

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

Complaint no.	:	273 of 2024
Date of complaint	:	29.01.2024
Date of order	:	21.08.2024

M/s Passerine Wealth Solutions Pvt. Ltd.
(Formerly known as "M/s Integrated Wealth Solutions Pvt. Ltd.),
Regd. Office at: W-110, 2nd Floor, Uppal Southend,
Sohna Road, Gurugram-122002.

Complainant

Versus

M/s Pareena Infrastructures Private Limited
Regd. Office at: Flat no.2, Palm Apartments,
Plot no. 13B, Sector-6, Dwarka, New Delhi-110075.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Siddhant Goel and Pankaj Chandola (Advocates)
Prashant Sheoran (Advocate)

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 thereunder or to the allottee 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 Residentes", 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.	1604, tower T-3, 16 th Floor (Page 28 of complaint)
8.	Unit admeasuring area	1997 sq. ft. of super area (page 28 of complaint)
9.	Provisional allotment letter	27.11.2013 (page 24 of complaint)
10.	Date of builder buyer agreement	04.04.2014 (Page 26 of complaint)
11.	Endorsement of complainant	23.09.2014 (page 62 of complaint)
12.	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</i>

		agreement, whichever is later. (Emphasis supplied)
13.	Date of start of construction	01.10.2014 (start of excavation) (Page 25 of reply)
14.	Due date of possession	01.10.2018 (calculated from the date of start of construction)
15.	Total sale consideration	Rs.1,21,43,771/- (as per BBA at page 51 of complaint)
16.	Total amount paid by the complainant	Rs.20,27,971/- (as per cancellation letter at page 64 of the complaint)
17.	Occupation certificate	13.12.2022 (page 21 of reply)
18.	Demand letter	05.01.2021 (page 63 of reply)
19.	Pre-cancellation letter	23.01.2021 (page 66 of reply)
20.	Cancellation letter	23.02.2021 (page 70 of reply)

B. Facts of the complaint:

- I. That the complainant is a company incorporated under the Companies Act, 1956 having its registered office at W-110, 2nd Floor, Uppal Southend, Sohna Road, Gurugram-122002, Haryana.
- II. That the name of the complainant company has been changed from 'M/s Integrated Wealth Solutions Pvt. Ltd.' to 'M/s Passerine Wealth Solutions Pvt. Ltd.' on 18.06.2015.
- III. That in the year 2013, the erstwhile allottee (M/s Infinite Wealth Solutions) learned about project through marketing representative of the respondent and believing upon the tall claims and assurances made by the representative on behalf of the respondent, the erstwhile allottee booked an apartment in the said project.



- IV. That the erstwhile allottee was allotted an apartment bearing no. T3-1604, Tower 4, admeasuring 1997 sq. ft. on 16th Floor in the project of the respondent named "Coban Residentes" at Sector-99A, Gurgaon vide provisional allotment letter dated 27.11.2013. Thereafter, on 04.04.2014, an apartment buyer agreement was executed between them for a total sale consideration of Rs.97,77,312/- against which the complainant had paid an amount of Rs.20,27,971/- in all.
- V. That as per Clause 3.1 of the agreement, the respondent assured to handover the possession of the said apartment within a period of 4 (four) years from the date of execution of the agreement.
- VI. That believing upon the respondent, the complainant purchased the unit in question from the erstwhile allottee. Further, vide nomination letter dated 23.09.2014, the said apartment was transferred in favour of the complainant company and all the rights, and the agreement were stand transferred and endorsed in favour of the complainant.
- VII. That subsequent to execution of the agreement the complainant kept requesting the respondent and even visited the office of the respondent to intimate and know the exact status of the project, but the respondent failed to respond.
- VIII. That even in the early quarters of the year 2016, the complainant again visited the office of the respondent to know the exact status of the project, but no fruitful response was received from it. It is a matter of record that the complainant had diligently paying the instalments on the trust and faith of the respondent that the unit in question would be handed over within the proposed timelines.
- IX. That to the utter shock of the complainant, the respondent vide email dated 26.02.2021 sent a letter of cancellation dated 23.02.2021 of the

unit in question whereby the respondent cancelled the allotment of the said unit and forfeited the entire amount paid by it which is completely unlawful and non-est in the eyes of law.

- X. That the act of the respondent is in complete contravention to the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 which clearly states that respondent cannot deduct more than 10% of the basic sale consideration on cancellation of the unit. However, the respondent, in utter disregard of the said regulation, forfeited the entire amount paid by the complainant.
- XI. That even after such defaults and violation on account of the respondent, the complainant under the hope of getting the refund of the hard-earned money kept approaching the respondent to know the status of the refund of the hard-earned money paid by it, but all the request and reminder were left unanswered.
- XII. That without prejudice, the complainant reserves the right to approach the appropriate Authority to file its claim of compensation as the respondent had utterly failed to fulfil its obligations to deliver the possession in time or refund the money along with the interest and as a result had caused loss of money, loss of time, loss of resources, but also mental harassment and agony.

C. Relief sought by the complainant:

3. The complainant has sought following relief(s):

- I. Direct the respondent to refund paid-up amount along with interest.

D. Reply by respondent:

4. The respondent vide reply dated 10.04.2024 contested the complaint on the following grounds:



- i. That the complainant itself admits that the unit was already cancelled on 26.02.2021 and the present complaint has been filed after a delay of more than 1060 days from date of cancelation of allotment. Hence, the present complaint is barred by law of limitation.
- ii. That as per apartment buyer agreement the sale consideration of unit in question was Rs.1,21,43,771/- (excluding taxes and other charges) and as pleaded by complainant it has only paid an amount of Rs.20,27,971/- only. i.e. approx. 16.69 %.
- iii. 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.
- iv. That the respondent has already completed the concerned unit and has obtained occupation certificate of the same from the competent authority.
- v. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees.
- vi. That due to the fault of complainant, respondent suffered huge losses and the unit of complainant was rightfully cancelled and the same is legally valid.
- vii. 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.
- viii. That the complainant alleged that it had paid the amount as and when demanded by the respondent but failed to mention as to why the complainant failed to pay the remaining amount demanded by the respondent after nomination of flat in its favor.
5. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

7. 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

8. 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)(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.

9. 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 Objections regarding complaint being barred by limitation.

10. The respondent has contended that the present complaint is not maintainable and barred by the law of limitation as the the present complaint has been filed after a delay of more than 1060 days from date of cancelation of allotment. However, after considering documents available on record as well as submissions made by the parties, it is determined that post cancellation of the unit, the respondent has failed to refund the refundable amount to the complainant so far, which clearly shows a subsisting liability. Moreover, the deductions made from the paid-up amount by the respondent are not as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018. Further, the law of limitation is, as such, not applicable to the proceedings under the Act



and has to be seen case to case. Thus, the objection of the respondent w.r.t. the complaint being barred by limitation stands rejected.

F.II 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 complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, 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. 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 complainant:

G.I Direct to the respondent to refund the paid-up amount along with interest.

12. The original allottee i.e. M/s Infinite Wealth Solutions Pvt. Ltd. was allotted a unit bearing no. 1604, tower T-3, 16th Floor in the project of the respondent named "Coban Residences" at sector-99A, Gurugram vide apartment buyer's agreement dated 04.04.2014 for a sale consideration of Rs.1,21,43,771/-. Thereafter, vide nomination letter dated 23.09.2014, the said apartment was transferred in favour of the

complainant company and all the rights, and the agreement were stand transferred and endorsed in favour of the complainant. Out of the said sale consideration, the complainant has paid an amount of Rs.20,27,971/- in all against the said allotment. The complainant has submitted that the respondent vide email dated 26.02.2021 sent a letter of cancellation dated 23.02.2021 of the unit in question whereby the respondent cancelled the allotment of the said unit and forfeited the entire amount paid by it. However, the respondent has submitted that numerous demand letter/reminders were sent to the complainant to pay the outstanding dues as per the payment plan. However, the complainant defaulted in making payments and the respondent was to issue pre-cancellation letter dated 23.01.2021 giving last and final opportunity to the complainant to comply with his obligation before finally cancelling the allotment of the unit vide cancellation letter dated 23.02.2021. Copies of the same alongwith dispatch proof have been placed on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 23.02.2021 is valid or not.

13. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid an amount of Rs.20,27,971/- against the sale consideration of Rs.1,21,43,771/- and no payment was made by the complainant after its endorsement i.e. 23.09.2014. The respondent/builder has sent several reminders as per the payment plan agreed between the parties, before issuing a pre-cancellation letter dated 23.01.2021 giving last and final opportunity to the complainant to comply with its obligation to make payment of the



amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 23.02.2021. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 04.04.2014 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real

Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

14. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.20,27,971/- after deducting 10% of the sale consideration of Rs. 1,21,43,771/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 23.02.2021 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority:

15. 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 respondents/promoter is directed to refund the paid-up amount of Rs.20,27,971/- after deducting 10% of the sale

consideration of Rs. 1,21,43,771/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 23.02.2021 till its realization.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

16. The complaints stand disposed of.

17. Files be consigned to the registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.08.2023

HARERA
GURUGRAM