

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

Complaint no.: 2473 of 2022  
Date of filing: 06.06.2022  
Date of decision: 27.05.2025

1. Vishal Mathur
2. Divya Mathur

**Both Regd. Address at:** D-4, Dattaguru,  
Deonar Village Road, Deanor, Mumbai,  
Maharashtra

**Complainants**

Versus

M/s Pareena Infrastructures Pvt. Ltd.  
**Regd. office:** C7A 2<sup>nd</sup> floor, Omaxe City Centre  
Mall, Sohna Road, Sector 49, Gurugram

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Mr. Rajan Kumar Hans (Advocate)  
Mr. Prashant Sheoran (Advocate)

**Counsel for Complainants**  
**Counsel for Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 there under or to the allottees 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 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	Residential
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 vide no. GGM/419/151/2020/335 dated 16.10.2020 valid up to 11.03.2024
7.	Unit no.	1803 Tower-1 (As per page no. 21 of the complaint)
8.	Unit area admeasuring	2352 sq. ft. (Super area) (As per page no. 21 of the complaint)
9.	Date of execution of apartment buyer's agreement	13.12.2013 (As per page no. 19 of the complaint)
10.	Possession clause	<b>3.1</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, as per the said plans and specifications seen and accepted by the Flat Allottee..... and</i> <b>5.1</b> <i>In case within a period as provided hereinabove, further extended by a period of 6(six) months if so required by</i>





		<i>the developer, 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. (As per page no. 32 and 35 of the complaint)</i>
11.	Due date of possession	13.06.2018 (Note: Due date to be calculated 4 years from the date of execution of apartment buyer's agreement i.e., 13.12.2013.)
12.	Payment Plan	Construction linked payment plan (As per page no. 44 of the complaint)
13.	Basic sale price	Rs.1,14,55,416/- (As per schedule of payments on page no. 44 of the complaint)
14.	Total sale consideration	Rs.1,40,17,752/- (As per schedule of payments on page no. 44 of the complaint)
15.	Amount paid by the complainant	Rs.60,13,799/- (As per cancellation letter on page no. 55 of the complaint)
16.	Reminder/Demand Notices	14.03.2017, 05.01.2021, 13.07.2018 and 19.01.2021
17.	Pre-cancellation letter	10.06.2021 (As per page no.56 of the complaint)
18.	Cancellation letter	12.08.2021 (As per page no. 55 of the complaint)
19.	Occupation Certificate/ completion certificate	Not received

**B. Facts of the complaint**



3. The complainants have made the following submissions in the complaint:
- a. That the complainants had booked a unit in the project named 'Coban Residences' of the respondent at Sector 99A, Gurugram, Haryana and the complainants was allotted unit no. T-1, 1803, Tower 1, at 18<sup>th</sup> Floor, admeasuring 2352 Sq. Ft, at Sector 99A Gurgaon on 27.07.2013. The builder buyer agreement was executed on 13.12.2013. That the complainants till date had made the payment of ₹60,13,798/- as per the agreed terms and as per builder buyer agreement. The possession of the unit was to be handed over by respondent to complainants within 48 months from the execution of the builder buyer agreement. The possession was to be handed to the respondent on 12.12.2017. That almost 4 years 5 months have lapsed, the respondent still failed to handover the possession of the said unit.
  - b. The present complaint is being filed under section 31 of Real Estate (Regulation and Development) Act, 2016 r/w rule 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 for violation of section 11(4)(a) of RERA, 2016.
- C. Relief sought by the complainants:**
4. The complainants have sought following relief(s).
    - a. Direct the respondent to pay delayed possession charges on the amount paid at prescribed rate from the due date of possession till physical possession of the unit.
    - b. Direct the respondent to hand over the possession of the unit.
  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.**

6. The respondent has contested the complaint on the following grounds.

- a. 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. That the respondent has already applied for occupation certificate and very soon same will be granted. That the respondent is a committed real estate developer, who is developing various residential colonies as per rules and law. 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 Authority at the expense of the respondent.
- b. 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. On the other hand, the respondent is still ready to deliver the unit in question of this due completion to the complainant, of course, subject to payment of due installments and charges.





- c. 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 foundationless 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.
- d. 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. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds.
- e. That from said worksheet prepared by the accounts department of respondent on the basis of record available. It is crystal clear that over a period of time numerous allottees have defaulted in their payments at the relevant stages of construction and it is not possible to construct with inadequate funds. Thus, the situation of non-payment of amount by the allottees is beyond the control of respondent. It is submitted that even in the Apartment Buyer Agreement it was stated that period of 4 years 6 months was subjected to normal conditions and force majeure and with any stretch of imagination situations faced by respondents are not normal. It is submitted that if we go through table given above more than 30% payment was not received by the respondents yet





the work at the site is completed approximately 80 to 90 percent. That it is the faults of those allottees who had committed defaults and respondent should not be made to suffer for the same.

- f. 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. The Hon'ble supreme court in Nov 2019 wherein it was ordered that "With respect to demolition and construction activities we direct that no demolition and construction activities take place in Delhi and NCR region. In case it is found that such activity is done, the local administration as well as the municipal authorities including the Zonal Commissioners, Deputy Zonal Commissioners shall be personally held responsible for all such activities. They have to act in furtherance of the Court's order and to ensure that no such activity takes place" That said order was revoked by Hon'ble supreme court in Feb 2020 whereby it was ordered that "The restriction imposed vide order dated 04.11.2019 is recalled. As per the norms, the work can be undertaken during day and night by all concerned, as permissible. Application for direction is, accordingly, disposed of."
- g. 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 labor 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 persons 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. It is



submitted that merely because few allottees have 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. It is submitted that for the same reason the clause of "force majeure" was made part of agreement. It is submitted that it is absolutely beyond the control of developer to get money from the buyer on time. It is submitted 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 does not bring money which the developer had already incurred and is incurring continuously.

- h. That material, labor and other requirements does not come 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 from above stated figures it is clear that complainant never paid amount on time. It is submitted that RERA is based on principles of natural justice and equity and these principles applies both to allottee and developer alike. It is further submitted that RERA does not give absolute right to allottee to seek refund if in standard time project is not completed. It is submitted that allottee rights are governed through their duties and if they failed to fulfill their duties, then they have no right to seek refund. That none is allowed to take benefit of their own mistake.





- i. That the construction is reciprocal to amount paid and it is not possible to raise complete construction without getting complete amount. That in such cases if refund is granted than it would be absolutely against the natural justice. It is pertinent to mention here that whatsoever amount which was received by respondent qua construction has already been utilized for construction and it is the complainant who never paid the amount demanded. Thus, he cannot put blame upon respondents. Thus, keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.
7. 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.
8. The written submissions filed by both the parties are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.
- E. Jurisdiction of the authority**
9. The authority has complete territorial and 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 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.

**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**

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(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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the relief sought by the complainants.**

**F.I. Direct the respondent to pay delayed possession charges on the amount paid at prescribed rate from the due date of possession till physical possession of the unit.**

**F.II. Direct the respondent to hand over the possession of the unit.**

13. The complainants in the present matter jointly applied for the allotment of the said unit admeasuring 2352 sq. ft. approx. super area. Thereafter, respondent executed builder buyers' agreement dated 13.12.2013 wherein the complainants were allotted a unit bearing no.





1803, 18<sup>th</sup> floor admeasuring 2352 sq. ft. for a total sale consideration of ₹1,40,17,752/-. The complainants agreed to pay the instalments as per the construction linked payment plan annexed with the buyer's agreement. The complainants had paid an amount of ₹60,13,799/- against the sale consideration of the unit. As per clause 3.1 of the BBA executed between the parties the respondent was obligated to complete the construction of the said unit and hand over possession of the unit within a period of 4 years from the date of the start of construction or execution of this Agreement whichever is later with a grace period of 6 months. The due date shall be calculated from the date of execution of agreement as the date of start of construction is not known therefore, the period of 4 years expires on 13.12.2017. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 13.06.2018.

14. The respondent submitted that the complainants are defaulter and have failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 12.08.2021.
15. The authority before illustrating upon the relief sought by the complainants shall observe whether the cancellation letter dated 12.08.2021 issued by the respondent is valid or not?
16. The authority has gone through the payment plan, which was duly signed by both the parties. Furthermore, it is matter of record that the complainants booked the aforesaid unit under the above-mentioned payment plan and paid an amount of ₹60,13,799/- towards total



consideration of ₹1,40,17,752/- which constitutes 42.9% of the total sale consideration and have paid the last payment on 20.06.2016.

17. It is pertinent to mention here that the respondent raised the demand of ₹23,14,349/-, instalment due on completion of 6<sup>th</sup> floor on 13.06.2016 followed by two reminder letters dated 16.07.2016 & 24.01.2017. Thereafter, the respondent issued another demand of ₹26,52,566/- due on completion of 12<sup>th</sup> floor slab. The reminders were also issued after the said demand. The respondent after giving reminders dated 08.04.2017, 11.07.2017, 13.07.2018 for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid numerous reminders, the complainant has failed to clear the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. Thereafter, the respondent issued pre-termination notice dated 10.06.2021, and finally cancelled the subject unit vide letter dated 12.08.2021.
18. As per clause 2.23 of the agreement dated 13.12.2013, the respondent/promoter has a right to cancel the unit in case the allottee makes default in making the payment. Clause 2.23 is reproduced as under for a ready reference:

*"That the Time is the essence with respect to the Flat Allottee(s) obligations to pay the Sale Price as provided in Annexure-I Summary of dues along with other payments such as applicable Service Tax, stamp duty, registration fee and other charges stipulated under this Agreement to be paid on or before due date or as and when demanded by the Developer as the case may be and also to perform or observe all the other obligations of the Flat Allottee(s) under this Agreement. It is clearly agreed and understood by the Flat Allottee(s) that it shall not be obligatory on the part of the Developer to send reminders regarding the payments to be made by the Flat Allottee(s) as per the Schedule of Payments*



*in Annexure-II or obligations to be performed by the Flat Allottee(s). In case of delay for more than 15 (fifteen) days in making payment by the Flat Allottee(s) to the Developer as per the Schedule of Payments as stated in Annexure-II, the Developer shall have the right to terminate the Agreement and forfeit the EARNEST MONEY as detailed hereinabove. The amounts, if any, paid over and above the earnest money shall be refunded by the Developer without any interest. In exceptional circumstances, the Developer at its sole discretion may condone the delay by charging interest @ 24% p.a. compounded at the time of every succeeding instalment from the due date of instalment, as per the Schedule of Payments Annexure-II, till the date of payment....."*

19. That the above-mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default on part of the complainants including timely payment of consideration. Further, the allottee is under obligation to make payments towards consideration of allotted unit as per payment plan annexed with BBA dated 13.12.2013 as per section 19(6) & 19(7) of Act of 2016.
20. Thereafter, the respondent/promoter issued demands letter and further, issued termination letter to the complainant. The respondent cancelled the unit of the complainant after giving adequate demands notices. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.
21. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Ors., (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 a 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."*

22. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate





Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 12.08.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions of the authority**

23. 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):
- a. The respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 12.08.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.





- b. 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.

24. Complaint stands disposed of.

25. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025

**HARERA**  
**GURUGRAM**