

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

Complaint no. : 4388 of 2023
Complaint filed on : 21.09.2023
Order Reserved On: 07.02.2025
Order Pronounced On: 04.04.2025

1. Anurag Vats
2. Sandeep Arora

Both R/o: - Orchid Petals, Flat no. 901, Tower-21,
Sohna Road, Gurugram

Complainants

Versus

M/s Pareena Infrastructure Pvt. Ltd.
Regd. Office at: - Flat no. 2, Palm Apartment, Plot no.
13 B, Sector Dwarka, New Delhi-110075

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Ms. Preeti Taneja (Advocate)
Sh. Prashant Sheoran
(Advocate)

Complainants
Respondent

HARERA
ORDER
GURUGRAM

1. The present complaint has been filed by the complainants/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 to the allottee as per the agreement for sale executed *inter se* them.

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:

S.N.	Particulars	Details
1.	Name and location of the project	"Coban Residences", sector-99A, Gurgaon
2.	Nature of the project	Group Housing Project
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.06.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2024 + 6 months = 11.09.2024
7.	Date of booking	20.01.2013 (page no. 19 of complaint)
8.	Unit no.	NA
9.	Unit admeasuring area	1800 sq. ft. (As per credit note at page no. 20 of complaint)
10.	Allotment letter	NA
11.	Date of builder buyer agreement	Not executed
12.	Due date of possession	Cannot be ascertained
13.	Surrender Request by complainants	16.10.2017

		[page no. 27 of complaint]
14.	Total sale consideration	Cannot be ascertained
15.	Total amount paid by the complainants	Rs.8,50,000/- [as per page no. 19 of complaint]
16.	Occupation certificate	13.12.2022 (For Tower A, C, D, F(half), EWS Block I, EWS Block II) (Page no. 13 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -
- I. That in the month of January 2013, the respondent published a very attractive brochure and extensively advertised their new upcoming project in sector 99A, Gurugram, through its representative agents, including one Investor Clinic.
 - II. That acting on the representations made by the respondent and the said agent, the complainants applied for provisional booking of a flat/unit in the project, by paying a sum of Rs. 8, 50,000/- by way of two cheques dated 20.01.2013 and 22.01.2013 in favour of the respondent.
 - III. That a credit note letter was issued in favour of the complainants, confirming the discount.
 - IV. That in the end of May 2013, the complainants visited the project site to check the status of the construction which should have been commenced as per the promise of the respondent but the complainants were astonished to see that nothing had started there, even no signage of the respondent to indicate that any project is coming up over there.



- V. That the complainants then visited the office of the respondent and enquired about the construction and required documentation regarding project details and its terms and conditions. The respondent said that construction would be starting soon and delayed sharing of any documents saying that certain approvals were still in process and the same would be shared soon.
- VI. That the complainants were eagerly waiting to receive any updates on the project in which they had invested their hard-earned money, the respondent, on the contrary, sent a demand letter dated 03.08.2013 to the complainants by post. The said notice mentioned the project's name as 'Group housing Coban Residences' while acknowledging the receipt of payment of Rs. 8,50,000/- and confirming the allocation of a 3 BHK+SQ unit in the said project, based on their earlier expression of interest. Additionally, the demand letter included a request for the sum of Rs. 11,99,096/- concerning the allotment of the mentioned unit in the said project.
- VII. That upon receiving the aforesaid letter, the complainants again visited the office of the respondent to know the reasons behind sending the demand letter, when no project details, allotment letter, or buyer builder agreement were ever shared and executed with the complainants. However, the respondent just gave false assurances about the commencement of the project in a few months and did not share with the complainants any details of the project or any requisite documentation.
- VIII. That the complainants thereafter kept on following up with the respondent but they remained entirely silent, providing no response whatsoever.

- IX. That due to the consistent failure of the respondent to fulfil their commitments and deliver on their assurances, the complainants were constrained to formally write an email for refund of the paid up amount. Despite sending emails and personally visiting the respondent's office, they were repeatedly promised that a refund was being processed and that a specific timeline would be provided for the refund. However, no timeline was ever communicated, and the money owed to the complainants was never returned.
- X. That upon persistent follow-ups by the complainants, the respondent replied by email giving the complainants an option to explore an alternate offer of the unit. However, the complainants continued to follow up with the respondent to obtain a refund for the amount paid by them.
- XI. That till today many rigorous follow ups with the respondent have been made but the same have not borne any fruits and the respondent is not refunding the amount which was got deposited by them under the garb of showing dream of house in an ultra-modern locality.
- XII. That the complainants have not only suffered huge financial losses but had also suffered mental agony as the complainants had given their hard-earned money to book the unit for their personal use.
- XIII. Since the respondent utterly failed not only in fulfilling their obligations of executing the allotment letter/ Builder Buyer agreement with the complainants, as well as the significant delay of over six years in delivering the said project, therefore, the complainants are seeking refund of the amount along with interest.

C. Relief sought by the complainants:

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

- I. Direct the respondent to refund the amount of Rs.8,50,000/- along with interest at the prescribed rate to be calculated from the date of each payment till the date of realization.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:
 - I. That the present complaint is not maintainable in the eyes of law as the demand was paid in the year 2013 itself and the complaint can be filed within 3 years of said demand i.e., by 2016 only. Whereas present complaint has been filed in year 2023.i.e., after expiry of more than 7 years from last date of limitation to file their claim, if any.
 - II. That the respondent has already obtained occupation certificate of the project in question. However, the possession could not be offered to complainants due to reason that complainants never came forward to take their allotment in the project and failed to fulfil its part as per letter dated 03.08.2013.
 - III. That the complainants have twisted and manipulated the facts of the case and presented them in a manner to depict respondent's fault, rather actually it was the complainants who failed to perform their part in order to enter upon a concluded contract. The complainants failed to prove any violation on the part of respondent in the present case.
 - IV. That the complainants had applied for an allotment in the project of respondent and initially paid an amount of ₹ 8,50,000/-. Thereafter respondent issued a letter to the complainants and apprises about the sanctioning of building plan and requested to pay further amount and also requested to get a builder buyer agreement executed since the allotment shall be governed by the terms and conditions of unit buyer agreement. That after applying for allotment, respondent issued a letter



dated 03.08.2013, wherein it was specifically mentioned that 3 BHK + SQ is being allocated and further the complainants were requested by the respondent to deposit an amount of ₹ 11,99,096/- in order to allot a specific apartment in the favour of complainants. Even after receiving of said letter complainants fails to come forward and pay the said amount to get allotment of specific unit in their favour.

- V. That the complainants out of their own will, never came forward to comply with the terms and conditions of letter dated 3rd of August 2013 and after passing of more than 11 years filed present baseless complaint.
- VI. That since the present complaint has been filed after inception of RERA Act, thus even if there is no builder buyer agreement, still the complainants are bound by the terms and condition of RERA Act and as per the regulations made under the act, the respondent is entitled to forfeit the earnest money at the rate of 10% of the sale consideration. In the letter dated 03.08.2013, it was stated that 20% of BSP is Rs. 19,75,832/- thus the simple calculation it can be ascertained that the 10% of the BSP will be Rs. 9,87,916 /-, whereas the complainants had paid only an amount of Rs. 8,50,000/-.
- VII. That after receiving letter dated 3rd of August 2013, the complainants remain silent for a period of more than 4 years and all of a sudden in the year 2017 started issuing baseless emails to the respondent and started demanding the amount paid by the complainants along with interest and start levying baseless allegations that the respondent fails to allot any unit in favour of the complainants and accordingly they want their refund. The complainants nowhere explained as to why for the period of more than 4 years they never contacted the respondent and why the

never came forward to pay the amount for getting an allotment of the specific unit in their favour. Even in the complaint filed by the complainants there is no such communication prior to year 2017. Thus, it is crystal clear that the allegations levied by the complainants are absolutely false and frivolous.

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 submission made by the parties.

E. Jurisdiction of the authority

7. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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 Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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 complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine,

keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants

- F. I** Direct the respondent to refund the amount of Rs.8,50,000/- along with interest at the prescribed rate to be calculated from the date of each payment till the date of realization.
13. The present complaint has been filed by the complainants against the respondent regarding the non-fulfillment of obligations under the Real Estate (Regulation and Development) Act, 2016 (RERA Act). The complainants paid an amount of Rs. 8,50,000/- to the respondent on 20.01.2013 towards the booking of a unit in the upcoming project of the respondent. Thereafter, on 03.08.2013, the respondent issued a demand letter in which it demanded an amount of Rs. 11,99,096/- and also acknowledged the amount already paid by the complainants. However, the respondent neither issued an allotment letter nor executed a Builder Buyer Agreement (BBA). The complainants on 16.10.2017 requested the respondent to refund an amount of Rs. 8,50,000/-. However, the respondent failed to refund the said amount, and due to this continued inaction, the complainants filed a complaint before this Authority on 21.09.2023, seeking a refund of the amount paid.
14. The respondent has objected to the maintainability of the complaint, arguing that it is barred by limitation since the payment was made in

2013, and no action was taken by the complainants for an extended period. Moreover, the complainants failed to approach the respondent for executing the necessary documents, and therefore, their claim should be dismissed.

15. Upon perusal of the documents on record, the authority observes that the pleas raised by the respondent are not sustainable for the following reasons **Firstly**, the complainants have made a payment of Rs.8,50,000/- to the respondent towards booking amount and the respondent has also admitted payment of the same in the reply so filed by the respondent. However, the respondent has failed to issue any receipt w.r.t to the payment made by the complainants-allottee and has not annexed the same with the reply so filed by the respondent. Moreover, the respondent vide demand letter dated 03.08.2013 raised a further demand of Rs. 11,99,096/- . **Secondly**, the respondent after receiving the said amount of Rs. 8,50,000/- neither issued the allotment letter nor builder buyer agreement. Further, the complainants made a formal request for a refund of the paid amount on 16.10.2017, which the respondent failed to act upon.
16. The failure of the respondent to issue an allotment letter, execute a BBA, or refund the amount constitutes a continuous breach of the respondent's obligations under the RERA Act. The cause of action is continuous, as the complainants remain deprived of either the property or their money. Courts and tribunals have consistently held that in cases of non-performance by developers, limitation laws should not be interpreted in a manner that prejudices homebuyers.
17. The principle of equity and justice dictates that the complainants should not be made to suffer due to the respondent's non-compliance. The

respondent, having accepted the amount and failed to take necessary actions, cannot now rely on limitation as a defense to escape liability.

18. Therefore, this Authority holds that the complaint is not barred by limitation and is maintainable under the provisions of the RERA Act. The counsel for respondent during proceedings has also objected that occupation certificate has been obtained by the respondent on 13.12.2022 and the complainant has only paid 8,50,000/- which is less than 10% of the earnest money therefore, they forfeited the said amount. The Authority is of the view that the respondent never issued an allotment letter or executed a builder buyer agreement and in the absence of a legally binding agreement specifying forfeiture conditions, the respondent cannot unilaterally forfeit the amount paid by the complainants. The respondent cannot retain the complainants money without having performed its obligations, such as allotting the unit or executing the agreement. Hence, the Authority rejects the respondent's claim of forfeiture.
19. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

"In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions

of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."

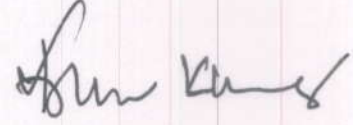
20. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amounts received from the complainants. Thus, the complainants are entitled to get refund of the entire amount paid by them along with interest at the prescribed rate.
21. The authority hereby directs the respondent-promoter to return the amount received by it i.e., Rs. 8,50,000/- with interest at the rate of 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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules *ibid*.

G. Directions of the authority

22. 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/promoter is directed to refund the amount i.e., Rs.8,50,000/- received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

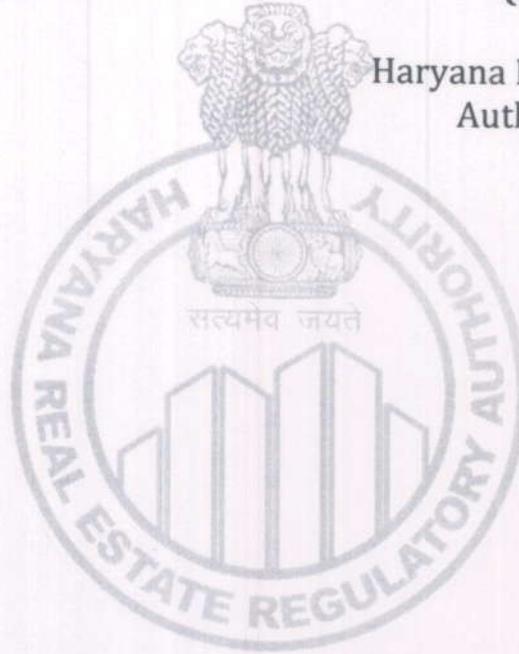
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to registry.

Dated: 04.04.2025



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory
Authority, Gurugram



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