

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	7110 of 2022	
Order reserved on:		10.01.2025	
Order pronounce	ed on:	14.02.2025	

Lokender Kumar Address at: Flat no. 35, T/F, Pocket- 8, Block A-5, Sector 23 B, Dwarka, Barthal, South West Delhi-110077

Versus

M/s Pareena Builders & Promoters Pvt. Ltd. **Regd. office:** 1114, 11th Floor, Hemkunt Chamber, 89, Nehru Place, New Delhi-110019

CORAM: Shri Arun Kumar

APPEARANCE:

Sh. Vipul Lamba Sh. Prashant Sheoran Advocate for the complainant Advocate for the respondent

ORDER

- 1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.
- A. Unit and project related details

Complainant

Respondent

Chairman



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.	Heads	Information	
1.	Name and location of the project	"Om Apartments" at Village Bajghera, Sector-112, Gurugram	
2.	Nature of the project	Affordable group housing colony	
3.	Project area	5.025 acres	
4.	DTCP license no.	49 of 2019 issued on 07.03.2019 valid up to 06.03.2024.	
5.	Name of license holder	Pareena Builders & Promoters Pvt. Ltd	
6.	RERA Registered/ not registered	Registered vide no. 24 of 2019 issued on 13.05.2019 valid up to 31.03.2024	
7.	Apartment no.	905, 9th floor, tower- T3	
	है सत्यमेव	[page no. 23 of complaint]	
8.	Unit measuring	560.91 sq. ft. carpet area	
	Ē	86.33 sq. ft. balcony area	
	1 1/2/	[page no. 23 of complaint]	
9.	Date of provisional allotment	24.12.2019	
	letter	(Page no. 17 of complaint)	
10.	Date of agreement to sell	13.02.2020	
	HAR	(page no. 21 of complaint)	
11.	Environment clearance date	05.02.2020	
12.	Building plans date	25.04.2019	
13.	Total consideration	Rs. 22,86,805/-	
		[as per the agreement on page no. 25 of complaint]	
14.	Total amount paid by the	Rs. 17,32,263/-	
	complainant	[as per demand cum invoice on page no. 49 of complaint]	
15.	Possession clause	8. Possession	
		8.1 .Subject to force majeure circumstances, intervention of	

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	A REP.	statutory authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the promoter/developer and not being in default under any part hereof and apartment buyers agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, stamp duty and registration charges, the promoter/ developer proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearances(herein refereed to as the commencement date), whichever is later. (page 52 of complaint)
16.	Due date of possession	05.02.2024 (calculated from the date of environment clearance being later)
17.	Demand letter HAR	19.02.2022 (page 44 of reply)
18.	Reminders sent by respondent	22.03.2022, 09.04.2022, 07.05.2022
19.	Publication in newspaper	10.10.2022 (page no. 50 of reply)
20.	Cancellation of unit	10.10.2022 (Page no. 48 of reply)
21.	Amount refunded by respondent after deduction	Rs. 15,13,835/- on 29.10.2022 [Deducted Rs. 2,09,428/-] (page no. 8 of complaint)



22.	Offer of possession	Not offered	
23.	Occupation certificate	Not obtained	

B. Facts of the complaint

- 3. The complainant has made the following submissions in the complaint:
- I. That believing on the false assurances and misleading representations of the respondent, the complainant booked an apartment in the project of the respondent by making a payment of Rs. 1,15,484/- vide dated 10.09.2019 towards said booking.
- II. That thereafter, almost after 3 months from the date of booking, an allotment letter dated 24.12.2019 was issued thereby allotting a residential apartment/flat bearing no. 905, Tower-3 admeasuring 647.24 sq. ft.
- III. That on 13.02.2020, after persistent demand from the complainant for executing the builder buyer agreement, the respondent executed a builder buyer agreement with the complainant in respect of the subject unit.
- IV. That as per clause 8.1 of the builder buyer agreement dated13.02.2020, the respondent undertook to handover possession within a period of 4 years from the date of approval of buildings plan or grant of environment clearance, whichever is later. However, till now the project is nowhere near completion and is in initial stage of the construction.
- V. That the complainant has booked the said unit in the project at a basic sale price of Rs.22,86,805/- and the total sale consideration of the unit as agreed was Rs.24,21,054/-. The above said payment has to be made by the complainant as per time linked plan. The complainant in order to



make the payment against the total sale consideration had made the payment of Rs. 17,23,263/- as and when demanded by the respondent.

- VI. That on 12.02.2022, the complainant visited the project site to see the stage of construction of the project but to the utter shock of the complainant, the project was nowhere near completion despite having been paid 80% of the total sale consideration to the respondent..
- VII. That on 23.09.2022, the complainant received reminder letter No-4 for installment due towards the purchase of the said unit in the project. It is pertinent to mention here that till date the complainant did not receive the reminder letter no. 1 to 3 from the respondent regarding the payments. Subsequently, the complainant approached the respondent and requested to withdraw the said reminder cum demand letter as it was assured that no payment shall be demanded from the complainant till the offer of possession as the project is in initial stage of construction and the complainant had made the payment of 80% of total sale consideration but the respondent clearly refused to withdraw the said demand cum reminder letter 4 and further threaten the complainant to cancel the unit and subsequently forfeit the deposited the sale consideration.
- VIII. That on 10.10.2022, the complainant got shock after receiving intimation in regard to the cancellation of unit hearing no 905, 9th Floor, Tower 3 in the said project. As per the said intimation notice, the respondent directed the complainant to clear the demand on or before 25.10.2022. Upon receiving the said notice, the complainant approached the respondent office and objected to the said intimation for cancellation of the unit in the said project and further requested to withdraw the said notice with immediate effect but the respondent



clearly refused to do the same and further said that they shall cancel the unit of the complainant and forfeit the entire paid amount.

- IX. That the complainant, after being aggrieved by the illegal and the immoral acts of the respondent left with no other option but to make the payment of the demand, approached the respondent office on 22.10.2022 in order to handover the cheques amounting to Rs. 5,77,420/- and Rs. 39,543/- respectively but the guard standing on the main gate of the respondent office restrained the complainant to enter into the office.
- X. That subsequently on 27.10.2022, the complainant again approached the respondent office to handover the cheques and further to ensure that the unit should not be cancelled. Subsequently, the complainant handed over the cheques to the representative of the respondent named Seema and Radhika. However, the respondent assured the complainant that his unit shall not be cancelled.
- XI. That the complainant on 28.10.2022 received a message from the representative named Seema that the unit has been cancelled and you had given the cheques forcefully. The respondent was keen to cancel the unit of the complainant despite knowing the fact that the complainant approached the respondent office to handover the cheque.
- XII. That on 29.10.2022, the respondent credited an amount of Rs. 15,13,835 in the bank account of the complainant after forfeiting an amount of Rs. 2,09,428/- which also an illegality committed by the respondent and further the same is in contravention of the RERA Act along with Affordable Housing Policy. The complainant is ready and willing to make the payment of Rs. 15,13,835/- along with fresh demand.



XIII. That the respondent had illegally and with the sole motive of earning more profit by selling the said unit at higher market price, cancelled the unit of the complainant and the same act is unethical and against the law of the land.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s).
- Declaration to the effect that the act of cancellation of the unit of the complainant is null and void being arbitrary and illegal.
- (ii) Direct the respondent to re-allot the unit in the name of the complainant by receiving the amount of Rs. 15,13,835/- from the complainant along with the fresh demand.
- (iii) Direct the respondent to complete the construction and obtain occupation certificate.
- (iv) Direct the respondent to offer possession only upon receipt of occupation certificate.
- (v) Direct the respondent to levy prescribed rate of interest upon the delayed payments.
- 5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
- D. Reply by the respondent.
- 6. The respondent has contested the complaint on the following grounds.
- That the complainant in the present case has demanded setting aside of cancellation dated 10-10-2022. The terms and conditions of Affordable Housing Policy 2013 are binding on both the parties.



- II. That date of possession is yet to arrive, however since the allotment is already stand cancelled due to defaults committed by complainant, thus even otherwise complainant is not entitled for possession.
- III. That as per Affordable Housing Policy "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 news-paper 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 the present case, cancellation has been done after following due process. The complainant is a habitual defaulter and since inception complainant was making defaults in payment.
 - IV. That respondent published a notice in newspaper wherein it also specifically stated that if payment is not made then the allotment shall stand cancelled automatically. The complainant was a habitual defaulter and the cancellation dated 10.10.2022 was done after giving him proper time and opportunity and after complying with due procedure. The present complaint is not maintainable as the respondent has already refunded the amount after deducting earnest money as per agreed terms and condition mentioned in agreement to sale and in terms of Haryana Affordable Housing Policy and RERA.
 - 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 these undisputed documents and submission made by the parties.



E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. 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

 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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding noncompliance of obligations by the promoter leaving aside compensation



which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant:

- (i) Declaration to the effect that the act of cancellation of the unit of the complainant is null and void being arbitrary and illegal.
- (ii) Direct the respondent to re allot the unit in the name of the complainant by receiving the amount of Rs. 15,13,835/- from the complainant along with the fresh demand.
- (iii) Direct the respondent to complete the construction and obtain occupation certificate.
- (iv) Direct the respondent to offer possession only upon receipt of occupation certificate.
- (v) Direct the respondent to levy prescribed rate of interest upon the delayed payments.
- 12. 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."

13. The complainant submitted an application for participation in the draw for the allotment of apartments in the project developed by the respondent company, namely Om Apartments, located at Sector 112, Gurugram. In response, the complainant was allotted unit bearing no. 905 on the 9th floor of tower T3, with a carpet area of 560.91 sq. ft. vide



allotment letter dated 24.12.2019. Subsequently, an agreement to sell was executed between the parties on 13.02.2020.

14. Clause 8 of the agreement to sell provides for handing over of possession and is reproduced below:

"8. Possession

8.1.Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the promoter/developer and not being in default under any part hereof and apartment buyers agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, stamp duty and registration charges, the promoter/ developer proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearances (herein refereed to as the commencement date), whichever is later."

- 15. **Due date of possession:** As per clause 8 of the agreement to sell the project has to be handed over within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. The respondent has obtained building plan approval and environment clearance in respect of the said project on 25.04.2019 and 05.02.2020 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Therefore, the due date of possession comes out to be 05.02.2024.
- 16. Further, as per the agreement to sell executed between the parties on 13.02.2020, the total price of the unit was Rs. 22,86,805/- out of which the complainant has made a payment of Rs. 17,32,263/-. In accordance with the payment plan, respondent raised further demand of Rs. 2,88,711/- vide letter dated 19.02.2022 which is due to be paid within 30 months from the date of issuance of allotment letter. Due to the complainant's failure to remit the required payment, the respondent issued several reminders for payment, on 22.03.2022,



09.04.2022, 07.05.2022. Subsequently, due to continued non-payment of the outstanding dues by the complainant, the respondent on 10.10.2022, published in newspaper the list of defaulters before cancellation as mandated by Affordable Housing Policy 2013. On the same date, 10.10.2022, the respondent also issued a formal cancellation notice to the complainant. Now, the question before the authority is whether this cancellation is valid or not.

17. After considering the documents available on record as well as submissions made by the parties, the Authority observes that the said project is regulated as per the Affordable Housing Policy, 2013. Further, the clause 5(iii)(i) of the Affordable Housing Policy, 2013 is relevant in the case of cancellation by the respondent promoter. The said clause is reproduced below for ready reference:

"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".

18. The Authority observes that clause 5(iii)(i) of the Affordable Housing Policy, 2013 provides that if an applicant fails to remit the installment within the prescribed time period, a reminder may be issued to the applicant, requiring payment of the outstanding installment within fifteen (15) days from the date of issuance of such notice. If the allottee



fails to make the payment within the specified period, the list of defaulters may then be published in a regional Hindi newspaper. If the allottee continue to default, the allotment may be cancelled within fifteen (15) days thereafter.

- 19. In the instant case, the demand for the payment was raised on 19.02.2022 and thereafter, reminders for the payment were sent by the respondent on 22.03.2022, 09.04.2022, 07.05.2022. The publication of the defaulters list in the newspaper was published on 10.10.2022. However, on the same date i.e., 10.10.2022 respondent issued a cancellation notice. The Affordable Housing Policy, 2013 clearly states that "within 15 days from the date of publication of such notice failing which allotment may be cancelled." Therefore, if the complainant fails to make payment within 15 days after publication of notice then the respondent promoter can cancel the allotment of the allottee. In the present case, 15 days' time period after the publication was not granted to the complainant. Moreover, post cancellation of the unit, the respondent has refunded an amount of Rs. 15,13,835/- after deduction of Rs. 2,09,428/- which is also illegal as per the clause 5(iii)(i) of the Affordable Housing Policy, 2013. 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 and the subject unit is ordered to be restored to its original position in favour of the complainant.
- 20. Payment of delay possession charges at prescribed rate of interest: As delineated hereinabove, the respondent was liable to handover possession of the subject unit by 05.02.2024 in terms of clause 8 of the agreement to sell. The respondent has not obtained



occupation certificate from competent authority till date. The complainant is seeking delay possession charges at the 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 subsections (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.

- 21. 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.
- 22. Consequently, as per website of the State Bank of India i.e., <u>https://sbi.co.in</u>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
- 23. 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;"
- 24. 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 him in case of delayed possession charges.
- 25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8 of the agreement dated 13.02.2020, the possession of the subject unit was to be delivered within stipulated time i.e., by 05.02.2024. However, till date no occupation certificate has been received by respondent and neither possession has been handed over to the allottee till date.
- 26. The complainant is also seeking relief of possession. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has not been obtained by the respondent so far from the competent authority. The respondent is directed to offer the possession of the allotted unit within compliance of section 11(4)(b) of the Act after obtaining the completion certificate or occupation certificate from the relevant competent authority. Further, the complainant is also directed to take the possession of the



allotted unit in compliance of obligation conferred upon them under section 19(10) of Act within two months of the occupation certificate after payment of such outstanding dues.

- 27. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer possession of the allotted unit to the complainant. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period.
- 28. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 05.02.2024 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- 29. The respondent-promoter is directed not to create third party rights. 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 agreement dated 13.02.2020 in the said project to the complainant.

G. Directions of the authority

30. 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):



- The cancellation is set aside. The respondent is directed to restore the subject unit to its original position in favour of the complainant.
- II. The respondent-promoter is directed not to create third party rights. 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 agreement dated 13.02.2020 in the said project to the complainant.
- III. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate or occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.
- IV. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 05.02.2024 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- V. 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.
- VI. The respondent is directed to pay arrears of interest accrued within90 days from the date of this order as per rule 16(2) of the rules



and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

- VII. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- VIII. The respondent shall not charge anything from the complainant which is not provided under Affordable Housing Policy, 2013.
 - IX. 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.
- 31. Complaint as well as applications, if any, stands disposed off accordingly.
- 32. File be consigned to registry.

(Arun Kumar) Chairman

Haryana Real Estate Regulatory Authority, Gurugram Dated: 14.02.2025