

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

Complaint no. : 3480 of 2024
Date of complaint : 25.07.2024
Order pronounced on: 13.02.2025

Anish Kumar Arora

Resident of: House no.18/82, Geeta Colony, Delhi-110031.

Complainant

Versus

M/s Pareena Infrastructures Pvt. Ltd.

Registered office: Flat no.2, Palm Apartments, Plot no.13B, Sector-6, Dwarka, New Delhi-110075.

Corporate address: C7A IInd Floor, Omaxe City Centre Mall, Sohna Road, Sector-49, Gurugram, Haryana-122018.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sukhbir Yadav, Advocate

Complainant

Shri Prashant Sheoran, Advocate

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 allottees as per the agreement for sale executed *inter se*.

A

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.No.	Particulars	Details
1.	Name and location of the project	"Coban Residences", Sector-99A, Gurugram
2.	Nature of the project	Residential
3.	Project Area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2014
5.	Name of licensee	M/s Monex Infrastructure 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.	303 on 3rd Floor, Tower- T-6 (As per page no. 39 of the complaint)
8.	Unit area admeasuring	1550 sq. ft. (As per page no. 39 of the complaint)
9.	Application form	27.11.2013 (As per page no. 39 of the complaint)
10.	Date of execution of flat buyer's agreement	11.01.2014 (As per page no. 42 of the complaint)
11.	Date of start of construction (excavation)	16.10.2014 (as mentioned in SOA dated 08.07.2024 at page 114 of complaint)
12.	Possession clause	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... [Emphasis Supplied]

		(As per page no. 55 of the complaint)
13.	Due date of possession	16.10.2018 (Note: The due date of possession is calculated 4 years from the date of start of excavation, being later)
14.	Total sale consideration	Rs.97,03,550/- (As per schedule of payment annexed with BBA at page 67 of complaint)
15.	Amount paid by the complainant-allottee	Rs.91,90,047/- (As per SOA annexed with offer of possession at page 93 of complaint)
16.	Occupation certificate	13.12.2022 (As per page no.24 of reply)
17.	Offer of possession	14.12.2022 (As per page no.92 of complaint)
18.	Emails from complainant (w.r.t adjustment of DPC and issuance of revised SOA)	18.02.2024, 20.02.2024, 24.02.2024, 07.04.2024, 16.04.2024, 22.05.2024, 29.05.2024 and 31.05.2024 (As per page no.97-98 of complaint)
19.	Cancellation letter (on Account of non-payment of Rs.11,53,760/-, as mentioned in OFP)	08.07.2024 (As per page no.117 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
- I. That the complainant is a law-abiding and peace-loving citizen and the respondent party is a company incorporated under the Companies Act, 1956.
 - II. That in August 2013, the complainant received a marketing call from the office of the respondent for booking in the residential project being developed by the respondent in the name of "Coban Residencies", situated in Sector 99A, Gurugram. The respondent party showed a rosy picture of the said project and allured the complainant through their lucrative advertisements. It is pertinent to mention here that the

A

respondent party represented that Pareena Infrastructure's well-known name in the real estate sector in Delhi NCR and has launched its new residential housing project "Coban Residencies" in sector 99A, Gurgaon. The society location is one of the most demanding searches in the property sector of Delhi NCR. Pareena Coban Residencies is offering 2 & 3 BHK spacious apartments at the best price range, the project is spread over 13 acres of land and apartments are in the range of 865-1999 sq ft. Its beautiful landscape and premium design of architecture will surely attract eyes of investors as well as the visitors. The said project is designed as per Vastu and it has all major facilities inside the gated society i.e., gymnasium badminton court, lawn tennis court, and swimming pool. The project has indoor activities such as a pool table and skating rink. Furthermore, it was represented that the project is located in Sector-99 A, Gurugram, a low-density haven with a wide frontage at the heart of a state-of-the-art engineering marvel: Dwarka Expressway. Access to the next hub of Delhi NCR and the promise of metro connectivity in the region make this location ideal for those who strive for the best for themselves.

- III. That being relied on representation & assurances of the respondent, the complainant decided to book an apartment/unit in the project of the respondent, therefore, the complainant booked a unit bearing no. 303, in Tower-T6, measuring 1550 sq. ft in the "Coban Residencies" project situated at Sector-99A, Gurugram for a total sale consideration of Rs.97,03,550/- under the construction linked payment plan. It is pertinent to mention here that the complainant also gave a cheque bearing no. 105640 dated 15.08.2013 of Rs.8,76,020/- against the booking amount, and also made a payment of Rs.9748/- through NEFT

A

on 05.09.2013. The respondent issued the payment receipt for the same on 15.10.2013.

- IV. That on 27.11.2013, the respondent issued an allotment letter for the residential unit bearing no. 303, in Tower-T6, measuring 1550 sq. ft.
- V. That the complainant kept on paying the instalments against the unit allotted to him as and when demands were raised by the respondent, and following the payment plan as well. The complainant after the allotment, on several occasions, asked the respondent for the execution of BBA, however, the respondent deliberately delayed the execution of BBA and the reason behind doing so is best known to the respondent.
- VI. That after a long and continuous follow-up by the complainant, on 11.01.2014, a pre-printed, arbitrary, unilateral, and ex-facie BBA was executed inter-se the respondent and the complainant. It is pertinent to mention here that as per the possession clause of the said BBA i.e., clause 3, the respondent was obligated to give possession of the complainant's unit within 4 years from the date of start of construction or the date of execution of BBA, whichever is later. It is relevant to note here that the respondent had raised a demand on account of the start of excavation on 16.10.2014, therefore, the due date of possession was 16.10.2018. It is again pertinent to mention here that the respondent delayed the execution of BBA for wrongful gain. It is relevant to note here that as per the said BBA, the total consideration of the unit in question is Rs.97,03,550/- and the respondent put one-sided clauses by using its dominant possession, and the complainant had signed on the said BBA under the compelling circumstances.
- VII. That by 2019, the complainant had made a payment of Rs. 89,75,556/- against the unit allotted to him. It is pertinent to mention here that the complainant several times asked the respondent to issue a statement of

A

account for his unit. However, the respondent never paid any heed to the reasonable demand of the complainant and neither gave possession on or before the due date of possession of the complainant's unit.

- VIII. That the complainant has been persistently seeking possession of his unit, but the respondent has failed to provide a firm date or any meaningful updates on the status of the unit's delivery. Notably, the unit was booked in 2013, and it has now been almost 11 years since the initial booking, yet the respondent has still not handed over possession of the unit, leaving the complainant in a state of uncertainty.
- IX. Thereafter, on 14.12.2022, the respondent sent an offer of possession letter against the unit of the complainant i.e., unit bearing no. 303, in Tower-T6, measuring 1550 sq. ft. In the said offer of possession letter, the respondent raised a demand of Rs.10,71,455/- in which Rs.42,748/- was demanded on account of "interest" which is not justified and payable in any manner since the respondent party did not mention which interest is being charged in Annexure -A of the said letter. Furthermore, the respondent asked for the execution of indemnity cum undertaking from the complainant. It is pertinent to mention that the contents of the indemnity cum undertaking are arbitrary and one-sided favoring the respondent. Hence, the said offer of possession is not tenable in the eyes of the law. Additionally, it is highly crucial to note here that the respondent party has failed to deliver the possession of the unit in question to the complainant on or before 16.10.2018 and did not pay any delayed possession charges to the complainant upon its failure to give possession on time. The complainant has made a payment of Rs.91,90,047/- much before the date of the said offer of possession, therefore, if we calculate the delayed possession charges on the amount paid by the complainant from the due date of possession till offer of

possession then it comes out of Rs.40,40,239/-. This amount of delayed possession charges far exceeds the demand made by the respondent in their offer of possession letter.

- X. Thereafter, on 16.12.2022, the respondent sent an email to the complainant and informed through the said email that the respondent had obtained the occupancy certificate for its project "Coban Residencies" and further asked to honour the demand raised by the respondent in its offer of possession letter dated 14.12.2022. It is noteworthy that the complainant repeatedly requested the respondent, via email, to provide a detailed justification for the interest amount charged in their offer of possession. Despite multiple attempts, the respondent failed to respond or provide any clarification, leaving the complainant with unanswered questions and a lack of transparency regarding the interest charges. Subsequently, a series of emails were exchanged between the parties regarding the interest amount, but the respondent remained unresponsive and failed to provide a satisfactory explanation or justification for the interest charges, despite the complainant's repeated requests for clarity. It is pertinent to mention here that the complainant asked for the delayed possession interest from the due date of possession, but the respondent failed to credit the delayed possession interest in the alleged offer of possession.
- XI. That the complainant had secured a home loan from the State Bank of India to pay the sale consideration of the unit and pay interest on said loan.
- XII. That the complainant made all the payments against the instalments of the unit in question and demands raised by the respondent timely and has paid a sum of Rs.91,90,047/- in total by 2019 as reflected in statement of account dated 08.07.2024. It is pertinent to mention here

Ad

that the complainant was always ready and willing to make further instalments against the demands raised by the respondent in the offer of possession letter Rs.91,90,047/- However, the respondent's failure to provide a clear justification for the interest charges, despite multiple requests, effectively prevented the complainant from making further payments.

- XIII. That after over 2 years of unresponsiveness, the respondent suddenly and arbitrarily cancelled the complainant's unit via a cancellation letter dated 08.07.2024, citing non-payment of the demand raised in their offer of possession letter dated 14.12.2022. This abrupt cancellation of the unit despite the complainant's repeated attempts to communicate highlights the malafide intentions of the respondent party. Furthermore, the respondent cancelled the unit of the complainant without following the due course of law since no reminders for the payment and pre-cancellation letter were ever sent by the respondent prior to the said cancellation letter dated 08.07.2024.
- XIV. That the main grievance of the complainant in the present complaint is that despite the complainant having paid more than 94% of the actual cost of the flat and is ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of flat on promised time. It is pertinent to point out that the delayed possession penalty will be more than the amount of demand raised by the respondent in the offer of possession letter.
- XV. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, they are liable to be punished and compensate the complainant.

A

- XVI. That it is submitted that the picture that emerges from the above-stated facts and circumstances, is clearly demonstrative of the callous and misconduct of the opposite party adopted towards the complainant. The manner in which the opposite party has conducted itself demonstrates that its main concern is to enjoy lacs of rupees collected from the Allottee and divert the same to its other projects. That the above acts, omissions and neglect only show that the opposite party is making false promises and cheating its customers to make illegal, unjustified, and wrongful benefits. The complainant has no other recourse and hence, is now approaching the Hon'ble Authority to seek corrective measures and relief for the loss and harm suffered.
- XVII. That due to the acts of the above and the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XVIII. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent party which makes them liable to answer this Hon'ble Authority.
- XIX. That the cause of action for the present complaint arose in January 2014, when one-sided terms and conditions of the BBA were forced upon the complainant. The cause of action further arose in October 2018, when the respondent party failed to hand over the possession of the flat as per the buyer agreement. The cause of action arose on various occasions, including on a) Dec 2022; b) June 2023 c) Sep 2023 d) Feb 2024 , e) April 2024, f) July 2024 , and on many times till date, when the protests were

A✓

lodged with the respondent party about its failure to deliver the project, the assurances were given by it that the possession would be delivered by a certain time, however, all the promises and assurances of the respondent were fake and wrongs. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

XX. That the complainant does not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under Section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.

XXI. That the present complaint is not for seeking compensation, without prejudice, complainant reserves the right to file a complaint to Adjudicating Officer for compensation.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
 - i. To get an order in his favor to set aside the alleged cancellation letter since the said cancellation letter was sent without following the due process of law and also, the delayed possession charges amount more than the demand raised by the respondent.
 - ii. To get possession of the fully developed/constructed flat with all amenities (after obtaining of OC).
 - iii. To get the delayed possession interest @ prescribed rate from the due date of possession (complete in all respect with all amenities).
 - iv. To get an order in his favour by directing the respondent party to execute the conveyance deed of the complainant's unit.

Ad

v. That in interest of justice, this authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while decided the present complaint and the respondent has not only treated the complainant unfairly but many other such buyer's.

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/builder.

6. The respondent has contested the complaint by filing reply 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 Residencies" at sector 99 A.
- II. That the respondent has already completed the concerned unit and occupation certificate of the same is attached herein as Annexure R1 and vide letter dated 14.12.2022 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. That the respondent is a committed real estate developer, who is developing various residential colonies as per rules and law.



- III. That quite conveniently certain pertinent facts have been concealed by the complainant. The concealment has been done with a motive of deriving undue benefit through an order, which may be passed by this Hon'ble forum at the expense of the respondent.
- IV. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of instalments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainant have already been spent in the development work of the proposed project. That the allotment of complainant was validly cancelled as per agreed terms and conditions. That the amount deducted was as per terms and conditions of agreement. That the authority will appreciate that cancellation was done after obtaining of Occupation certificate and the RERA itself recognized it several judgments that if the cancelation has been done after obtaining of occupation certificate than the builder is entitled to deducted taxes and other non-refundable charges.
- V. That it has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundation less allegations will be admitted then, interest of other genuine allottees of the project, will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.
- VI. That admittedly completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid

Par

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 completed the project by managing available funds.

VII. 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. Few of the examples of such factor are

- Delay in construction due to various orders/ restrictions dated 07.04.2015, 19.07.2017, 07.11.2017, 29.10.2018 & 11.10.2019 passed by National Green tribunal, New Delhi and other competent authorities for protecting the environment of the country.
- Ban in construction due to various court orders as well as government guidelines.
- The major outbreak of Covid-19.

VIII. 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. That from march 2020 till now, there have been several months where construction work was completely stopped either due to nationwide lock down or regional restrictions, that metro cities like Gurgaon and Delhi suffered from a major outburst of COVID cases and deaths in such a number which can't be comprehended. That there has severe dearth of labour due to state-imposed restrictions. That developers were helpless in these times since they had no alternative but to wait for the situation to come under

A

control. That even RERA has extended the time limits for completion of project vide notification dated 26-05-2020, by six months. But the aforesaid was the period evidencing the first wave but the relaxation in restrictions were seen at fag end of year 2020 however soon thereafter our country saw a more dangerous variant of COVID from the month of March 2021 and only recently restrictions have been lifted by the government. That whole of this consumed more than 11 months wherein 2/3d time there could be no construction and rest of the time construction progressed at very slow pace to several restrictions imposed by state government on movement and number of persons allowed etc. That the Hon'ble authority would appreciate the fact that developer has to face several difficulties in construction of project few out of the several are already discussed above and moreover complainant did not opt services of respondent against a single unit isolated from whole of the project or other units in same tower. That at the time of seeking allotment in the project of respondent, complainant very well knew that unit /apartment in question is a part of tower consisting of several other units and the unit shall be completed along with other units which belong to other allottees. It is submitted that merely because complainant had paid on time, it does not fulfill the criteria of complete payment required for construction of whole of the tower/project. That the complainant knew that without complete payment on time from all allottees it is not possible or quite difficult to complete the project on time. It is submitted that for the same reason the clause of "force majeure" was made part of agreement. It is submitted that it is absolutely beyond the control of developer to get money from the buyer on time. It is submitted that after a demand was raised, the only thing developer can do is to send a reminder and in

A

extreme cases cancellation. But reminders /cancellation do not bring money which the developer had already incurred.

- IX. That it is the admitted fact that the builder buyer agreement was executed between the parties on 11.01.2014. However, certain extremely important facts were concealed by the complainant while drafting the present complaint. That the complainant has intentionally provided details of payments only but concealed the facts whether the payments were made on time or not. That complainant falsely pleaded in their complaint that they have paid all the demands as and when demanded/raised by the respondent. It is submitted that material, labour and other requirements does not comes for free and if allottees wishes to get the possession on time than it is their legal duty to pay on time, since without money it is not possible to construct the project on time. That complainant intentionally did not produce demand letters and reminders issued by respondent, for the reason that they have not paid demand in timely manner. That complete detail of default and payments are as follows:

Sr. no.	Stage	Amount demanded	Date of demand/reminder	Due date	Amount paid	Date of payment
1.	On start of excavation	1008143	01.10.2014	15.10.2014	928054 +70000 =998054	16.10.2014 20.10.2014
2.	On completion of stilt floor roof	707193	05.02.2016	25.02.2016	700121	25.02.2016
3.	On the completion of 3 rd floor roof/slab	767941	05.05.2016	25.05.2016	760262	01.06.2016
5.	On the completion of 6 th floor roof/slab	763248	08.09.2016	28.09.2016	751583	27.09.2016
6.	On the completion of 9 th floor roof/slab	1003580	03.01.2017	23.01.2017		
7.	Reminder	1004995	24.01.2017	Asap	1003580	08.03.2017
8.	On the completion of	831718	16.05.2017	05.06.2017	801851	03.06.2017



	12 th floor roof/slab					
9.	On the completion of 15 th floor roof/slab	825026	06.10.2017	26.10.2017	816776	26.10.2017
10.	On completion of 18 th floor roof/slab	437248	14.02.2018	05.03.2018	432275	10.03.2018
11.	On the completion of final floor roof/slab	432755	21.06.2018	11.07.2018	NA	
12.	Reminder	433663	13.07.2018	Asap	428428	08.08.2018
13.	On completion of brick work	441266	01.11.2018	19.11.2018	428391	30.05.2019
14.	On completion of flooring	446813	03.03.2021	19.03.2021		
15.	Reminder	449587	10.04.2021	Asap		
16.	Reminder 2	458331	22.06.2021	Asap	4,14,179	10.07.2021
15.	Offer of Possession	1153760	14.12.2022	30.12.2022		
16.	Intimation of demand	1215947	07.07.2023	07.07.2023		

- X. That from above stated figures it is clear that complainant committed breach of contract and defaulted in making payment since very beginning, thus the respondent is entitled to levy interest on delayed payment. That while raising any demand specific time limit was given to allottee to make payment and any default would render him to pay interest. It is submitted 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 on time the demands raised by the respondent over a period of time and against appropriate stage of construction. 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 possession as alleged in present complaint as the unit has already been cancelled after waiting for more than sufficient period and after following due process as per agreement. That it is

A✓

specifically agreed by the allottee/complainant that if allottee fails to take possession than the builder has discretion to cancel the allotment after expiry of time granted to take possession. That said cancellation was duly received by complainant. That none is allowed to take benefit of their own mistake. Thus, keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed. It is submitted that since there is a tripartite agreement between complainant and respondent and SBI thus in case of cancelation first right is of the concerned bank and for the same reason it was specifically mentioned cancellation letter that " as yours is bank loan case, request you to provide bank loan statement /NOC from the bank, as said documents are required to disbursement of amount to concerned bank and remaining if any to allottee after deduction of earnest money, however complainant never came forward to provide said details. Thus, the respondent is not liable to pay in interest on remaining amount if any after cancellation of allotment.

- XI. All the reliefs claimed by the complainant is false and frivolous and hence denied, and therefore the complainant is not entitled for any such reliefs.
7. 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 and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

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

E.1 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

A

Regulatory Authority, Gurugram shall be entire Gurugram 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Finding on the objections raised by the respondent.

F.1 Objection regarding force majeure circumstances.

11. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts and adverse effects of covid etc. and others force majeure circumstances

A

and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. Firstly, the Authority has gone through the possession clause of the agreement and observed that the respondent-promoter proposes to handover the possession of the allotted unit within 4 years from the date of start of construction or date of execution of buyer's agreement, whichever is later." In the present case, the buyer's agreement was executed between the parties on 11.01.2014 and the date of start of construction is 16.10.2014 (as mentioned in SOA dated 08.07.2024 at page 114 of complaint), So the due date is calculated from the date of start of construction, being later, which comes out to 16.10.2018, which is much prior to the occurrence of Covid-19 restriction and hence, the respondent cannot be benefitted for its own wrong. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020 dated 29.05.2020* which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

12. Secondly, the events such as orders of NGT in NCR on account of the environmental conditions, ban on construction activity and others force majeure circumstances do not have any impact on the project being developed by the respondent. As the events mentioned above are for short period which does not make such a huge impact on project which can cause and justify inordinate delay of 5 years. Moreover, these events are of routine in nature happening annually and the promoter is required to

take the same into consideration while fixing the due date of possession. And lastly, though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Finding on the reliefs sought by the complainant.

G.I Direct the respondent to set aside the alleged cancellation letter since the said cancellation letter was sent without following the due process of law and also, the delayed possession charges amount more than the demand raised by the respondent.

G.II Direct the respondent to get possession of the fully developed/constructed flat with all amenities after obtaining of OC.

G.III Direct the respondent to pay the delayed possession interest @ prescribed rate from the due date of possession complete in all respect with all amenities.

G.IV Pass any order as Authority deems fit in the interest of justice.

13. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. In the present complaint, the complainant intends to continue with the project and is seeking setting aside of cancellation letter dated 08.07.2024 and to restore the originally allotted unit.

15. In the present complaint, vide letter of provisional allotment dated 27.11.2013, the complainant was provisionally allotted a unit bearing no.303 at third floor in tower-T6, admeasuring area of 1550 sq. ft. super area. However, the buyer's agreement was executed on 11.01.2014 interse parties for the unit bearing no.303 at third floor in tower-T6, admeasuring area of 1550 sq. ft. super area for total sale consideration of Rs.97,03,550/- against which the complainant-allottee has paid an



amount of Rs.91,90,047/- till August, 2018, which constitutes around 94.70% of the sale consideration. The complainant has opted for construction linked payment plan. The respondent has raised a demand on 14.12.2022 for making payment of Rs.11,53,760/- outstanding but the complainant has not made the payment as per the demand and has raised various queries through mails which the respondent has failed to answer. Thereafter, the respondent has cancelled the unit of the complainant vide cancellation letter dated 08.07.2024. Now the question arises before the Authority whether the cancellation is valid or not, in the eyes of law?

16. On the consideration of documents available on records and submissions made by both the parties, the Authority observes that complainant-allottee made a payment of Rs.91,90,047/- (which is almost 95% of total sale consideration) against the total sale consideration of Rs.97,03,550/- till August, 2018, and occupation certificate w.r.t the tower in which unit of the complainant is situated was obtained by the respondent on 13.12.2022 and thereafter on 14.12.2022, the respondent issued offer of possession to the complainant along with a demand letter dated 14.12.2022 and via email dated 16.12.2022 for payment of Rs.11,53,760/- . On receipt of such demand, the complainant had raised various queries, through various emails dated 18.02.2024, 20.02.2024, 24.02.2024, 07.04.2024, 16.04.2024, 22.05.2024, 29.05.2024 and 31.05.2024, asking the respondent to issue a fresh statement of account after adjustment of delay possession charges and delay payment charges which the respondent never replied to the same nor issued any revised statement of account after adjustment of delay possession charges. The interest accrued during the delay period significantly reduces the amount payable by the complainant. The respondent's actions were in bad faith, as they

failed to adjust the delay period interest and issue. No response from the respondent call for an inference against the respondent.

17. Further, the Authority observes that the respondent has never issued any reminder/ final reminder against the said demand nor issued any notice for termination, intimating the complainant-allottee prior to such cancellation.
18. Also, as per clause 9.3 (i) and (ii) of Model Agreement for sale as prescribed in the Rules, provides that the respondent has to issue at least two consecutive demand and an intimation to the allottee(s) 30 days prior to such termination. The relevant clause 9.3 (i) and (ii) are reproduced hereinbelow:

9.3 (i) In case the Allottee fails to make payments for two consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;

*9.3 (ii) ... On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. **Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.***

(Emphasis supplied)

19. In view of the reasons quoted above and documents placed on record, the authority is of the view that the cancellation of the allotment vide letter dated 08.07.2024 is not valid in the eyes of law and is hereby set aside and the respondent is directed to restore the allotted unit of the complainant within 30 days from the date of this order.
20. In the present complaint the complainant intends 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."

21. Clause 3.1 of the buyer's agreement dated 11.01.2014 provides the time period of handing over possession and the same 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...
(Emphasis Supplied)*

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoters, 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.*

23. 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.

24. 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

A

date i.e., 13.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. The definition of 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 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;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to her in case of delayed possession charges.
27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 4 years from the start of construction or execution of agreement, whichever is later. The builder buyer agreement was executed between the parties on 11.01.2014 whereas construction (excavation) was started by the respondent is 16.10.2014. Therefore, the date of start of construction, being later, the due date of possession was calculated from the date of start of

construction. Accordingly, the due date of possession comes out to be 16.10.2018. The occupation certificate was granted by the concerned authority on 13.12.2022 and thereafter, the possession of the subject unit was offered to the complainant on 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 the possession of the subject unit to the complainant-allottee and there is failure on part of the respondent-promoter to fulfil its obligation and responsibilities as per the buyer's agreement 11.01.2014 to handover the possession within the stipulated period.

28. 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 complainant only on 14.12.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 month's time from the date of offer of possession. These two months of reasonable time is being given to the complainant 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 of 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.



29. 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 complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 16.10.2018 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 and Section 19(10) of the Act.
30. Further, as per Section 19(10) of the Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainant is directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months. Also, the respondent shall handover the possession of the allotted unit as per specifications of the buyer's agreement entered into between the parties.
- G.V Direct the respondent to execute the conveyance deed of the allotted unit in favour of complainant.**

31. The complainant is seeking direction to respondent to execute the conveyance deed of the allotted unit in favour of the complainant. The respondent has offered the possession dated 14.12.2022 of the subject unit in question. Whereas the possession was offer after obtaining of occupation certificate on 13.12.2022 as per clause 4.3 of the agreement dated 11.01.2014, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favour of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

4.3 Subject to the flat allottee(s) making all payments under this agreement, the developer shall prepare and execute along with the flat allottee(s) a sale/conveyance deed to convey the title of the said Flat in favor of Flat Allottee(s) but after payment of stamp duty, registration



charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this Agreement or as demanded by the Developer from time to time prior to the execution of the Sale/Conveyance Deed. The Parties agree that after the Flat Allottee(s) have provided all the details, documents as provided in the written notice as stated in this clause and/or other documents required for the purpose of registration of the Sale/Conveyance Deed, the Developer shall make all reasonable efforts to get the Sale/Conveyance Deed registered within a reasonable time. The Flat Allottee(s) agrees and undertakes to make himself/herself/themselves available for the purpose of registration on the date(s) as informed by the Developer.

32. It is to be further noted that Section 11 (4) (f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.
33. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee as per Section 17(1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this Section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

34. As occupation certificate of the unit has been obtained from the competent authority on 13.12.2022, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the

conveyance deed of the allotted unit in favour of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

H. Directions of the authority

35. 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 cancellation letter dated 08.07.2024 is not valid and is hereby set aside, and the respondent-promoter is directed to restore the allotted unit of the complainant within 30 days from the date of this order.
 - ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% per annum for every month of delay from the due date of possession i.e., 16.10.2018 till offer of possession (i.e., 14.12.2022) plus two months i.e., 14.02.2023, as per Section 18(1)(a) of the Act read with Rule 15 of the Rules, *ibid*. The arrears of the interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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 delayed possession charges as per Section 2(za) of the Act.
 - iv. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is

A

directed to pay outstanding dues, if any remains, after adjustment of delay possession charges within a period of next 30 days.

- v. The respondent is directed to handover the physical possession of the allotted unit to the complainant complete in all aspect of buyer's agreement.
 - vi. The respondent-promoter shall not charge anything from the complainant which is not the part of buyer's agreement.
 - vii. The respondent is directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainant.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated:13.02.2025



(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM