

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

Complaint no. : 970 of 2024
Date of complaint : 19.03.2024
Date of order : 13.02.2025

Mr. Gaurav Kumar

R/o: - H. No. 34, Model House, Kartar Nagar, Jalandhar-I, Model Town (Jalandhar), Punjab-144003.

Complainant

Versus

M/s Pareena Infrastructure Private Limited.

Regd. Office at: Flat no.2, Palm Apartment, Plot no.13B, Sector-6, Dwarka, New Delhi-110075.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Siddhant Sharma and Shri Praful
Bhardwaj (Advocates for complainant)
Shri 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

A

Rules and regulations made there under 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. No.	Particulars	Details
1.	Name and location of the project	"Laxmi Apartments", Sector-99A, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	4.91 acres [Note: During the proceedings dated 13.02.2025, it is inadvertently recorded as 10.5875 acres]
4.	DTCP license no.	106 of 2014 dated 14.08.2014 Valid up to 30.05.2021 [Note: During the proceedings dated 13.02.2025, it is inadvertently recorded as 10 of 2013 dated 12.03.2013 valid upto 11.03.2024]
5.	Name of licensee	M/s Pareena Infrastructure Pvt. Ltd. [Note: During the proceedings dated 13.02.2025, it is inadvertently recorded as M/s Monex Infrastructure Pvt. Ltd.]
6.	RERA Registered or not registered	Registered Vide no. 25 of 2017 dated 27.07.2017 Valid up to 14.09.2020 [Note: During the proceedings dated 13.02.2025, it is inadvertently recorded as Vide no. GGM/419/151/2020/335 dated 16.10.2020]
7.	Unit no. and floor no.	1102 on 11 th floor and Tower-2 (As per page no. 18 of the complaint)
8.	Unit area admeasuring	453.541 sq. ft. (Carpet area) (As per page no.18 of the complaint)
9.	Provisional allotment letter	09.11.2015 (As per page no.14 of the complaint)

10.	Date of execution of apartment buyer's agreement	03.03.2016 (As per page no.17 of the complaint)
11.	Possession clause	<p>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</p> <p><i>Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and the subject to the company having obtained the occupation/completion certificate from the competent authority(ies), the company shall endeavour to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of environmental clearance or within 4 years from the date of grant of sanction of building plans for the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder.</i></p> <p>(As per page no. 29 of the complaint)</p>
12.	Date of Environment Clearance	15.03.2016 (As per page no. 28 of the reply)
13.	Date of approval of building plan	26.03.2015 (as per para 5 at page 5 of reply)
14.	Due date of possession	<p>15.09.2020</p> <p>(Note: Due date to be calculated 4 years from the date of environment clearance i.e., 15.03.2016, being later + Grace period for 6 months on account of covid-19 is allowed as per HARERA, Gurugram Notification No.-9/03-2020 dated 26.05.2020)</p> <p>[As already decided by Authority while deciding complaints bearing no.CR/4068/2022 & 50 other titled as: Pardeep Kumar V/s M/s Pareena Infrastructure Private Limited.]</p>
15.	Payment Plan	Time linked payment plan (As per schedule of payments on page no. 40 of the complaint)

16.	Total sale consideration (exclusive of taxes and levies)	Rs.18,64,162/- (As per page no.21 of the complaint)
17.	Amount paid by the complainant	Rs.19,10,587/- (As per SOA dated 20.02.2024 at page no. 56 of the complaint)
18.	Occupation Certificate/ completion certificate	09.07.2021 (As per page no.25 of the reply)
19.	Offer of possession	16.07.2021 (As per page no.43 of the complaint)
20.	Reminder letters for payment with OFP	13.09.2021 & 20.01.2022 (As per page no. 213-216 of reply)
21.	Notice for cancellation	20.02.2024 (As per page no.59 of the complaint)
22.	Reminder for collection of refundable cheques	02.04.2024 (As per page no. 219 of reply)
23.	News Paper publication [one in hindi news paper i.e., <i>Apna Sehar Delhi</i> & second in English newspaper i.e., <i>The Times of India</i>]	05.02.2024 (As per page no. 220-221 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. That the complainant booked an apartment bearing no.1102 admeasuring 453.54 sq. ft. situated at 11th floor in tower-2 in affordable group housing project namely "Laxmi Apartments" in Sector 99A, Gurugram along with one (two-wheeler) parking site, admeasuring approximately 0.8m x 2.5m.
 - b. That the respondent is a company registered with the registrar of companies under the Companies Act, 1956 and involved in the business of construction and development of residential and commercial projects.
 - c. That the affordable housing project namely "Laxmi Apartments" Sector 99A is registered with RERA with registration no. 25/2017.

A

- d. That the respondents received the environmental clearance from the "State Environment Impact Assessment Authority Haryana" on 15.03.2016.
- e. That the complainant applied to the company vide application no. 001751 dated 01.07.2015 for allotment of residential unit in the project of the respondent by the name of "Laxmi Apartments - affordable housing scheme". The respondent provided the complainant provisional allotment letter dated 09.11.2015 for unit no.1102 Tower- 2 on making initial payment of Rs.93,208/- and the complainant duly received a receipt acknowledging the payment.
- f. That the complainants from 03.07.2015 to 22.11.2018 disbursed payments to the respondent to the tune of Rs.19,10,587/- for unit no. 1102 Tower- 2, which were duly acknowledged by the respondent by issuing receipts time to time.
- g. That the respondent and complainants signed the builder buyer's agreement dated 03.03.2016 for allotment of residential apartment bearing unit no. 1102 Tower-2 admeasuring 453.54 sq. ft. (carpet area) as well as the allotment of one two-wheeler parking site, admeasuring approximately 0.8m x 2.5m earmarked and to be allotted with the apartment of the said project to the identified and allotted by the company at the time of handing over possession of the said apartment.
- h. That as per clause 4.1 of the BBA the complainant was to pay a sum of Rs.19,10,587/- to the respondent as total consideration for residential apartment bearing unit no. 1102 Tower-4 admeasuring 453.54 sq. ft. (carpet area) as well as the allotment of one (two-wheeler) parking site, admeasuring approximately 0.8m x 2.5m earmarked.

- i. That this Hon'ble Authority in the matter of "Hari Ballabh Sharma vs. M/s Pareena Infrastructure P. Ltd" Complaint no. 26 of 2019 decided in favour of the complainant and against the same respondent in the same project, and it was observed by the Authority that the due date of delivery of possession on calculation comes out to be on 15.03.2020.
- j. That the respondent sent a letter dated 16.07.2021 offering possession residential apartment bearing unit no. 1102 Tower- 2 admeasuring 424.17 sq. ft. (carpet area) as well as the allotment of one two-wheeler parking site, admeasuring approximately 0.8m x 2.5m after a delay of more than 1 year 6 months and further demanded a payment of Rs.11,94,530/- for possession from the complainant without any justification.
- k. That the complainant tried to seek clarification for the unfair interest and justification for the unreasonable and exorbitant charges demanded by the respondent over telephone and also through a number of emails but the respondent did not provide any clarification and justification for the demands. The complainant also sought information about the compensation for delayed possession as per clause 8.1 of the buyer's agreement and also the provisional allotment letter (email) as the possession of the residential unit was offered 1 year 6 months later but the respondent did not give any satisfactory reply.
- l. That despite having paid the total consideration amount of Rs.19,10,587/- to the respondent and wherein there was a considerable delay of more than 1 year 6 months in handing over the offer of possession to the complainant.

- m. That the letter offering possession is misleading and that the "Laxmi Apartments" is inhabitable and that the complainant is in no position to move in and stay in the unit allotted to him after getting the possession.
- n. That thereafter till date the respondent did not hand over the physical possession or got the conveyance deed registered for the complainant or for anyone who approached this Hon'ble authority. Further, the unwarranted amounts as mentioned by the respondent in the offer of possession which has been clarified by the Directorate of Town and Country planning, Haryana. Despite that the respondent is adamant and not modifying the amount as per the orders passed by this court and District Town Planner.
- o. That the respondent has further sent a cancellation notice dated 20.02.2024, without considering the above facts or handing over the possession.

C. Reliefs sought by the complainant:

- 4. The complainant has sought following relief(s).
 - I. Direct the respondent to pay the prescribed amount along with interest as per clause 8.1 of the buyer's agreement for delay in handing over the possession with effect from 15.03.2020 to the complainant towards purchase of the residential unit.
 - II. Direct the respondent to handover the possession of the said unit to the complainants on registering the conveyance deed.
 - III. Direct the respondent to not create any third-party interest in the unit allotted to the complainants.
 - IV. Direct the respondent not to cancel the allotment as the respondent has already received entire sale consideration amount.

12

- V. Hold the respondent guilty of indulging in profiteering by demanding unreasonable, unfair and exorbitant amount of money through offer of possession and direct the respondent to provide proper legal justification for the demands raised through offer of possession.
- VI. Award pendent lite interest as per rules from the date of payment of amounts till realization.
- VII. Direct the respondent to complete the basic infrastructure and provide all the basic amenities in the project to make the unit habitable before handing over the physical possession of the apartment.
- VIII. Pass any other order as this forum may deem fit and necessary in view of the above- mentioned facts in favour of complainant and against the respondent.
- 5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

- 5. The respondent contested the complaint on the following grounds: -
 - a. That the complainant in the present case has demanded delayed possession charges as per RERA on the basis of terms and conditions of apartment buyer agreement executed between the parties on 03.03.2016 as well as on parity on the basis of some complaint filed by other allottees. That the complainant cannot take benefit of order passed in some other cases as the present complainant was not a party to those cases and in those cases, there was no cancellation and they have been filed immediately after receiving of offer of possession, whereas present case has been filed 14-03-2024 i.e after more than 973 days from date of offer of possession and more than 40 days after



date of cancellation. That as already stated allotment was already cancelled much prior to filing of present complaint and same was duly received by complainant as well as admitted by complainant in his complaint, yet no relief was sought to set aside said cancellation, thus complainant has no right to seek possession at this stage. That filing of present complaint in itself acknowledges the fact that the terms and conditions are binding on both the parties and accordingly the complainant is also bound by the terms and conditions of agreement and since the project is governed by Affordable Housing Policy 2013 thus as per the terms of affordable housing policy as well.

- b. That the respondent has already received occupation certificate qua the unit/tower in question and possession has already been offered to the complainant. And after waiting for more than sufficient period and after following due process of law as prescribed by Haryana Affordable Housing Policy, 2013, allotment of complainant was cancelled by respondent as the complainant failed to pay demand raised on offer of possession.
- c. That respondent completed the construction within agreed time frame and applied for occupation certificate and soon the occupation certificate was received by respondent offered the possession and demand amount as per agreed terms and conditions. During the phases when construction work was going on the respondent faced several difficulties in construction work, yet completed the construction within time and now when the construction is complete and occupation certificate has been received, the complainant has no right seek delayed possession charges since there is no delay in completion of construction on part of respondent.

- d. That the license for the said project had been granted by the concerned authority on 14.08.2014 and the building plans for the said project had been sanctioned on 26.03.2015.
- e. That the said project is being developed under the affordable Housing policy, 2013 and its modifications, the project was required to be completed within a period of 4 years from the date of sanction of the building plans or grant of environmental clearance, whichever is later.
- f. That the prescribed period of 4 years is however subject to force majeure circumstances. There were a number of judicial orders, notifications and other circumstances which were completely beyond the reasonable control of the respondent, which directly impeded the ability and even the intention of the respondent to continue with the development and construction work of the said project.
- g. That on account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed. That the total number of days for which despite of their being an absolute willingness on the part of respondent, respondent could not raise construction for 141 days. Thus that period should be added to the period of 4 years to calculate the due date of completion of project and offer of possession of the allotted unit.
- h. That on account of corona virus pandemic, the Authority granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01.04.2021 to 30.06.2021. Even the Town and Country Planning extended the period of 6 months from 01.03.2020 to 30.09.2020 and further 2 months from 01.04.2021 to 31.05.2021 and imposed moratorium for the period qua all the real estate projects for all purpose and intents as stipulated in those

notifications and the present project is squarely covered under said notifications and is entitled for benefits provided in said notifications.

- i. That whenever construction was stopped due to any reason either because of lockdown or any interim orders of Hon'ble Supreme court/MCG/Environment pollution control boards of state of Haryana and separately of NCR, it created a hurdle in pace of construction and after such period was over, it required considerable period of time to resume construction activity.
- j. That there are several others order and notifications which cases delay in the construction of project and are beyond the control of developer.
 - NGT order 18.12.2017 to implement earlier order of stoppage of construction but with some conditions i.e., if Pm10 (1000) & Pm2.5 (600) goes higher than permissible limit no construction is allowed.
 - EPCA (Environment protection and control Authority for NCR) Action plan if PM10 higher than 500 and PM2.5 higher than 300 than construction should stop.
 - Outbreak of pandemic (COVID 19) in starting of year 2020 and HRERA itself extend 6 months, however lockdown remains more than 9 months.
 - NGT in its order dated 07.04.2015 had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It had further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.
 - NGT in its order dated 19.07.2017 in O.A. no. 479/2016 had directed that no stone crushers be permitted to operate unless they obtain consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environmental Clearance from the competent authority.
 - Environment Pollution (Prevention and Control) Authority order dated 07.11.2017 had directed to closure of all brick kilns, stone crushers, hot mix plants etc. with effect from 07.11.2017 till further notice. Till date

the order of closure of brick kilns and hot mix plants has not been Vacated.

- k. That even the Hon'ble Apex court has already held that notice, order, rules, notification of the Government and/or other public or competent authority, including any prohibitory order of any court against development of property comes under force majeure and period for handing over of the possession stood extended during the prevalence of the force majeure event.
- l. As already stated in above paras the environmental clearance had been granted later than the sanctioning of building plans and therefore the requisite period of 4 years shall commence from 15th of March 2016, subject to force majeure. That the respondent had in fact completed the said project well before the completion of 4 years from the date of commencement of the project. That considering the period of 141 days plus six months as detailed in the preceding paragraph and adding the same to the total period of 4 years and then the other periods mentioned in para no.7 shall also be added and thus there is no delay and the project was timely completed. However, as it will be detailed hereinafter on account of the prevailing corona virus pandemic the period from 25th of March 2020 till Six months had been declared as zero period. However, development work of the project was completed and the respondent had in fact applied for obtaining an occupancy certificate.
- m. That on 13.03.2020 the respondent applied for obtaining an occupancy certificate. After applying for it, the entire country was in grip of corona virus pandemic and the central government issued orders of national lockdown from 25.03.2020 onwards, extended time to time.

n. That on 15.10.2020, Haryana Government vide its extraordinary gazette notification amended The Haryana Lifts and Escalators Act and make it mandatory to install "emergency rescue devices (ERD)" for lift in high rise building. Thus, installing of emergency rescue device in already installed lift is a time and money consuming work and took time. That after completion of work the LIFT NOC was granted to respondent on 06.04.2021, however due to outbreak of second wave of COVID 19, DTP again imposed moratorium period for 01.04.2021 till 31.05.2021 and even RERA also vide its notification dated 02.08.2021 grant extension of 3 months from 01.04.2021 till 30.06.2021. After the said time period was over the DTP granted respondent occupation certificate and immediately the possession was offered to concerned allottees.

o. That the additional charges levied by the respondent are as follow:

- Additional area: That RERA authority itself vide its notification dated 07.05.2021 extended the area to be included in Carpet area and due to said notification the area of unit in question stands extended.
- Administrative Charges: Fixed @Rs.15,000/- by District Town Planner vide order dated 02.04.2018.
- Labour Cess: Calculated on pro-rata basis. That total labor Cess paid by respondent is Rs.72,63,988/- and total area of project as far as type 1 & type 2 units are concerned comes to 4,51,853.58 sq ft. thus pro-rata Cess per sq ft comes to Rs.16.08/- per sq ft.
- Meter connection charges: That total cost of installing electricity meters was Rs.6,72,954/- + Rs.79,29,954/- = Rs.86,02,908/- and the total number of unit in laxmi apartment is 804, thus pro-rata cost of each unit comes to Rs.10,700/-. That meter which is installed in each unit are prepaid meters.
- EEC (external electrification charges & emergency rescue device charges): That total cost electrification was Rs.2,93,36,329/- and total area (including Type 1 & 2 units + tower 10 & commercial

area) is Rs.4,81,269.21/- sq ft. Thus, on the basis of pro-rata basis per unit cost comes @ 60.96/- sq. ft.

- IFSD (interest free security deposit) & Maintenance charge: As per clause 10 of the agreement maintenance work and services in relation to the common area and facilities shall be provided by the company for 5 years. However, the same are not free in any manner at all, promoter was only under liability to provide services and cost of service is the duty of allottees only, Moreover, the authority recently in its order in EMMAR cases clarifies that the promoter is entitled to charge IFSD.
 - Advance electricity consumption deposit: That as already stated above, the meters installed in each unit are prepaid meter and in prepaid meter a person has to pay in advance and same is deducted as per usage. Thus, the amount which was demanded is deposited in advance against consumption and same will be utilized by allottee itself as per his usage after taking over of possession.
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 submissions made by the parties.

E. Written Submission made by respondent:

7. The counsel for the respondent has filed written submission on 21.02.2025 but no additional facts apart from reply and submission during proceedings have been stated in written submissions.

F. Jurisdiction of the authority

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

F.1 Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire

Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject-matter jurisdiction

9. 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.

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.

G. Findings on the objections raised by the respondent.

G.I Objection regarding delay in project due to force majeure circumstances.

11. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, adverse effects of Covid-19 etc. and others force majeure circumstances but all the pleas advanced in this regard are devoid of merit. Firstly, the buyer's agreement was executed between the parties on 03.03.2016 and as per clause 8.1 of buyer's agreement dated 03.03.2016 and Affordable

Housing Policy, 2013, the due date to handover the possession to the allottees by 15.09.2020¹², including a grace period of 6 months is granted to the respondent, as already allowed in **CR/4068/2022 & 50 other titled as: Pardeep Kumar V/s M/s Pareena Infrastructure Private Limited** of the above project by this Authority, on account of force majeure due to outbreak of Covid-19 pandemic. Secondly, the events taking place such as orders of NGT in NCR on account of the environmental conditions, and others force majeure circumstances are for short duration and are routine in nature happening annually, which does not make such impact on project. In the instant complaint, the due date of handing over of possession comes out to be 15.03.2020¹² 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.

H. Findings on the reliefs sought by the complainant.

- H.I Direct the respondent to pay the prescribed amount along with interest as per clause 8.1 of the buyer's agreement for delay in handing over the possession with effect from 15.03.2020 to the complainant towards purchase of the residential unit.**
- H.II Hold the respondent guilty of indulging in profiteering by demanding unreasonable, unfair and exorbitant amount of money through offer of possession and direct the respondent to provide proper legal justification for the demands raised through offer of possession.**
- H.III Award pendent lite interest as per rules from the date of payment of amounts till realization.**
- H.IV Pass any other order as this forum may deem fit and necessary in view of the above- mentioned facts in favour of complainant and against the respondent.**

12. The above-mentioned relief 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.
13. The complainant has submitted that he was allotted a flat bearing no. 1102, 11th floor, tower-T-2, admeasuring 453.541 sq. ft. and balcony area 99.997 sq. ft. in the affordable group housing project of the respondent named "Laxmi Apartments" at Sector-99A, Gurugram through draw of lots vide provisional allotment letter dated 09.11.2015 for a total cost of Rs.18,64,162/- (excluding EDC and IDC and other charges). Thereafter, an apartment buyer agreement dated 03.03.2016 was also executed between the parties regarding the said allotment. Further, after execution of the above said agreement, he made all the payment in time bound manner as per the construction linked plan as and when demanded by the respondent from time to time and till 23.11.2018 he has made a total payment of Rs.19,10,587/- to the respondent. The counsel for the complainant vide proceedings dated 13.02.2025 has submitted that the complainant is seeking revocation of the cancellation, DPC and possession of the unit. He stated that certain illegal demands were made by the respondent w.r.t administrative charges, labour cess, meter connection charges, IFSD, EEC, advance electricity consumption charges and advance maintenance charges and interest on delayed payment to which the complainant objected. Further, a notice published in the newspaper does not bear the name of the complainant-allottee. The respondent has submitted that cancelation has been done after following due process. The complainant is a habitual defaulter and since inception complainant was making defaults in payment. The respondent even published a notice in newspaper wherein it also specifically stated that if payment

1A ✓

is not made than allotment shall stand cancelled automatically. Further, it is clear from the pleadings of the complainant that possession was already offered to complainant way back in 16.07.2021 and present complaint has been filed on or around 19.03.2024 that is after passing of 970 days. However, since the allotment is already stand cancelled due to defaults committed by complainant, thus even otherwise he is not entitled for possession. The counsel for the respondent vide proceedings dated 13.02.2025 has further submitted that the complainant defaulted in making payments on multiple occasions and failed to make the due payment for purchase of the unit as a result of which the same was cancelled after giving due opportunities. Further, the application number for the allottee was duly published in the newspaper notice. Now, the question before the authority is whether this cancellation is valid or not.

14. After considering the documents available on record as well as submissions made by the parties, the Authority observes that as per clause 5(iii)(i) of the Policy, 2013, if the allottee fails to pay the outstanding dues, the promoter is required to publish a list of defaulters in one regional Hindi newspaper of the state, providing a 15 day period for payment from the date of publication and if the payment is not made within this period, the allotment may be cancelled and amount be shall be refunded to the applicant-allottee according to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which reproduced as under:

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days

from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

15. In the instant case, the complainant has already paid an amount of Rs.19,10,587/- (i.e., more than 100% the basic sale consideration of Rs.18,64,162/-) and the respondent was required to handover the possession of the allotted unit by 15.09.2020 including grace period of 6 months, the respondent failed to complete the construction of the project within the stipulate time period. The occupation certificate in obtained only on 09.07.2021. Further, the interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest. Moreover, post cancellation of the unit, the respondent has failed to refund the monies paid by the complainant in terms of policy of 2013, till date. Seeing, various lapses on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In light of these findings, the cancellation of the allotment on 20.02.2024, is deemed invalid and hereby quashed as issued in bad faith.
16. In the present complaint, the complainant intends to continue with the project and is 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."

17. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

1 (iv)

"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

18. **Due date of handing over of possession:** As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained building plan approval and environment clearance in respect of the said project on 26.03.2015 and 15.03.2016 respectively. Therefore, the due date of possession is come to 15.03.2020 being calculated from the date of environmental clearance, being later. There was a pandemic in March, 2020 and all the activities including construction works were closed. Accordingly, an extension of 6 months is granted to the respondent as already allowed in **CR/4068/2022 & 50 other, case titled as; Pardeep Kumar V/s M/s Pareena Infrastructure Private Limited** of the above project by this Authority, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 15.09.2020.

19. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. 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.
21. 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., 13.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
22. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

23. Therefore, interest on the delayed 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 delay possession charges.
24. On consideration of documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered by 15.09.2020. The occupation certificate was granted by the concerned authority on 09.07.2021 and thereafter, the possession of the subject flat was offered to the complainants vide letter dated 16.07.2021. 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 physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 03.03.2016 to hand over the possession within the stipulated period.
25. 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 09.07.2021. The respondent offered the possession of the flat in question to the complainant only on 16.07.2021, 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 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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 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 (16.07.2021) which comes out to be 16.09.2021.

26. 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. 15.09.2020 till the expiry of 2 months from the date of offer of possession (16.07.2021) which comes out to be 16.09.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
27. Further, during the proceedings dated 13.02.2025, the complainant has raised various issues such as administrative charges, labour cess, meter connection charges, IFSD, EEC, advance electricity consumption charges and advance maintenance charges, which were not pressed in main reliefs sought by the complainant in his complaint. For redressal of such issues the Authority has already passed a detailed order on 09.12.2022 in **CR/4068/2022 & 50 other titled as: Pardeep Kumar V/s M/s Pareena Infrastructure Private Limited.**

H.V Direct the respondent to handover the possession of the said unit to the complainants on registering the conveyance deed.

28. The complainant is seeking direction to respondent to execute the conveyance deed of the apartment in favour of the complainant. Whereas the possession was offered after obtaining of occupation certificate as per clause of the agreement. 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 and the relevant clause of the agreement is reproduced for ready reference: -

8.2. Execution of slae/ conveyance deed:

8.2.1 Any and all costs and expenses in relation to execution and registration of the sale/ conveyance deed, e.g., stamp duty, registration fees, municipal duties (if any) and other incidental and legal expenses relating thereto shall be borne solely by the allottee. As and when demanded by the company, the allottee shall pay, the stamp duty, registration charges and all other incidental and legal expenses for execution and registration of sale/ conveyance deed of the said apartment in favour of the allottee.

8.3.1..... after satisfactory execution of such documents and payment of all such amounts give possession of the said apartment to the allottee, provided the allottee is not in breach of any other term of this agreement.

29. 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.
30. 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 and the same is reproduced below:

"Section17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment

A

of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

31. As occupation certificate of the unit has been obtained from the competent authority on 09.07.2021, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit Accordingly, the Authority directs the respondent to handover the physical possession of the allotted unit and to execute the conveyance deed 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.

H.VI Direct the respondent to not create any third-party interest in the unit allotted to the complainants.

H.VII Direct the respondent not to cancel the allotment as the respondent has already received entire sale consideration amount.

32. The above-mentioned relief 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.

33. 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.VIII Direct the respondent to complete the basic infrastructure and provide all the basic amenities in the project to make the unit habitable before handing over the physical possession of the apartment.

34. The respondent is directed to complete the unit allotted to the complainant as per the specifications mentioned in Annexure-I of buyer's agreement dated 03.03.2016.



I. Directions of the authority:

35. 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 20.02.2024 is hereby set aside. The respondent is directed to re instate the allotted unit.
- ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay from the due date of possession i.e., 15.09.2020 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority as per section 18(1) of the Act of 2016 read with rule 15 of the rules. The arrears of 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.
- iii. The respondent is directed to supply a copy of the updated statement of account after adjusting the delay possession charges within a period of 30 days to the complainant.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent/promoter shall handover the possession of the of the allotted unit and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.



- v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under Affordable Group Housing Policy, 2013.
- vi. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 13.02.2025



HARERA
GURUGRAM

V.I. 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram