate)
Prashant Sheoran (Advocate)

**Complainants
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 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	"Coban Residences", sector-99A, Gurgaon
2.	Nature of the project	Group Housing Project
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.06.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
7.	Unit no.	1203, tower T-3, 12 th Floor (Page 22 of complaint)
8.	Unit admeasuring area	1997 sq. ft. of super area
9.	Allotment letter	N/A
10.	Date of builder buyer agreement	04.04.2014 (Page 20 of complaint)
11.	Possession Clause	3.1. Possession <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 or execution of this agreement, whichever is later. (Emphasis supplied)</i>

12.	Date of start of construction	01.10.2014 (start of excavation) (Page 27 of reply)
13.	Due date of possession	01.10.2018 (calculated from the date of start of construction)
14.	Total sale consideration	Rs.1,18,36,732.25/- (Page 42 of complaint)
15.	Total amount paid by the complainant	Rs.1,07,41,974.62/- (Page 61 of the complaint)
16.	Occupation certificate	13.12.2022 (page 17 of reply)
17.	Offer of possession	14.12.2022 (page 51 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted a flat bearing no. T-3/1203, having 1997 sq. ft. super area in project of the respondent named Coban Residences, Sector-99A Gurugram vide builder buyer's agreement dated 04.04.2014 for a basic sale consideration of Rs.1,07,41,975/- against which they have paid a sum of Rs.1,07,41,975/- upto 19.03.2021.
- II. That as per clause 3.1 of the agreement, the respondent was under legal obligation to handover the possession of the above said flat within 48 months from the date of execution of the builder buyer agreement.
- III. That the complainants visited the site during the course of construction and noticed and found that the construction work was delayed beyond the possession date and since then they have been trying to communicate to the respondent by visiting their offices and



through various modes including but not limited to telephonic conversations and personal approach etc.

- IV. That the complainants have made all the payments against the demands raised by the respondent as per the payments plan of the agreement without any delay and default. The complainants have also paid for the development charges of the project.
- V. That till today the complainants had not received any satisfactory reply from the respondent regarding completion of the project. The complainants have been suffering a lot of mental, physical and financial agony and harassment.
- VI. That the respondent has not completed the construction of the said project till now and the complainants have not been provided with the possession of the said flat despite several and repeated promises and representation made by respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - I. Direct the respondent to handover possession of the unit and to pay delay possession charges as per the Act.
 - II. Direct the respondent to pay an amount of Rs.50,000/- towards legal expenses.
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 contested the complaint by way of reply dated 06.03.2024 on the following grounds: -
 - i. That the respondent has already completed the concerned unit and after obtaining occupation certificate from the competent authority,



- the respondent vide letter dated 14.12.2022 and email dated 15.12.2022, offered possession of the same to the complainants, yet they didn't come forward for taking possession.
- ii. That in the complaint complainants themselves have admitted that they have only paid an amount of Rs.1,07,41,975 and in offer of possession, the respondent has duly compensated the complainant by adding extra Rs.4,49,657/- out of its own pocket.
 - iii. That in the present complaint, the complainants have alleged that construction is not complete. It is submitted that construction of the concerned unit as well as tower 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.
 - iv. That the construction of the said project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which were beyond the control of the respondent, which have materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:
 - a) Delay in construction due to various orders/restrictions passed by National Green Tribunal, Delhi and other competent authorities for protecting the environment of the country.
 - b) Ban on construction due to various court orders as well as government guidelines.
 - c) The major outbreak of Covid-19.
 - v. That as per clause 3.1 of the agreement, the date for handing over of possession was to be calculated from the date of start of construction and the construction was started on 01.10.2014.



- vi. That the complainants are intentionally not coming forward for taking possession. That as per offer of possession complaint is still liable to pay amount as mentioned in said letter along with accrued interest and maintenance charges etc.
7. 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 submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

8. 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

9. 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.

10. 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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding force majeure conditions.

11. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, ban on construction by the orders of Hon'ble Supreme Court, non-payment of instalment by different allottee of the project and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 01.10.2018. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Further, the fact cannot be ignored that there might be certain group of allottees who defaulted in making payments. But upon perusal of documents on record, it is observed that no default has been made by the complainants in the instant case. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.



G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover possession of the unit and to pay delay possession charges as per the Act.

12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges 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.”

13. Clause 3.1 of the buyer’s agreement provides for handing over of possession and 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 within 4 years of the start of construction or execution of this agreement, whichever is later...”

(Emphasis supplied)

14. The respondent/promoter has proposed to handover the possession of the subject apartment within a period of 4 years from the date of start of construction i.e., 01.10.2014 or execution of the buyer’s agreement i.e., 04.04.2014, whichever is later. Thus, the due date of possession come out to be 01.10.2018.

15. **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 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.

17. 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.

18. 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., 03.07.2024 is **8.95%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.95%**.

19. The definition of 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 which 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;"*

20. Therefore, interest on the delayed payments from the complainants shall be charged at the prescribed rate i.e., **10.95%** by the respondent/



promoter which is the same as is being granted to it in case of delay possession charges.

16. On consideration of documents available on record as well as submissions made by the parties, 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 apartment was to be delivered within 4 years from the date of start of construction or execution of the buyer's agreement, whichever is later. Therefore, the due date of handing over possession was 01.10.2018. The occupation certificate was granted by the concerned authority on 13.12.2022 and thereafter, the possession of the subject flat was offered to the complainants vide letter dated 14.12.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 04.04.2014 to hand over the possession within the stipulated period.
17. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.12.2022. The respondent offered the possession of the unit in question to the complainants only on 14.12.2022, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the



complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (14.12.2022) which comes out to be 14.02.2023.

21. 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 respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 10.95 % p.a. w.e.f. 01.10.2018 till the expiry of 2 months from the date of offer of possession (14.12.2022) which comes out to be 14.02.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G. II Cost of litigation expenses.

22. The complainants are seeking above mentioned relief w.r.t. litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.



Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

24. 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 is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.95% per annum for every month of delay from due date of possession i.e., 01.10.2018 till the expiry of 2 months from the date of offer of possession (14.12.2022) i.e., upto 14.02.2023 only.
- ii. The respondent is directed to supply a copy of the updated statement of account after adjusting the delayed possession charges within a period of 15 days to the complainants.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days from the date of receipt of updated statement of account.
- iv. The respondent is directed to handover possession of the unit/flat in question to the complainants in terms of Section 17(1) of the Act, 2016 and the complainants are also obligated to take physical possession of the allotted unit under Section 19(10) of the Act, 2016.
- v. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement. Further, the respondent-promoter shall not charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.



- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- vii. 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.
25. Complaint stands disposed off.
26. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.07.2024

HARERA
GURUGRAM