

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

Complaint No.3978-2023

Date of Decision: 09.05.2025

**Mabood Aryaman, Apartment No. B-502, ATS 1, Sector 50,
NOIDA, Uttar Pradesh**

Complainant

Versus

**M/s. Pareena Infrastructures Pvt Ltd, C1/7A, 2nd Floor, Omaxe
City Centre, Sohna Road, Gurugram, Haryana.**

Respondent

APPEARANCE

**For Complainant:
For Respondent**

**Mr. Praddyot Pravesh, Advocate
Mr. Prashant Sheoran, Advocate**

ORDER

1. This is a complaint filed by Mr. Mabood Aryaman, (allottee) under sections 12, 14, 18 and 19 read with section 71 of the Real

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Estate (Regulation and Development), Act 2016, against M/s. Pareena Infrastructures Pvt Ltd (promoter).

2. According to complainant, the respondent is a leading Real Estate Company and is engaged in setting up its project of Residential Group Housing Colony in the name of "**Coban Residences**", Sector-99A, Dwarka Express Way, Gurugram with registered office at C-7A, 2nd Floor, Omaxe City Centre Mall, Sohna Road, Gurugram.

3. That the respondent with its associates has obtained the approval for construction of said project vide License No.13 of 2013 dated 12.03.2017. The complainant booked a 4BHK flat in the said project with respondent and its cost was determined to be Rs. 1,49,92,185/- @ Rs. 5065.2 per sq. ft for super area of 2352 sq. ft.

4. That he (complainant) made payment of Rs. 7,50,000/- vide cheque no. 193791 drawn on AXIS Bank and Rs. 2,50,000/- vide cheque no. 487779 drawn on Indusland Bank. He (complainant) received the provisional allotment letter dated 27.11.2013 of booked Apartment no. T-1/1104 in the said project. He (complainant) made further payment of Rs. 14,71,019/- vide cheque no. 193811 dated 01.09.2013 drawn on AXIS Bank,

5. That he (complainant) further made payment of Rs. 15,24,218/- on 29.06.2015 vide NEFT HDFC Bank No.178250077990674. However, no Builder Buyer Agreement had been executed by the respondent despite request and persuasion. A total sum of Rs. 39,95,237/- being 30% of the cost of the booked flat has been paid to the respondent, within 29 months booking of flat, whereas the development of the project was not even 2%. He (complainant) understood the malafide intention of the extortion of money by the respondent and was left with no option but to stop payment to respondent and asked for refund from respondent.

6. That in the course of time, he (complainant) faced medical emergency with his family members and on personal front also. He had even lost his job. Due to these circumstances, he (complainant) wrote letters to respondent dated 15.09.2016, 07.06.2017 and 12.08.2017 for refund of the payment.

7. That after waiting for more than four years and failing to hear any update in the status of the project, he (complainant) wrote other e-mails reiterating his question with respect to the tentative schedule for completion of working and handing over of possession.

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8. That it was shocking for him (complainant) to have received a letter dated 03.02.2021 asking him to transfer to another project at an exorbitant rate contrary to discussion i.e. MICASA in sector 68, Gurugram. Further he (complainant) received an e-mail dated 16.09.2018 where it was intimated to him that allotment of flat was changed to 2 BHK measuring 865 sq. mt of flat in MICASA, Sector 68 at an exorbitant amount of Rs. 58,11,000/-. He (complainant) vehemently declined this proposal via e-mail, as the same flat was available @ Rs. 40.00 lakhs. Again, this was another delayed project where no possession was possible till 2024.

9. That he (complainant) was asked to pay cash to get the matter settled. He expressed his inability as he was under severe health constraints and objected in strong words to this. Several e-mails have been exchanged on different dates between parties, but no fruitful result came out. Finally, on 31.07.2020 he (complainant) sent a final reminder, and it was clearly mentioned that he would be constrained to take legal recourse against the respondent, if it (respondent) fails to update him about the development and completion date of the project.

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10. That the project was supposed to be completed in the year 2017 and delay is being caused since then and not even 5% of the project has been completed within stipulated period of delivery. The respondent has failed completely in complying with terms of clause 13^{and 14} of the BBA and has also violated the provisions of RERA Act which entitles him (complainant) to act against the respondent.

11. That on 30.03.2022 he (complainant) filed the complaint bearing No. 1151 of 2023 before the Haryana Real Estate Regulatory Authority, Gurugram and failed to pay due amount within time of 90 days.

12. That the Hon'ble Authority gave direction to him to file appropriate petition for compensation.

13. The complainant has sought following reliefs:

- i) To direct the respondent to pay loss of rent of Rs. 50,000/- for delayed period from 27.11.2013 till date of actual realization.
- ii) To direct the respondent to pay Rs. 50,000/- for appreciation value.
- iii) To direct the respondent to pay compensation to the tune of Rs. 20,00,000/- for mental agony and physical harassment.

- iv) To direct the respondent to pay compensation to Rs.500/- per day in delay in extra expenses occurred due to conveyance and loss of time from NOIDA to Gurugram.
- v) To award Rs. 5,00,000/- as cost of three different complaints in favour of the complainant and against the respondent.
- vi) To pass such other orders/reliefs, Hon'ble Authority may deem fit and appropriate in the fact and circumstances of the present case and interest of justice.

14. Respondent contested the claim of complainant by filing a written reply. It is averred that present complaint is not maintainable in the eyes of law and the complainant has not come with clean hands, before this forum.

15. That the Authority vide its order dated 09.02.2023 passed in complaint No. 1151 of 2022 has already acknowledged the fault of present complainant and already stated that respondent is entitled to deduct 10% of the sale consideration being earnest money as per regulation of Haryana Real Estate Regulatory Authority, Gurugram. Said order was challenged by the complainant before Haryana Real Estate Appellate Tribunal and Hon'ble Tribunal vide its order dated

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18.08.2021 stated that 10% of the total sale consideration shall be deducted as earnest money.

16. That relief of compensation in the name of suffering and mental agony by the complainant was part and parcel of earlier complaint.

17. As per respondent, complaint in hands, which is based on same cause of action, is not maintainable. It is a principle of public policy that there should be end of litigation. When complaint has already been decided, no fresh case/complaint can be allowed on same cause of action.

18. It is denied by respondent that it (respondent) had sent any e-mail dated 16.09.2018 in which it was intimated to the complainant that allotment of flat was changed to 2BHK measuring 865 sqmt of flat in MICASA, Sector-68, Gurugram and that at an exorbitant high amount of Rs. 58,11,000/-. It is also denied that complainant had declined said proposal via e-mail as the same flat was available @ Rs. 40.00 lakhs. It is again disputed by respondent that the project was supposed to be completed in year 2017 and there was any delay on its part.

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19. The respondent prayed that the complaint be dismissed in the interest of justice.

20. Both of the parties filed affidavits in evidence reaffirming their case.

21. I have heard learned counsels for both of the parties and perused the record on file.

22. It is not disputed on behalf of respondent that the complainant booked a unit (4BHK flat) in the project "**Coban Residences**" being developed by it (respondent) on consideration of Rs. 1,49,92,185/-. The provisional allotment letter in this regard was issued by the respondent on 27.11.2013. The payments as claimed by the complainant are also not disputed during arguments. According to complainant, same paid a sum of Rs. 39,95,237/- i.e. about 30% of total cost within 29 months of booking the flat. The only plea of respondent is that the complainant himself opted to withdraw from the project and sought refund of the amount. He filed a complaint before the Authority, which was allowed and the Authority was of the view that it was fault of the complainant and hence, it (respondent) was entitled to deduct 10% of sale consideration. Present complainant

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approached Appellate Tribunal feeling aggrieved by said order, but the Appellate Tribunal did not find any merit in his plea and dismissed the appeal.

23. Arguing all this, learned counsel for respondent requested to dismiss present complaint.

24. On the other hand, according to learned counsel for complainant, his client was forced to apply for refund of the amount, when same found that no construction at all was started by the respondent despite 29 months of the booking. He (complainant) requested to tell the status of the project regarding its construction and as when same was likely to be completed, but no response was given to him by the respondent. Finding no other way and suffering with several diseases, complainant opted to apply for refund of the amount.

25. True, while disposing of complaint filed by present complainant, the Authority noted that "the complainant surrendered the allotted unit before issuance of cancellation of unit by the respondent. Same (complainant) approached for cancellation of unit even before the due date of possession, which made it a case of surrender. So, the deduction should be made as

per Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder), Regulation 11 (5) Act of 2018".

26. Admittedly, on an application/request made by complainant, a unit (4BHK flat) was allotted to him by respondent through allotment letter dated 27.11.2013. It is not in dispute that complainant had paid a sum of Rs. 39,95,237/- i.e. about 30% of total cost of booked flat within 29 months of booking the flat. According to complainant, despite 29 months of booking, the project was not constructed even up to 2%, which left no option with him but to stop payment to the respondent and hence, he asked for refund of amount from the respondent. The respondent although denied aforesaid fact but adduced no evidence to show that construction was as per schedule, and again to show that status of construction was disclosed to buyer (complainant). As per section 11 (3) of Act of 2016, the promoter was duty bound to give information about stagewise time schedule of completion of the project.

27. Builder's Buyer Agreement (BBA) was executed between the parties on 21.12.2013 but admittedly, project was not

complete when (The Real Estate Regulation and Development) of Act 2016 came into force. In this way, aforesaid was an on-going project and the promoter was bound to adhere the provisions of the Act. It is not clear that promoter applied for registration of project, as per this Act

28. In this way, it is well established that even if the complainant applied for refund of the amount, same was compelled to do so, as there was no ^{effort} development on the part of respondent to complete the project in agreed time.

29. BBA dated 21.12.2013 is evident that allottee/complainant had paid a sum of Rs. 24,71,019/- till said date i.e. 21.12.2013. It was covenanted in said BBA that developer under normal conditions subject to force-majeure to complete construction of tower/building in which said flat is located, within four years of start of construction or execution of this agreement, whichever is later. In this way, project was to be completed till December 2017 but as mentioned above, project was completed upto about 2% within 29 months. Considering all this, I find weight in the contention of learned counsel for complainant alleging that the complainant was left with no option but to seek refund of the

amount. The respondent failed to construct the project as per agreement. All this makes complainant entitled for compensation, apart from refund of amount. So far as plea of respondent that present complaint is not maintainable, having been based on same cause of action, on which a complaint seeking refund of amount has already been decided by the Authority is concerned, section 18 (3) of Act of 2016 provides for both of remedies to an allottee i.e. to seek refund of amount paid by him and also to claim compensation, if promoter fails to discharge his obligations imposed upon him under this Act or in accordance with terms and conditions of agreement for sale. The respondent did not provide status report about construction of project and also failed to raise construction as agreed and hence liable to pay compensation. Reliefs of refund & of compensation are two separate reliefs. It is well settled that jurisdiction to allow refund of amount vests in the Authority, while it is for Adjudicating Officer to decide matters of compensation. No merit in this plea of respondent.

30. The complainant has prayed for a sum of Rs. 20.00 lacs as compensation for loss of rent at rate of Rs. 50,000/- per month from 27.11.2013 till the date of actual realization, Rs. 5.00 lacs for

appreciation value, Rs. 20.00 lacs for mental agony and physical harassment, Rs. 500/- per day in delay in extra expenses accrued due to conveyance and loss of time, Rs. 5.00 lacs as cost of three complaints.

31. Section 72 of Act of 2016 provides the factors, which are to be taken into consideration, while assessing amount of compensation by the AO.

32. Apparently, promoter/respondent used money paid by complainant without expanding same for the construction of project/unit, thus received unfair advantage/gain. All this consequently caused loss to buyer/complainant. If the promoter/respondent had completed project/unit in time, the complainant could have earned rent from it or could have used the same for his habitation. ^{Apparently} The complainant ^{was} ~~apparently~~ was deprived of his right.

33. As mentioned above, unit in question was a flat (4BHK) admeasuring 2352 sq. ft. in Coban Residences, Sector-99A, Dwarka Expressway, Gurugram. Keeping in view size of unit and area where same is situated, in my opinion, Rs. 5.00 lacs will be appropriate amount to be awarded as compensation for loss

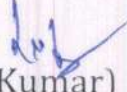
suffered by the complainant. Same is awarded in favour of complainant, to be paid by the respondent.

34. When the respondent failed to raise construction as per agreement and did not provide status report about construction of building despite request by complainant. The latter, who is suffering from several diseases, was forced to withdraw from the project. All this caused mental agony and suffering to him. Although the complainant has prayed for a sum of Rs. 20.00 lacs for mental agony and physical harassment, it appears to be excessive. Same is awarded a sum of Rs. 1.00 lac for mental agony and physical harassment. However, no receipt of payment of fee of counsel is submitted by the complainant, it is evident that ^{latter (complainant)} ~~same~~ was represented by a counsel. He is allowed Rs. 50,000/- as cost of litigation.

35. No reason to award compensation in the name of cost of appreciation value, expenses incurred in transportation from NOIDA to Gurugram etc. Requests in this regard are declined. Respondent is directed to pay said amounts along with interest at rate of 10.50% per month from the date of this order till date of realization of amount.

36. File be consigned to record room.

Announced in open court today i.e. on 09.05.2025


(Rajender Kumar)
Adjudicating Officer
Haryana Real Estate
Regulatory Authority,
Gurugram. 09.05.2025