



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

Complaint no. : 495 of 2024
Date of complaint : 09.02.2025
Date of order : 19.02.2025

Ram Sharma,
R/o - 267/11B, Sri Balaji Appt, F-2,
Sec-1, Vaishali, Ghaziabad-202020.

Complainant

Versus

M/s Pareena Infrastructure Private Limited.
Regd. Office at: C7A, 2nd Floor, Omaxe City, Central
Mall, Sohna Road, Sec-49, Gurugram.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Vijay Pratap Singh (Advocate)
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 there under 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 of the project	Laxmi apartments at Sector 99A, Gurugram-Manesar Urban Complex
2.	Unit no.	804, 8 th Floor, Tower-T-4, admeasuring 424.833 carpet area (page 21 of complaint)
3.	New area	440.25 carpet area (as per offer of possession letter dated 16.07.2021 on page 45 of complaint)
4.	Provisional allotment	09.11.2015 (page 19 of complaint)
5.	Date of builder buyer agreement	28.01.2016 (page 20 of complaint)
6.	Date of building plan approval	26.03.2015 (as per information obtained from planning branch)
7.	Date of environmental clearance	15.03.2016 (as per information obtained from planning branch)
8.	Possession clause	8(1) Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation / completion certificate from the competent authority (authorities), the company shall endeavor to complete the construction and handover the possession of the said apartment within a period of four years from the date of grant of environmental clearance or within four years from the date of grant of

		sanction of building plans for the project, whichever is later , subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder. (page 32 of complaint)
9.	Due date of possession	15.09.2020 (Calculated as 4 years from date of grant of environmental clearance i.e., 15.03.2016 as per policy of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
10.	Total sale consideration	Rs.19,40,484/- (page 43 of complaint)
11.	Paid up amount	Rs. 17,80,559/- (page 43 of complaint)
12.	Occupation certificate	09.07.2021 (as per CR/4068/2021 & Ors)
13.	Offer of possession	16.07.2021 (page 45 of complaint)
14.	Reminders	13.09.2021, 21.07.2022 (page 41-42 of reply)
15.	Pre-cancellation letter	05.01.2024 (page 43 of reply)
16.	Publication	22.01.2024 (page 47 of reply)

B. Facts of the complaint

3. The complainant vide complaint and written submissions dated 30.12.2024 has made the following submissions: -
 - I. That the complainant was allotted a flat bearing no. 804, 8th floor, tower-T-4, admeasuring 424.833 sq. ft. and balcony area 99.997 sq. ft. in the affordable group housing project of the respondent named "Laxmi Apartments" at Sector-99A, Gurugram through draw of lots



- vide provisional allotment letter dated 09.11.2015 for a total cost of Rs.17,49,330/- (excluding EDC and IDC and other charges). Thereafter, an apartment buyer agreement dated 28.01.2016 was also executed between the parties regarding the said allotment.
- II. That the complainant after execution of the above said agreement made all the payment in time bound manner as per the construction linked plan as and when demanded by the respondent from time to time and till 20.08.2022 he has made a total payment of Rs.17,80,559/- to the respondent.
 - III. That the complainant made all the payment time to time and looking for the possession of the said flat as per the agreement, but the construction is not as per the agreement. The possession of the allotted unit was to be handed over from the date of grant of environment clearance or from the date of sanction of building plan, whichever is later.
 - IV. That the respondent has charged illegal interest on delayed instalment @24% p.a. compounded quarterly interest compounded at the time of every succeeding instalment from the due date of instalments till the date of payment, whereas, as per BBA the offer of delay possession penalty for the builder towards buyers is just 10% p.a. This is totally illegal, arbitrary and unilateral.
 - V. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of BBA with a malicious and fraudulent intention. The builder buyer agreement consists very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature.
 - VI. That the respondent is always making wrong interpretation of the Haryana Affordable Housing Policy and threatening the complainant



to cancel the unit, treating the customer as a default customer without raising the last demand order, under plea that the complainant is supposed to make payment without raising any demand letter to the buyer.

- VII. That the respondent has illegally initiated the process of cancellation of allotment even after depositing the entire amount as per the allotment letter dated 09.11.2015 and BBA dated 28.01.2016, which is illegal and unjustified act on part of the respondent. Further, the respondent filed to provide the explanations and clarifications for unilateral demands raised at the time of offer of possession. The respondent has neither paid the delayed compensation for delay in offer of possession not given the possession of flat and has not charged interest as per the provisions of the Act, 2016.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to revoke cancellation of the unit in question and restore the said unit in the name of the complainant.
 - II. Direct the respondent to pay delay possession charges.
 - III. Direct the respondent to withdraw illegal demands raised in offer of possession dated 16.07.2021 by the respondent.
 - IV. Direct the respondent to waive off excess interest charged by the respondent for delay in making payment by the complainant.
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.

5. The respondent contested the complaint vide its reply dated 30.04.2024 on following grounds: -
- i. That the complainant in the present case has demanded setting aside of cancellation done by respondent after following due process. The present complaint itself acknowledges the fact that the terms and conditions of agreement/affordable housing policy are binding on both the parties and accordingly the complainant is also bound by the terms and conditions of agreement and since the project is governed by Affordable Housing Policy 2013, thus as per the terms of affordable housing policy as well.
 - ii. That it is clear from the pleadings that possession was already offered to complainant way back in 21.07.2021 and present complaint has been filed on or around 06.02.2024 that is after passing of 930 days. However, since the allotment is already stand cancelled due to defaults committed by complainant, thus even otherwise he is not entitled for possession. That the matter in issue revolves around the fact whether cancellation done by respondent is valid or not or whether same has been done after following due process of law.
 - iii. That in the present case cancelation has been done after following due process. That the complainant is a habitual defaulter and since inception complainant was making defaults in payment. It is pertinent to mention here that payment plan in affordable housing policy is governed by said policy itself and same has been duly mentioned in agreement itself in Annexure A attached with agreement itself.
 - iv. That even respondent publish a notice in newspaper wherein it also specifically stated that if payment is not made than allotment shall stands cancelled automatically. The demand letters, reminders



annexed with the reply clearly indicate the fact that complainant was a habitual defaulter and the cancellation was done after giving him more than proper time and opportunity and after complying with due procedure.

- v. That present complaint is not maintainable and that another important fact concealed by complainant is that complainant had obtained a loan from ICICI Bank and as per tripartite in case of refund first right would be of said bank and thereafter if any amount remains same would be payable to complainant. It is further submitted that as the unit was cancelled/surrender after 2 years from the date of commencement of the project, the deduction shall be 5% of the cost of flat + 25,000 in terms of Haryana affordable housing policy.
6. 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 these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

7. 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.



E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 relief sought by the complainant.

F. I Direct the respondent to revoke cancellation of the unit in question and restore the said unit in the name of the complainant.

F. II Direct the respondent to pay delay possession charges.

12. The complainant has submitted that he was allotted a flat bearing no. 804, 8th floor, tower-T-4, admeasuring 424.833 sq. ft. and balcony area 99.997 sq. ft. in the affordable group housing project of the respondent named "Laxmi Apartments" at Sector-99A, Gurugram through draw of lots vide provisional allotment letter dated 09.11.2015 for a total cost of Rs.17,49,330/- (excluding EDC and IDC and other charges). Thereafter, an apartment buyer agreement dated 28.01.2016 was also executed between the parties regarding the said allotment. Further, after execution of the above said agreement, he made all the payment in



time bound manner as per the construction linked plan as and when demanded by the respondent from time to time and till 20.08.2022 he has made a total payment of Rs.17,80,559/- to the respondent. He further submits that the respondent has charged illegal interest on delayed instalment @24% p.a. compounded quarterly interest compounded at the time of every succeeding instalment from the due date of instalments till the date of payment, whereas, as per BBA the offer of delay possession penalty for the builder towards buyers is just 10% p.a. The counsel for the complainant vide proceedings dated 18.12.2024 has submitted that the complainant is seeking revocation of the cancellation, DPC and possession of the unit. He stated that certain illegal demands were made by the respondent w.r.t interest on delayed payment to which the complainant objected. Further, a notice published in the newspaper does not bear the name of the complainant-allottee. The respondent has submitted that cancelation has been done after following due process. The complainant is a habitual defaulter and since inception complainant was making defaults in payment. The respondent even published a notice in newspaper wherein it also specifically stated that if payment is not made than allotment shall stands cancelled automatically. Further, it is clear from the pleadings of the complainant that possession was already offered to complainant way back in 21.07.2021 and present complaint has been filed on or around 06.02.2024 that is after passing of 930 days. However, since the allotment is already stand, cancelled due to defaults committed by complainant, thus even otherwise he is not entitled for possession. The counsel for the respondent vide proceedings dated 18.12.2024 has further submitted that the complainant defaulted in making payments on multiple occasions and failed to make the due payment for purchase



of the unit as a result of which the same was cancelled after giving due opportunities. Further, the application number for the allottee was duly published in the newspaper notice. Now, the question before the authority is whether this cancellation is valid or not.

13. After considering the documents available on record as well as submissions made by the parties, the Authority observes that as per clause 5(iii)(i) of the Policy, 2013, if the allottee fails to pay the outstanding dues, the promoter is required to publish a list of defaulters in one regional Hindi newspaper of the state, providing a 15 day period for payment from the date of publication and if the payment is not made within this period, the allotment may be cancelled according to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which reproduced as under:

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

14. In the instant case, the pre-cancellation notice was issued by the respondent on 05.01.2024 and publication of the defaulters list in the newspaper was published on 22.01.2024. However, no formal cancellation letter was issued after publication of the list of defaulters.



It is to be noted that in clause 5(iii)(i) of the Policy, 2013, it is specified that in case the allottee fails to clear the outstanding dues within 15 days of publication in the newspaper, then his allotment may be cancelled by the promoter. The word 'may' here does not mean that post 15 days of publication, the allotment shall be deemed to be cancelled rather it means that some action is required to be taken by the promoter towards cancellation of the allotment. Moreover, post cancellation of the unit, the respondent has failed to refund the monies paid by the complainant in terms of policy of 2013, till date. Seeing, various illegalities on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the said cancellation is bad in law and is hereby set aside. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the buyer's agreement dated 28.01.2016 in the said project to the complainant.

15. In the present complaint, the complainant intends to continue with the project and is 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."

16. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:



1 (iv)

"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

17. Due date of handing over of possession: As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained building plan approval and environment clearance in respect of the said project on 26.03.2015 and 15.03.2016 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 15.09.2020.

18. 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.



19. 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.
20. 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., 19.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
21. 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;"*
22. Therefore, interest on the delayed 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 delay possession charges.
23. 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 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered by 15.09.2020. The occupation certificate was granted by the concerned authority on 09.07.2021 and thereafter, the possession of the subject flat was offered to the complainants vide letter dated 16.07.2021. 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 28.01.2016 to hand over the possession within the stipulated period.

24. 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 09.07.2021. The respondent offered the possession of the flat in question to the complainant only on 16.07.2021, 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 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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 (16.07.2021) which comes out to be 16.09.2021.



25. 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. 15.09.2020 till the expiry of 2 months from the date of offer of possession (16.07.2021) which comes out to be 16.09.2021 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. Directions of the authority

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The cancellation is set aside. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the buyer's agreement dated 28.01.2016 in the said project to the complainant.
- ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay from the due date of possession i.e., 15.09.2020 till the expiry of 2 months from the date of offer of possession (16.07.2021) i.e., upto 16.09.2021 only.
- iii. The respondent is directed to supply a copy of the updated statement of account after adjusting the delay possession charges within a period of 30 days to the complainant.

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- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
 - v. The respondent shall handover possession of the unit on payment of outstanding dues if any, after adjustment of delay possession charges, within 30 days to the complainant/allottee.
 - vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under Affordable Group Housing Policy, 2013.
 - vii. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
 - viii. 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.
27. Complaint stands disposed of.
 28. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 19.02.2025