

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

Complaint no.: 3895 of 2024
Date of filing: 14.08.2024
Date of order: 20.03.2025

Sandeep Dwivedi

R/o:- D-103, IVY Apartments, Block-A, Sushant Lok-1,
Gurugram, Haryana-122001.

Complainant

Versus

M/s Pareena Infrastructures Private Limited
Regd. Office at:- C7A, 2nd Floor, Omaxe City Centre Mall,
Sohna Road, Sector-49, Gurugram, Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Dhruv Lamba (Advocate)

Shri Prashant Sheoran (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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. Project and unit related details

2. The particulars of the project, the details of 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. No.	Particulars	Details
1.	Name and location of the project	"Coban Residences", Sector-99A, Gurugram
2.	Nature of the project	Group Housing Complex
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered or not registered	Registered GGM/419/151/2020/35 dated 16.10.2020 Valid up to 11.03.2024
7.	Unit no. and floor no.	502 and 5 th floor and Tower-1 (As per page no. 31 of the complaint)
8.	Unit area admeasuring	1997 sq. ft. (Super area) (As per page no. 31 of the complaint)
9.	Provisional allotment letter	27.11.2013 (As per page no. 28 of the complaint)
10.	Date of execution of apartment buyer's agreement	11.12.2013 (As per page no. 29 of the complaint)
11.	Date of start of construction	16.10.2014 (As per mentioned in demand letter dated 22.06.2021 at page no. 27 of the complaint)
12.	Possession clause	3.1 <i>That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee.....</i> 5.1



		<p><i>In case within a period as provided hereinabove, further extended by a period of 6(six) months if so required by the developer, if the developer is unable to complete construction of the said flat as provided hereinabove (subject to force majeure conditions) to the flat allottee(s), who have made payments as required for in this agreement, then the flat allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs. 5/- per sq. ft. per month of the super area till the date of notice of possession as provided hereinabove in this agreement. The flat allottee(s) shall have no other claim against the developer in respect of the said flat and parking space under this agreement.</i></p> <p>(As per page no. 42 and 45 of the complaint)</p>
13.	Due date of possession	<p>16.04.2019 (16.10.2018 + grace period of 6 months) (Note: Due date to be calculated 4 years from the date of start of construction i.e., 16.10.2014 being later.) (Note: In proceedings dated 20.03.2025, the due date of possession is inadvertently recorded as 16.10.2018 i.e., without grace period of 6 months)</p>
14.	Payment Plan	<p>Construction linked payment plan (As per page no. 54 of the complaint)</p>
15.	Total sale consideration	<p>Rs.1,27,02,257/- (As per summary of payments on page no. 54 of the complaint)</p>
16.	Amount paid by the complainant	<p>Rs.1,02,38,680/- [i.e., 101.75% of Basic sale consideration] [i.e., 80.60% of Total sale consideration] (As mentioned in the offer of possession at page 67 of complaint)</p>
17.	Occupation certificate	<p>13.12.2022 (as per page 21 of reply)</p>
18.	Offer of possession	<p>14.12.2022 (As per page no. 65 of the complaint)</p>



19.	Cancellation letter (due to non-payment of outstanding dues as mentioned in offer of possession)	14.06.2024 (As per page no.8 of the application by the complainant u/s 36 of Act)
20.	Notice for revocation of Loyalty bonus given by respondent	06.01.2021 (of Rs.5,99,100/-) (as per page 70 of complaint)

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint:

- i. That Mr. Sandeep Dwivedi is a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent and is stated to be a builder/ promoter.
- ii. That M/s Pareena Infrastructures Pvt. Ltd. is a company, incorporated under the provisions of the Companies Act, 1956 and having its registered office at 2, Palms Apartment, Plot no 13B, Sector 6, Dwarka, New Delhi-110045 IN. That the Office of the Director, Town & Country Planning, Chandigarh, Government of Haryana (DTCP) granted Licence bearing No. 10 of 2013 dt. 12.03.2013 to the one M/s Monex Infrastructure Pvt. Ltd. (hereinafter referred to as "License Holder") for the development of a Residential colony on land admeasuring 10.5875 acres situated in the revenue estates of Village Gopalpur at Sector 99A, Distt. Gurgaon, Haryana. Thereafter, the license holder had entered into a joint development agreement with M/s Pareena Infrastructures Pvt. Ltd. whereby the respondent is entitled to develop a group housing colony upon the said land. Further, the license holder has also granted a power of attorney to the respondent, authorising the respondent to develop, construct, complete the group housing complex and to allot, book and sell units etc.

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- iii. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant fall under the category of "Allottee(s)" and has all the rights and obligations under the Act.
- iv. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent fall under the category of "Promoter(s)" and are bound by the duties and obligations mentioned in the said act.
- v. That the respondent issued an advertisement w.r.t launching of a residential project namely "Coban Residencies" situated at Sector 99A, Gurgaon and thereby invited applications from prospective buyers for the purchase of units in the said project. After representing through brochures, about the facilities to be provided, the respondent managed to impress Mr. Sandeep Dwivedi, who then decided to invest his hard-earned money in purchasing a unit in the subject project. It was specifically told to the complainant by the respondent that they have obtained all the government approvals required for the construction of the subject project. Accordingly, relying on the assurances and promises of the respondent, the complainant allottee made an application towards provisional booking on this date i.e., 27.07.2013 and made a payment of Rs.8,81,518/- against the total sale consideration of the subject unit. The said payment was also acknowledged by the respondent's company and is also reflected in the statement of accounts issued by the respondent.
- vi. That on 27.11.2013, a provisional allotment letter was issued by the respondent in the name of the present allottee vide which a 3 BHK + Servant apartment bearing no.502 in Tower T-1, admeasuring about 1997 sq. ft. was allotted to the present complainant in the subject residential project.
- vii. That on 11.12.2013, a buyer's agreement was executed between the respondent namely M/s Pareena Infrastructures Pvt. Ltd. and the present complainant, wherein a 3BHK + Servant apartment bearing no. 502 in

Tower- T1, having a super area of 1997 sq. ft. was allotted to the present complainant for a total sale consideration of Rs.1,27,02,257/-.

- viii. That as per clause 3.1 of the buyer's agreement dated 11.12.2013, executed inter se both the parties, the respondent has promised to complete the construction of the subject unit within 4 years from the date of start of construction or execution of the buyer's agreement whichever is later. Considering the fact, that the respondent, at the time of booking itself, had assured the complainant w.r.t the fact that it has obtained all the governmental approvals required to start the construction of the subject project. Hence, the due date for handing over of physical possession of the subject unit shall be calculated from the date of execution of buyer's agreement i.e., 11.12.2013. Therefore, the due date for handing over of physical possession in the present matter comes out to be 11.12.2017. However, it is a matter of fact and record that till date the respondent has not delivered the physical possession of the subject unit despite the complainant having paid almost 80% of the total sale consideration.
- ix. That the present complainant had paid an amount of Rs.1,02,38,674/- against the total consideration of Rs.1,27,02,257/- as and when demanded by the respondent. That, the complainant has time and again visited the project site of the respondent and has innumerable followed up with the representatives and employees/ officials of the respondent to know about the fact as to when the construction of the project shall be completed and when the units will be ready for the handing over. Further, the complainant allottee has time and again highlighted the snail-paced construction work at the project site of the respondent and sought clarification in this regard but all in vain. The construction of the project is considerably delayed by the respondents and hence, the complainant allottee has claimed his statutory right of delay possession charges from the respondent, but like always the

respondent has turned deaf years to this genuine request of the complainant allottee. In spite of the present complainant having fulfilled his obligations being an allottee, the respondent has not fulfilled their contractual obligation and has considerably delayed the construction and hence possession of the subject unit. That it is most respectfully reiterated that as per clause 3.1 of the buyer's agreement, the promoter had promised to handover the physical possession of the subject unit by 11.12.2017.

- x. That in the present matter the complainant does not intend to withdraw and wishes to continue in the subject project. So, in the light of the facts mentioned above, the respondents are liable to pay the delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules of 2017 from the due date of possession i.e., 11.12.2017 till actual handing over of physical possession of the unit as per the provisions of section 18 of the Act of 2016.
- xi. That after a delay of almost years, on 14.12.2022, the respondent has sent an offer of possession for the subject apartment to the present complainant. However, even after the repeated request of the complainant allottee, the respondent has still not adjusted the amount of delay possession charges accrued in favour of the complainant allottee in the final demand which was annexed along with the said offer of possession. That after the possession was offered on 14.12.2022, the complainant has made several pleas with the builder to hand over the flat after resolving the just issue of delay possession charge meaning thereby after adjusting the payment of DPC, which is a statutory right of the complainant. However, the respondent has failed to address the issues raised by the complainant, and has willfully not addressed the genuine grievance of the home buyer which shows its callous attitude and therefore, it is most humbly prayed from the Hon'ble Authority that the respondent must be made to pay for the delay possession charges till the

date of actual handing over of possession of the subject unit or in alternative till the filing the present complaint.

- xii. That till date the respondent has not handed over the physical possession of the subject unit to the complainant and hence shall not charge maintenance charge till physical possession of the subject unit is not handed over to the complainant. Therefore, it is most humbly prayed before this Hon'ble Authority that the respondent shall be directed to not charge any maintenance charges till physical possession of the subject unit is not handed over to the complainant or in alternative the respondent shall be directed to charge maintenance charges only after physical possession of the subject unit has been handed over to the present complainant in the best interest of justice.
- xiii. That the respondent builder cannot charge holding charges from the present complainants in view of the law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020 wherein it was held that the holding charges shall also not be charged by the respondent builder at any point of time even if they are part of the agreement.
- xiv. That vide letter dated 28.10.2016, a loyalty bonus Rs.5,99,100/- (@ 300 per sq. ft) under the realm of "Pareena Honours" promotional scheme of the respondent was granted to the complainant. However, the same was withdrawn from them arbitrarily, illegally and in an unlawful manner via a letter dated 06 Jan 2021. That the complainant has made all the payments in a timely manner, as and when demanded by the respondent except those demands which are arbitrary, unreasonable and unjustified.
- xv. That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent which is evident from their irresponsible and desultory attitude and conduct of the respondents, consequently injuring the interest of the buyers including the present

complainant who has spent his entire hard-earned savings in order to buy this subject unit and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondents conducted their business and their lack of commitment in completing the subject project on time, has caused the complainant great financial and emotional loss.

- xvi. That due to the mala fide intentions of the respondent and non-delivery of the subject apartment the complainant has accrued huge losses on account of the career plans of their family members and themselves and the future of the complainant and his family is rendered in dark as the planning with which they had invested their hard-earned monies has resulted in sub-zero results and borne thorns instead of bearing fruits. Without prejudice to the above, the complainant reserves the right to file a complaint before the Hon'ble Adjudicating Office for compensation.
- xvii. That the complainant being an aggrieved person is filing the present complaint under section 31 with this Hon'ble Authority for the violation/contravention of various provisions of the Act of 2016 and Rules of 2017. Furthermore, the complainant does not want to withdraw from the project and intends to continue with the project. That it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 11.12.2013 to hand over the possession of the subject unit within the stipulated period. Hence, the respondents have failed to fulfil its obligations as contained in section 11(4)(a) read with section 18(1) of the Act of 2016. It is a matter of fact that the respondents are liable to hand over the possession of the subject unit on or before the due date of possession i.e., 11.12.2017 as per clause 3.1 of the buyer's agreement. Therefore, the respondents are liable to pay the delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules of 2017 from the due date of possession i.e., 11.12.2017 till actual handing over of physical possession of

the subject unit as per the provisions of section 18 of the Act of 2016. The respondent is liable to execute a conveyance deed in favour of the present complainant as per provisions of section 17 of the Act of 2016.

C. Relief sought by the complainant:

4. The complainant has filed the present complaint for seeking following relief(s):
 - i. Direct the respondent to pay delay possession charges at the prescribed rate of interest as per rule 15 of the act, from the promissory date of delivery of possession of subject unit, i.e., 11.12.2017, till the date of actual handover of possession.
 - ii. Direct the respondent to handover the possession of the subject unit.
 - iii. Direct the respondent to execute a conveyance deed in favor of complainants in view of section 17 of the Act of 2016.
 - iv. The respondent be directed to not to charge any maintenance charges till physical possession of the subject unit is handed over to the complainant.
 - v. Set aside the letter dated 06.01.2021 issued by the respondent, the same being arbitrary, illegal and unlawful.
 - vi. Direct the respondent to not to charge any holding charges.
 - vii. Pass any such order as Hon'ble Authority may deems fit.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 present complaint on the following grounds:

- i. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residences" at Sector 99A.
- ii. That the respondent has already completed the concerned unit and occupation certificate vide letter dated 14.12.2022 a letter of offer of possession was issued to the complainant. That construction of the concerned unit as well as tower was stands completed in the month of April 2022 itself and thereafter an application for obtaining occupation certificate was filed by the respondent before the concerned authority. Thus, the reason for filing the present complaint is absolutely baseless. That the respondent is a committed real estate developer, who is developing various residential colonies as per rules and law.
- iii. That quite conveniently certain pertinent facts have been concealed by the complainant. The concealment has been done with a motive of deriving undue benefit through an order, which may be passed by this Hon'ble forum at the expense of the respondent.
- iv. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainants have already been spent in the development work of the proposed project. That the allotment of complainant was validly cancelled after following due course of law. That the amount deducted was as per terms and conditions of agreement. That the authority will appreciate that cancellation was done after obtaining of Occupation certificate and the RERA itself recognized it several judgments that if the cancelation has been



done after obtaining of occupation certificate than the builder is entitled to deducted taxes and other non-refundable charges.

- v. That it has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundation less allegations will be admitted then, interest of other genuine allottees of the project, will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.
- vi. That admittedly completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfill the criteria of collective payment. That numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of project, yet the respondent completed the project by managing available funds.
- vii. That other than above stated factor there are lots of other reason which either hamper the progress of construction of in many cases complete stoppage of construction work. Few of such examples of such factor are:
- Delay in construction due to various orders/ restrictions dated 07.04.2015, 08.11.2016, 19.07.2017, 07.11.2017, 29.10.2018, 24.07.2019 & 11.10.2019 passed by National Green Tribunal, New Delhi and other competent authorities for protecting the environment of the country.
 - Ban in construction due to various court orders as well as government guidelines.
 - The major outbreak of Covid-19.
- viii. That the situation of COVID pandemic is in the knowledge of everyone, that since march 2020 till now our country has seen mass migration of laborers, complete lockdown in whole of the country, curfews and several other



restrictions. That present situation seriously hampers the construction progress in real estate sector. That from march 2020 till now, there have been several months where construction work was completely stopped either due to nationwide lock down or regional restrictions, that metro cities like Gurgaon and Delhi suffered from a major outburst of COVID cases and deaths in such a number which can't be comprehended. That there has severe dearth of labour due to state imposed restrictions. That developers were helpless in these times since they had no alternative but to wait for the situation to come under control. That even RERA has extended the time limits for completion of project vide notification dated 26.05.2020, by six months. But the aforesaid was the period evidencing the first wave but the relaxation in restrictions were seen at fag end of year 2020 however soon thereafter our country saw a more dangerous variant of COVID from the month of March 2021 and only recently restrictions have been lifted by the government. That whole of this consumed more than 11 months wherein 2/3rd time there could be no construction and rest of the time construction progressed at very slow pace to several restrictions imposed by state government on movement and number of person allowed etc. That the Hon'ble authority would appreciate the fact that developer has to face several difficulties in construction of project few out of the several are already discussed above and moreover complainant did not opt services of respondent against a single unit isolated from whole of the project or other units in same tower. That at the time of seeking allotment in the project of respondent, complainant very well knew that unit / apartment in question is a part of tower consisting of several other units and the unit shall be completed along with other units which belong to other allottees. That merely because complainant had paid on time, it does not fulfill the criteria of complete payment required for construction of whole of the

tower/project. That the complainant knew that without complete payment on time from all allottees it is not possible or quite difficult to complete the project on time. That for the same reason the clause of "force majeure" was made part of agreement. That it is absolutely beyond the control of developer to get money from the buyer on time. That after a demand was raised, the only thing developer can do is to send a reminder and in extreme cases cancellation. But reminders/ cancellation do not bring money which the developer had already incurred.

- ix. That the builder buyer agreement was executed between the parties on 11.12.2013. However, certain extremely important facts were concealed by the complainant while drafting the present complaint. That the complainant has intentionally provided details of payments only but concealed the facts whether the payments were made on time or not. That complainant falsely pleaded in their complaint that they have paid all the demands as and when demanded/raised by the respondent. That material, labor and other requirements does not comes for free and if allottees wishes to get the possession on time than it is their legal duty to pay on time, since without money it is not possible to construct the project on time. That complainant intentionally did not produce demand letters and reminders issued by respondent, for the reason that they have not paid demands in timely manner. That a complete detail of defaults in payments are as follow:

Sr.	Stage	Amount demanded	Date of demand/Reminder	Due date	Amount paid
1.	On Completion of final floor/roof slab	476118	06.04.2018	26.04.2018	Not paid
2.	Reminder	500850	13.06.2018	ASAP	Not paid
3.	On Completion of brick work	1007263	01.11.2018	19.11.2018	Not paid
4.	Revocation of Pareena honours discount on 06.01.2021				
5.	Reminder	1821973	01.02.2021	ASAP	Not paid
6.	On Completion of flooring	2362211	03.03.2021	19.03.2021	Not paid

7.	Reminder	2380888	10.04.2021	ASAP	Not paid
8.	Reminder	2421131	22.06.2021	ASAP	Not paid
9.	Reminder	2460256	01.09.2021	ASAP	Not paid
10.	Offer of possession	40,66,661	14.12.2022	30.12.2022	Not paid
11.	Reminder against offer of possession	3252767 (only basic amount)	06.06.2023	06.07.2023	Not paid
12.	Cancellation letter	14-06-2024			

- x. That from above stated figures it is clear that complainant committed breach of contract and since 2018 not making any payment. That without fulfilling ones duty no one has any right to seek any relief. It is further submitted that rights are reciprocal to duties and in order to seek possession on time allottee has a duty to pay on time but in the present payment in time out of question, since the complainants have not even bothered to pay the demands raised by the respondent over a period of time and against appropriate stage of construction. Thus, since complainant stopped making payment after 2018 respondent revoked discount given to complainant as pareena Honours as the same has been given as a goodwill gesture and under no circumstances same can be demanded as a matter of right. That these defaults in itself clarifies the fact that complainants themselves have not come before the Hon'ble forum with clean hands, thus their complaint is liable to be dismissed with cost. That allottee rights are governed through their duties and if they failed to fulfill their duties, than they have no right to seek possession as alleged in present complaint as the unit has already been cancelled after waiting for more than sufficient period and after following due process of law. That said cancellation was duly received by complainant yet same was never challenged by the complainant. That none is allowed to take benefit of their own mistake.
- xi. Thus, keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.
7. All other averments made in the complaint were denied in toto.

8. 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 submissions made by the parties.

E. Jurisdiction of the authority

9. 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

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

11. 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.

12. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Objections raised by the respondent:

F.1. Objection regarding force majeure circumstances

13. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts and adverse effects of covid etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. Firstly, the Authority has gone through the possession clause of the agreement and observed that the respondent-promoter proposes to handover the possession of the allotted unit within 4 years from the date of start of construction or date of execution of buyer's agreement, whichever is later." In the present case, the buyer's agreement was executed between the parties on 11.12.2013 and the date of start of construction is 16.10.2014 (as mentioned in demand letter dated 22.06.2021 at page 27 of complaint). So the due date is calculated from the date of start of construction, being later, which comes out to 16.10.2018, It is further provided in agreement that the promoter is entitle to a grace period of six (6) months. Therefore, the said grace period of 6 months is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in *Appeal No. 433 of 2022 titled as Emaar MGF Land Limited Vs Babita Tiwari and Yogesh Tiwari*, wherein it has been held that if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding

grace period of three months for applying and obtaining the occupation certificate. Therefore, in view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided to the agreement. Therefore, the due date of handing over of possession comes out to be 16.04.2019 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to pay delay possession charges at the prescribed rate of interest as per rule 15 of the act, from the promissory date of delivery of possession of subject unit, i.e., 11.12.2017, till the date of actual handover of possession.

G.II. Direct the respondent to handover the possession of the subject unit.

14. On The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. In the present complaint, vide letter of provisional allotment dated 27.11.2013, the complainant was provisionally allotted a unit bearing no.502 at 5th floor in tower-T1, admeasuring area of 1997 sq. ft. super area. However, the buyer's agreement was executed on 11.12.2013 inter-se parties for the unit bearing no.502 at 5th floor in tower-T1, admeasuring area of 1997 sq. ft. super area for total sale consideration of Rs.1,27,02,257/- against which the complainant-allottee has paid an amount of Rs.1,02,38,680/- till February, 2018, which constitutes around 80.60% of the total sale consideration and 101.75% of basic sale consideration. The complainant has opted for construction linked payment plan. The respondent has raised a demand on

14.12.2022 for making payment of Rs.40,66,661/- outstanding but the complainant has not made the payment as per the demand and has raised various queries through mails which the respondent has failed to answer. Thereafter, the respondent has cancelled the unit of the complainant vide cancellation letter dated 14.06.2024. Now the question arises before the Authority whether the cancellation is valid or not, in the eyes of law?

16. On the consideration of documents available on records and submissions made by both the parties, the Authority observes that complainant-allottee made a payment of Rs.1,02,38,680/- (which is almost 80.60% of the total sale consideration and 101.75% of basic sale consideration) against the total sale consideration of Rs.1,27,02,257/- till February, 2018, and occupation certificate w.r.t the tower in which unit of the complainant is situated was obtained by the respondent on 13.12.2022 and thereafter on 14.12.2022, the respondent issued offer of possession to the complainant along with a demand letter dated 14.12.2022 for payment of Rs.40,66,661/-. On receipt of such demand, the complainant had raised various queries, through various meetings and emails asking the respondent to issue a fresh statement of account after adjustment of delay possession charges and delay payment charges which the respondent never replied to the same nor issued any revised statement of account after adjustment of delay possession charges. The interest accrued during the delay period significantly reduces the amount payable by the complainant. The respondent's actions were in bad faith, as they failed to adjust the delay period interest and issue. No response from the respondent call for an inference against the respondent.

17. Further, the Authority observes that the respondent has only issued an intimation for demand letter on 06.07.2023 but never issued any reminder/ final reminder against the said demand nor issued any notice for termination, intimating the complainant-allottee prior to such cancellation.

18. Also, as per clause 9.3 (i) and (ii) of Model Agreement for sale as prescribed in the Rules, provides that the respondent has to issue at least two consecutive demand and an intimation to the allottee(s) 30 days prior to such termination. The relevant clause 9.3 (i) and (ii) are reproduced hereinbelow:

9.3 (i) In case the Allottee fails to make payments for two consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;

*9.3 (ii) ... On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. **Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.***

(Emphasis supplied)

19. In view of the reasons quoted above and documents placed on record, the authority is of the view that the cancellation of the allotment vide letter dated 14.06.2024 is bad in the eyes of law and is hereby set aside and the respondent is directed to restore the allotted unit of the complainant within 30 days from the date of this order.
20. In the present complaint the complainant intends to continue with the project and are 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."

21. Clause 3.1 and 5.1 of the buyer's agreement dated 11.12.2013 provides the time period of handing over possession and the same is reproduced below:

*3.1 That the developer shall, under normal conditions, subject to force majeure, **complete construction of tower/building in which the said flat is to be located with 4 years of the start of construction or execution of this agreement whichever is later...***

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5.1 In case within a period as provided hereinabove, **further extended by a period of 6(six) months, if so, required by the developer, if the developer is unable to complete construction of the said flat as provided hereinabove (subject to force majeure conditions) to the flat allottee(s), who have made payments as required for in this agreement...**

(Emphasis Supplied)

22. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoters, 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.

23. 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.

24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. 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;*

26. 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 her in case of delayed possession charges.
27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 4 years from the start of construction or execution of agreement, whichever is later. The builder buyer agreement was executed between the parties on 11.12.2013 whereas construction (excavation) was started by the respondent is 16.10.2014. Therefore, the date of start of construction, being later, the due date of possession was calculated from the date of start of construction. Accordingly, the due date of possession comes out to be 16.10.2018. It is further provided in agreement that the promoter is entitle to a grace period of six (6) months. Therefore, the said grace period of 6 months is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 titled as Emaar MGF Land Limited Vs Babita Tiwari and Yogesh Tiwari***, wherein it has been held that if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. Therefore, in view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided to the agreement. Therefore, the due date of handing over of possession comes out to be

16.04.2019 including grace period of 6 months. The occupation certificate was granted by the concerned authority on 13.12.2022 and thereafter, the possession of the subject unit was offered to the complainant on 14.12.2022. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer the possession of the subject unit to the complainant-allottee and there is failure on part of the respondent-promoter to fulfil its obligation and responsibilities as per the buyer's agreement 11.12.2013 to handover the possession within the stipulated period.

28. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.12.2022. The respondent offered the possession of the unit in question to the complainant only on 14.12.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 month's time from the date of offer of possession. These two months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking of possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (14.12.2022) which comes out to be 14.02.2023.

29. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established.

As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 16.04.2019 till the expiry of 2 months from the date of offer of possession (14.12.2022) which comes out to be 14.02.2023 as per provisions of Section 18(1) of the Act read with rule 15 and Section 19(10) of the Act.

30. Further, as per Section 19(10) of the Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainant is directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months. Also, the respondent shall handover the possession of the allotted unit as per specifications of the buyer's agreement entered into between the parties.

G.III. Direct the respondent to execute a conveyance deed in favor of complainants in view of section 17 of the Act of 2016.

31. The complainant is seeking direction to respondent to execute the conveyance deed of the allotted unit in favour of the complainant. The respondent has offered the possession dated 14.12.2022 of the subject unit in question. Whereas the possession was offer after obtaining of occupation certificate on 13.12.2022 as per clause 4.3 of the agreement dated 11.12.2013, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favour of the allottee but only after receiving full payment of total price of the apartment.
32. It is to be further noted that Section 11 (4) (f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.

33. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee as per Section 17(1) of the Act provide for transfer of title.
34. As occupation certificate of the unit has been obtained from the competent authority on 13.12.2022, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Further during proceedings dated 20.03.2025, the counsel for the respondent assures that no delayed interest will be charged on stamp duty charges. Accordingly, the Authority directs the respondent to execute the conveyance deed of the allotted unit in favour of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.
- G.IV. Set aside the letter dated 06.01.2021 issued by the respondent, the same being arbitrary, illegal and unlawful.**
35. The complainant has pleaded that the respondent vide letter dated 28.10.2016 has granted loyalty bonus amounting to Rs.5,99,100/- (i.e., Rs.300/- per sq. ft.) under the (PHPS) Pareena Honours Promotional Scheme of the respondent-promoter, which was revoked by the respondent on 06.01.2021. The counsel for the respondent during proceedings dated 20.03.2025 submitted that the loyalty bonus was revoke by the respondent as per the terms and conditions of Pareena Honours Promotional Scheme, only when the complainant-allottee has defaulted in making timely payment from April, 2018 and the details of the payment defaulted are mentioned in tabular form of reply by respondent.
36. Therefore, the Authority is of the view that as per the terms and conditions of Pareena Honours Promotional Scheme, the respondent is well within the right to revoke the amount given to the allottee in lieu of loyalty bonus on account of failure of allottee.

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G.V. The respondent be directed to not to charge any maintenance charges till physical possession of the subject unit is handed over to the complainant.

G.VI. Direct the respondent to not to charge any holding charges.

G.VII. Pass any such order as Hon'ble Authority may deems fit.

37. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

- **CAM Charges & Maintenance Charges**

38. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. Further, the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

39. Further, it is pertinent to note that, as per Section 11(4)(d) of the Act, of the Haryana Real Estate (Regulation and Development) Act, 2016, the promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

- **Holding charges:**

40. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the



builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.*

H. Directions of the authority

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

- i. The cancellation letter dated 14.06.2024 is not valid and is hereby set aside, and the respondent-promoter is directed to restore the allotted unit of the complainant within 30 days from the date of this order.
- ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% per annum for every month of delay from the due date of possession (including grace period of 6 months) i.e., 16.04.2019 till offer of possession (i.e., 14.12.2022) plus two months i.e., 14.02.2023, as per Section 18(1)(a) of the Act read with Rule 15 of the Rules, *ibid.* The arrears of the interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid.*
- iii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any remains, after adjustment of delay possession charges within a period of next 30 days.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

- v. The respondent is directed to handover the physical possession of the allotted unit to the complainant complete in all aspect of buyer's agreement.
- vi. The respondent is further directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainant.
- vii. The respondent-promoter shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.*
42. Complaint stands disposed of.
43. File be consigned to registry.

Dated: 20.03.2025

V. I. 3
(Vijay Kumar Goyal)

Member
Haryana Real Estate Regulatory
Authority, Gurugram