

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

Complaint no. :	1803 of 2024
Order reserved on:	13.12.2024
Order pronounced on:	21.02.2025

1. Vivek Sharma
2. Geeta Sharma

Both R/O: D-605, NPSC Society, Plot no. 5,
Dwarka, New Delhi-110075

Complainants

Versus

M/s Pareena Infrastructures Pvt. Ltd.
Regd. office: C7 A, IInd Floor, Omaxe City
Centre Mall, Sohna Road, Sector-49, Gurugram

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Vikas Malik
Sh. Prashant Sheoran

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/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

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	The Elite Residencies, Sector 99, Gurugram, Haryana
2.	Total area of the project	13.32 acres
3.	Nature of the project	Group Housing
4.	DTCP license no.	70 of 2011 dated 22.07.2011 valid upto 21.07.2024 Licensee : Shivnandan Buildtech Private Limited
		82 of 2012 dated 27.08.2012 valid upto 26.08.2023 Licensee : Shivnandan Buildtech Private Limited
5.	HRERA registered/ not registered	Registered vide no. 46 of 2019 dated 25.09.2019 Valid till 31.07.2020
6.	Agreement for sale	20.01.2020 (page no. 34 of complaint)
7.	Unit no.	A-207, 2 nd floor, Tower A(T-3) [page 40 of complaint]
8.	Unit measuring (super area)	1865 sq. ft. (Page no. 40 of complaint)
9.	Possession clause	7. POSSESSION of the apartment 7.1 Schedule for possession of the unit/apartment for residential purposes- The Promoter agrees and understands that the delivery of possession of the Unit/Apartment for

		Residential purposes along with parking to the Allottee(s) and the common areas to the association of allottees or competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement. [page 47 of complaint]
10.	Due date of possession	31.07.2020 [as per possession clause calculated upto validation of RERA certificate]
11	Total sale consideration	Rs. 81,86,094/- (as per payment plan on page no. 68 of complaint)
12.	Total amount paid by the complainants	Rs. 48,84,783/- + 82,806/- (GST paid after cancellation) =49,67,589/-
13.	Payment plan	Possession linked payment plan (page no. 70 of complaint)
14.	Occupation certificate	09.11.2022 [page no. 31 of reply]
15.	Offer of Possession	25.11.2022 [page no. 89 of complaint]
16.	Cancellation letter	29.01.2024 (page no. 98 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. That the complainants along with his wife i.e. Geeta Sharma booked a unit in the project of the respondent at sector 99, Gurugram bearing no. A-207, having super area of 1865 sq. ft. on 2nd floor in Tower-A (T-3).



- II. That the builder buyer agreement was executed between the parties on 20.01.2020 with respect to the aforesaid unit. As per the said agreement the total cost of the said apartment was stipulated as Rs. 81,86,094/-.
- III. That the respondent inserted various clauses which were exploitative in nature. As per the schedule-C at page 39 of the agreement, complainants were required to make payment as given below:
- i.10% of the total cost at the time of booking.
 - ii.40% of the total cost within 30 days of allotment.
 - iii.50% of the total cost at the time of offer of possession.
- IV. That the complainants made a payment amounting to Rs 40,84,783/- till 31.01.2020 to the respondent towards the purchase of the said unit.
- V. That on 25.11.2022 the respondent issued a demand notice/offer of possession to the complainants, calling upon them to make the remaining payment of Rs 43,90,720/- at the short notice of 45 days. The demand notice further said that in the event of failing to make the said payment in the short notice, the respondent shall be absolved from all its obligations and liabilities qua the said unit/apartment and the same shall be held by the respondent.
- VI. That upon the receipt of the said notice i.e. offer of possession, the complainants visited the site to assess the progress and stage of the construction and to physically verify the condition of the said unit. They were surprised to see that the flat was not at all ready for occupation as it consisted only of the structure but it lacked all the furnishings, fitments, fixtures. The said unit also lacked plumbing and electric installations. The basic internal wiring work was incomplete. The complainants raised the said issue of incomplete construction with respondent's officials but they totally failed to explain reason.



- VII. That the complainants then, requested the respondent's officials to kindly expedite the work as the project was unnecessarily getting delayed and further requested for speedy conclusion of the pending work so that he could make the payment and take the possession of the unit. They also requested the respondent to kindly provide a tentative date or duration by which the said work would likely get completed.
- VIII. However, the respondent assured that the work will be completed soon and on believing the assurances of respondent complainants made a further payment of Rs. 8,00,000/ on 09.06.2023.
- IX. That surprisingly, the respondent unilaterally served a unit cancellation notice upon the complainants without any prior intimation with the complainants, on pretext that since the demands made vide letter dated 25.11.2022 was pending, therefore the unit allotment of the complainants stands cancelled. That in spite of completing the pending work the respondent right away proceeded with cancelling the allotted unit without making any communication with the complainants.
- X. That as per the statutory provision laid down in the Act of 2016, the respondent was supposed to serve two prior notices before proceeding with the unit/apartment cancellation. That the respondent not only deliberately bypassed the said mandatory provision but unilaterally proceeded with the said cancellation of the unit/apartment in a totally arbitrary manner which is bad in law and the same may kindly be set aside and action may kindly be taken against the respondent with respect to the same.
- XI. That the complainants when visited the office of the respondent, they were asked to pay an amount of Rs. 82,806/- towards the GST demand raised by respondent through NEFT vide transaction No.HS92405934509947 and the complainants made the said payment.



XII. That the complainants then tried contacting the respondent but it all went in vain. The complainants made multiple visits to the office of the respondent but the respondent paid no heed to the requests of the complainants.

XIII. That the complainants then finally, through his lawyer, served a legal notice upon the respondent requesting him to withdraw the said "cancellation notice" dated 29.01.2024 and handover the finished unit/apartment upon making the outstanding payment, with a copy of the completion as well as the occupancy certificate within a period of 4 weeks from the date of receipt of the said notice. The respondent neither replied to the said notice nor did the respondent offer~~d~~ the possession of the said unit.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

- (i) Direct the respondent to immediately withdraw the cancellation notice dated 29.01.2024.
- (ii) Direct the respondent to complete the construction of the unit and then issue fresh letter of offer of possession as per agreement to sale.
- (iii) Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of present litigation.

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.



- I. That in the present complaint the builder buyer agreement was executed on the basis of Performa prescribed by the real estate regulatory authority.
- II. That as far as present builder buyer agreement is concerned, its terms and conditions are applicable on both the parties equally and the complainants are bound by the same. As per the clause 9.3, the allottee shall be considered under a condition of default on occurrence of following events. The clause 9.3 (i) of the agreement in question specifically puts a condition upon the allottee wherein it states that if the allottee fails to make payment for 2 consecutive demands made by the promoter then it shall be considered as a default on the part of allottee.
- III. That as per clause 9.3 (ii) in case of default under the condition listed above continues for a period beyond 90 days after notice from the promoter in this regard, the promoter may cancel the allotment.
- IV. That from the above stated clauses it is crystal clear that for the purpose of cancellation, a promoter has to raise least 2 demand and total time period of non-payment shall not be less than 90 days. That in case the allottee fails to make payment beyond 90 days, the respondent/promoter has the right to cancel the allotment of the complainants. In the present case, the respondent has complied with said clause as and raised to demands, 1st demand raised by the respondent was offer of possession as admitted by the complainants itself. That said offer of possession was issued by the respondent on 25th of November 2022 i.e within 3 years from the date of execution of builder buyer agreement. The complainants specifically admits that they had received said offer of possession yet the complainants failed to make payment against the amount demanded by the respondent.



- V. That vide said offer of possession respondent demanded an amount of Rs. 43,90,720/- plus charges towards stamp duty and registration charges i.e Rs. 4,40,000/- as stamp duty and Rs. 40,003/- as registration charges. The complainants failed to make said payment. That after receiving of demand against offer of possession, complainants only paid an amount of ₹ 8 lakh as admitted by the complainants in this complaint itself. That admittedly no further amount was paid by the complainants till the date of cancellation that is 23.01.2024.
- VI. That the complainants transferred an amount of ₹ 82,806/- after cancellation of the unit. That once the unit has been cancelled, the complainants have no right to transfer any amount in the account of respondent. That the respondent absolutely does not admit the said amount against the cancelled unit of the complainants.
- VII. That the fact concealed by the complainants are that prior to cancellation of the unit on 29.01.2024, the respondent had issued another demand/reminder to the complainants wherein the respondent has demanded the amount due along with additional demand of taxes in shape of GST. The said demand was raised by the respondent on 03.01.2024 and an amount of ₹ 82,806/- was demanded against 12% GST and said amount was paid by the complainants after receiving cancellation letter issued by the respondent.
- VIII. That the complainants always knew, that if he fails to pay the amount demanded by the respondent and if said defaults continues for more than 90 days it shall be considered as default under agreed terms and condition and the promoter has each and every right to cancel the allotment. Whereas in the present case the default of the complainants continues for approximately 430 days i.e 5 times more as agreed in builder buyer agreement. The respondent has given more than



sufficient time to the complainants to pay the balance amount yet the complainants only paid ₹ 8 lakh to the respondent. That making of part payment do not absolve is the complainants from its liability to pay the entire amount and cannot be treated as fulfilment of their duties. That even after receiving of demand letter dated 03.01.2024, when the complainants fails to pay total amount due, the respondent on the basis of agreed terms and condition issued a cancellation letter dated 29th of January 2024.

IX. That the cancellation was done by the respondent in due compliance of the agreed terms and conditions of the agreement.

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. Written Submissions filed by complainants

8. The complainants on 02.01.2025 has filed written submissions has made following submissions.

I. That the builder buyer agreement, was executed between the complainants & the respondent on 20.01.2020. The said BBA shall be binding on both the parties and that terms of the transaction between parties shall be governed by the BBA.

II. That there was both delay & pendency in the ongoing project and the promoter failed to provide ready to move in possession of the developed unit/apartment & failed to complete the project within the stipulated time and due to the delay in same, the promoter was clearly at fault as per clause 9.1 of the BBA. The allottee was empowered by clause 9.2(i) of the BBA to withhold further payment & after withholding of the payment, the promoter was legally bound to correct





the situation by completing the construction/development milestones and only thereafter the allottee be required to make the next payment without any interest for the period of such delay.

III. That the unit/apartment can only be cancelled if the allottee fails to make payments for two consecutive demands made by the promoter as per the payment plan. No two demands were ever raised by the promoter at any point of time. Only one demand was raised vide offer of possession dated 25.11.2022. However no second demand was ever raised by the respondent at any point of time.

F. Written submissions filed by respondent

9. The respondent on 02.01.2025 has filed written submissions has made following submissions.

I. That the respondent raised a demand as per payment plan. The list of demands raised and payments received by the respondent is as follow:

S. no.	Demand/Reminder	Date of Demand	Due Date	Amount demanded	Amount paid	Date of Payment
1.	At the time of booking			2,00,000/-	2,00,000/-	05.12.2019
2.	At the time of booking	20.12.2019	25.12.2019	6,44,276/-	6,44,276/-	23.12.2019
3.	Within 30 days of booking	23.12.2019	23.01.2020	32,48,782/-	2,48,782/- 1,34,856/- 28,56,869/- =32,40,507 /-	23.01.2020 20 31.01.2020 20 03.02.2020 20
4.	Offer of possession	25.11.2022	17.12.2022	43,90,720/- + 4,40,000/- =48,30,720/-	2,00,000/- 6,00,000/- =8,00,000/-	09.06.2023



				=48,70,723 /-		
5.	Demand against GST	03.01.20 24		82,806/-	82,806/-	28.02.20 24

II. That as on date of cancellation total amount due towards complainants was Rs. 41,53,529/- and the complainants only paid an amount of Rs. 82,806/- and that too after cancellation of unit.

III. That complainants raised another issue that cancellation is not valid because respondent has to raise two consecutive demands as per agreement and total time period must be beyond 90 days before cancellation. The respondent has raised 2 demands first against offer of possession and second against payment of GST and total time period qua continuation of default was 430 days i.e., 5 times more as per terms and conditions of agreement.

G. Jurisdiction of the authority

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

G.I Territorial jurisdiction

11. 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.

G.II Subject-matter jurisdiction

12. 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.

13. 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 complainants at a later stage.

H. Findings on the relief sought by the complainants:

- (i) Direct the respondent to immediately withdraw the cancellation notice dated 29.01.2024.
- (ii) Direct the respondent to complete the construction of the unit and then issue fresh letter of offer of possession as per agreement to sale.
14. The above mentioned relief no. (i) and (ii) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
15. In the present complaint, the complainants booked a unit in the project of respondent namely, The Elite Residencies, situated at sector 99, Gurugram. The complainants were allotted a unit bearing no. A-207 on 2nd floor in Tower A(T-3) admeasuring 1865 sq. ft. The agreement to sale for the said unit was executed between the complainants and the respondent on 20.01.2020 for the total sale consideration of was Rs. 81,86,094/- and the complainants has made a payment of



Rs. 48,84,783/- + 82,806/- against the same in all. The respondent company completed the construction and development of the project and got the occupation certificate on 09.11.2022.

16. The complainants have pleaded that the respondent has cancelled their unit on 29.01.2024 which is illegal and invalid as the cancellation letter issued by the respondent is in contravention of clause 9.3 of the agreement dated 20.01.2020. The respondent can cancel the unit of the allottee if he fails to make payments for two consecutive demands made by the promoter as per the payment plan. No two demands were ever raised by the respondent at any point of time. Only one demand was raised vide offer of possession dated 25.11.2022.
17. The plea of the respondent is otherwise and stated that the demand were raised as per payment plan annexed with agreement to sale and the complainants have made payment of Rs. 40,84,783/- till offer of possession and further Rs. 82,806/- was paid after cancellation of the unit. Moreover, the respondent has raised 2 demands first against offer of possession and second against payment of GST. However, despite repeated follow ups the complainants failed to act further and comply with their contractual obligations and therefore the unit of the complainants was finally terminated vide letter dated 29.01.2024. Now the question before the authority is whether the cancellation issued vide letter dated 29.01.2024 is valid or not.
18. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the agreement to sale was executed between the complainants and respondent on 20.01.2020. As per the payment plan annexed as Schedule C with agreement to sale at page 70 of complaint the total sale consideration of the unit was Rs. 81,86,094/-. The possession linked



payment plan was agreed between the parties explaining as how the complainants have to make payments. As per the plan the 10% of the total cost is to be paid on booking, thereafter 40% of the total cost is to be paid within 30 days from the allotment and subsequently on offer of offer possession the complainants had to pay 50% of the total cost. The complainants have made a payment of Rs. 40,84,783/- till the date of offer of possession. The respondent completed the construction and development of the project and got the occupation certificate on 09.11.2022 thereafter they offered the possession of the unit on 25.11.2022 and raised a demand of Rs. 48,70,723/- to be paid on the offer of possession as per the payment plan. The complainants on 09.06.2023 has made a payment of Rs. 8,00,000/- out of demanded amount of Rs. 48,70,723/-. Hence, the complainants defaulted in making payments.

19. The complainants plea is that the respondent did not issue 2 consecutive demands as per agreement. The authority observes that the respondent has obtained occupation certificate on 09.11.2022 and also offered the possession of unit on 25.11.2022 so now it is the duty of the allottee to take possession of the unit within two months of obtaining occupation certificate. The relevant section is reproduced below:

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

20. The authority observes that the complainants had paid an amount of Rs. 40,84,783/- till the date of offer of possession and when demanded an amount which is due on offer of possession was made the



complainants had only paid an amount of Rs. 8,00,000/- out of the demanded amount. As per section 19(10) of the Act, 2016 the allottee also has a responsibility to take physical possession of the unit within two months after receiving occupation certificate. However, the allottee failed to comply with its obligations. The respondent waited for more than a year and subsequently cancelled the agreement. Therefore, the cancellation of the unit is legally valid.

21. However, while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. As per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux vs Union of India 1969(2) SCC 554*** and it was held that a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing as under:

"5. AMOUNT OF EARNEST MONEY

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



22. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs. 49,67,589/- after deducting 10% of the sale consideration along with an interest @11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 29.01.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

(iii) Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of present litigation.

23. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

I. Directions of the authority

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

- i. The respondent/builder is directed to refund the deposited amount of Rs. 49,67,589/- after deducting 10% of the sale consideration



along with an interest @11.10% on the refundable amount, from the date of cancellation i.e., 29.01.2024 till the date of realization of payment.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. Complaint as well as applications, if any, stands disposed off accordingly.
 26. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2025