


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

Complaint no.	:	1050 of 2024
Date of complaint	:	12.04.2024
Date of order	:	09.04.2025

Gaurav Kumar, S/o Kedar Singh,  
R/o: H. No. 1510, 17C Huda,  
Gurugram-122001.

**Complainant**  
Versus

M/s Pareena Infrastructures Private Limited  
Regd. Office at: Flat no.2, Palm Apartments,  
Plot no. 13B, Sector-6, Dwarka, New Delhi-110075.

**Respondent****CORAM:**

Ashok Sangwan

**Member****APPEARANCE:**

Sunil Kumar (Advocate)

Prashant Sheoran (Advocate)

Complainant

Respondent

**ORDER**

1. The present complaint has been filed by the complainant/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 under the provisions of the Act or the

Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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 Residentes", 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	<b>Registered</b> Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
7.	Unit no.	703, tower T-6, 7 <sup>th</sup> Floor (Page 41 of complaint)
8.	Unit admeasuring area	1550 sq. ft. of super area (page 41 of complaint)
9.	Provisional allotment letter	12.02.2014 (page 21 of complaint)
10.	Date of builder buyer agreement	17.04.2014 (Page 39 of complaint)
11.	Possession Clause	<b>3.1. Possession</b> <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. (Emphasis supplied)</i>

12.	Date of start of construction	01.10.2014 (start of excavation) (Page 23 of reply)
13.	Due date of possession	01.10.2018 (calculated from the date of start of construction)
14.	Total sale consideration	Rs.1,05,08,775/- (as per BBA at page 64 of complaint)
15.	Total amount paid by the complainant	Rs.57,21,877/- (as per cancellation letter at page 48 of the reply)
16.	Occupation certificate	13.12.2022 (page 19 of reply)
17.	Offer of possession	14.12.2022 (page 76 of complaint)
18.	Demand letter	07.07.2023 (page 45 of reply)
19.	Cancellation letter	06.03.2024 (page 48 of reply)

#### B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant was allotted an apartment bearing no. 703 having area 1550 sq. ft. in project of the respondent named "Coban Residences" at Sector -99A, Gurugram vide provisional allotment letter dated 12.02.2014. Thereafter, an apartment buyer agreement dated 17.04.2014, was executed between the parties for a total sale consideration of Rs.1,05,08,775/- against which the complainant has paid a sum of Rs.57,21,877/- as and when demanded by the respondent.
- II. That as per clause 3.1 of the agreement, the promoter assures to hand over possession of the apartment within period of 4 years of the start of construction or execution of this agreement whichever is later. Therefore, the due date of possession was

16.04.2018. However, the occupation certificate was only issued on 13.12.2022 and offer of possession was made on 14.12.2022. Despite the inordinate delay, the respondent failed to provide delay compensation.

- III. That the complainant made all the payments within stipulated timelines except for minor delays on few payments for which a penalty of Rs.60,000/- was paid on 10.01.2017. The respondent acknowledged compliance by issuing a timely payment loyalty voucher.
- IV. That the complainant, upon receiving final demand notice cum offer of possession dated 14.12.2022 requested the respondent to adjust the delay possession interest and loyalty benefits before making the final payment by writing various emails. Instead of addressing these legitimate concerns, the respondent arbitrarily cancelled the allotment on 06.03.2024 and illegally deducted an amount of Rs.29,76,852/- which is in contradiction of the RERA Act, 2016.
- V. That the respondent misrepresented the project details at the time of sale by not disclosing the presence of an extra high voltage transmission line passing through the project.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- I. Direct the respondent to revoke cancellation of the unit in question and restore the said unit in the name of the complainant.
  - II. Direct the respondent to pay delay possession charges.
  - III. Direct the respondent to not to charge anything which is not part of the buyer's agreement and to revoke indemnity cum undertaking.



**D. Reply by respondent:**

5. The respondent vide reply and written submissions dated 05.03.2025 contested the 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 has obtained occupation certificate of the same from the competent authority on 14.12.2022 and a letter of offer of possession was issued to the complainant.
- iii. 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.
- iv. That the allotment of the complainant was rightfully cancelled after following due course of law and the amount deducted was as per the terms and conditions of the agreement.
- v. That the construction of the said project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which were beyond the control of the respondent, which have materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:
  - a) Delay in construction due to various orders/restrictions passed by National Green Tribunal, Delhi and other competent authorities for protecting the environment of the country.

- b) Ban on construction due to various court orders as well as government guidelines.
- c) The major outbreak of Covid-19.
- vi. That the complainant has never paid any demand in full and against appropriate stage of construction. Thus, since no demands were fulfilled by the complainant, he is not entitled for timely payment rebate as per clause 1.2(vii) (b) of the agreement.
- vii. That at the time when cancellation was done, an amount of Rs.66,80,716/- (inclusive of conveyance deed charges) was due and payable by the complainant against the unit in question.
- viii. That the respondent cancelled the unit due to complainant's failure to make complete and timely payments as required in the demand letters.
- ix. That on 14.12.2022, an offer of possession was made to the complainant allowing him to pay the remaining balance and take possession of the unit, but no payment was received. Another reminder was set on 07.07.2023 before the final cancellation letter was issued on 06.03.2024.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

7. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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.

**F. Findings on the objections raised by the respondent.****F.I Objection regarding force majeure conditions.**

11. The respondent-promoter has raised the contention that the construction and implementation of the project has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders,

spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 01.10.2018. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant:**

- G.I Direct to the respondent to revoke cancellation of the unit in question and restore the said unit in the name of the complainant.**
  - G.II Direct to the respondent to pay delay possession charges.**
  - G.III Direct to the respondent to not to charge anything which is not part of the buyer's agreement and to revoke indemnity cum undertaking.**
12. The complainant was allotted an apartment bearing no. 703, tower T-6, 7<sup>th</sup> Floor in the project of the respondent named "Coban Residences" at Sector-99A, Gurugram vide apartment buyer's agreement dated 17.04.2014 for a sale consideration of Rs.1,05,08,775/-. Out of the said sale consideration, the complainant has paid an amount of Rs.57,21,877/- in all against the said allotment. The complainant has submitted that as per clause 3.1 of the agreement, the promoter assures to hand over possession of the apartment within period of 4 years of the start of construction or execution of this agreement whichever is later, whereas the possession of the apartment was offered to the complainant only on 14.12.2022. Despite the inordinate delay, the respondent failed to provide delay compensation. upon receiving final



demand notice cum offer of possession dated 14.12.2022. Further, the complainant after receipt of offer of possession, requested the respondent to adjust the delay possession interest and loyalty benefits before making the final payment by writing various emails. Instead of addressing legitimate concerns of the complainant, the respondent arbitrarily cancelled the allotment on 06.03.2024. The respondent has submitted that the complainant has never paid any demand in full and against appropriate stage of construction. The occupation certificate for the tower in question was obtained by the respondent on 13.12.2022 and thereafter possession of the apartment was offered to the complainant vide offer of possession letter dated 14.12.2022, subject to payment of outstanding dues on or before 30.12.2022. Thereafter, on non-payment of the outstanding dues, a demand/reminder letter dated 07.07.2023 was issued to the complainant to pay the outstanding dues, before finally cancelling the allotment of the unit vide cancellation letter dated 06.03.2024. Copies of the same is available on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 06.03.2024 is valid or not.

13. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant has paid an amount of Rs.57,21,877/- against the sale consideration of Rs.1,05,08,775/- and no payment was made by the complainant after July 2018. The occupation certificate for the tower in question was obtained by the respondent on 13.12.2022 and thereafter possession of the apartment was offered to the complainant vide offer of possession letter dated



14.12.2022, subject to payment of outstanding dues. As per the payment plan agreed between the parties, 'on offer of possession', the complainant was obligated to pay 50% of the BSP + other charges. However, the complainant defaulted in making payment and the respondent was to issue demand letter dated 07.07.2023 to the complainant to comply with his obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 06.03.2024. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 17.04.2014 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited***



(decided on 12.04.2022) and followed in **CC/2766/2017** in case titled as **Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

**"5. AMOUNT OF EARNEST MONEY**

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

14. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.57,21,877/- after deducting 10% of the sale consideration of Rs.1,05,08,775/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 06.03.2024 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
15. In view of the findings detailed above, the rest of the reliefs sought by the complainant becomes redundant and no direction to the same.

**H. Directions of the Authority:**

16. 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 paid-up amount of Rs.57,21,877/- after deducting 10% of the sale consideration of Rs.1,05,08,775/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 06.03.2024 till its realization.
- 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.

17. The complaints stand disposed of.

18. Files be consigned to the registry.

**HARERA**  
**GURUGRAM**  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2025