

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

Complaint no.	:	1512 of 2024
Date of complaint	:	09.04.2024
Date of order	:	21.05.2025

Rajdeep Aggarwal,
R/o: - House no. 387, Sector-A,
Pocket-C, Vasant Kunj, New Delhi-110070.

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:**

Sukhbir Yadav (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, Gurugram
2.	Nature of the project	Group Housing Colony
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	Registered Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
7.	Unit no.	T3-902, Tower-3 (Page 97 of complaint)
8.	Unit admeasuring area	1997 sq. ft. of super area (page 97 of complaint)
9.	Provisional allotment letter	20.11.2013 (page 39 of complaint)
10.	Date of apartment buyer agreement	17.04.2014 (Page 41 of complaint)
11.	Possession Clause	3.1. Possession <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	16.10.2014 (start of excavation) (Page 74 of complaint)
13.	Due date of possession	16.10.2018 (Page 74 of complaint)
14.	Total sale consideration	Rs.1,23,52,419/- (as per SOA dated 14.12.2022 at page 97 of complaint)
15.	Total amount paid by the complainant	Rs.1,10,24,831/- (as per SOA dated 14.12.2022 at page 97 of complaint)
16.	Occupation certificate	13.12.2022 (page 109 of reply)
17.	Offer of possession	14.12.2022 (page 97 of complaint)
18.	Cancellation letter	12.03.2024 (page 108 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant has filed a complaint before the Authority against the respondent on 02.01.2019 vide complaint No. 2191 of 2018 and sought relief to get either a refund of the paid amount along with interest or to get the possession with the payment of delayed possession charges along with other reliefs.
- II. That the complainant primarily wanted to get a refund of his investment since the respondent had delayed the possession, however, during the proceedings of the above-mentioned complaint, the respondent assured the Authority that the respondent is in the process of giving possession and the possession of complainant's unit will be in his hands soon. It is relevant to note here that this Authority believed the words of the respondent and granted the delayed possession charges instead of refunding his money. Hence, this

- Authority granted the relief of delayed possession charges to the complainant.
- III. That the respondent did not comply with the directions of the Authority, thereafter, the complainant filed an execution petition vide CRN 4119 of 2021 to recover the decretal amount. After adjustment of Rs.10,33,535/- against the pending demands and Rs.1,83,583/- towards interest on pending demands, the respondent paid Rs.23,82,814/- to the complainant. Thereafter, the respondent undertook before the court that the balance decretal amount shall be paid to the complainant, therefore, the said execution petition was withdrawn by the complainant.
- IV. That on 07.04.2022, the respondent issued a statement of account and the said statement of account reflects that the complainant has paid Rs.1,12,08,414/- to the respondent. It is highly germane to mention here that the complainant made every payment against the demands raised by the respondent.
- V. That it has been more than 4 years from the order dated 20.03.2019 and still respondent has not given possession of the complainant's unit. It is pertinent to mention here that the respondent has failed to keep its promises by not giving possession of the complainant's unit.
- VI. That on 08.05.2022, the complainant sent a grievance email to respondent and asked for a refund of money along with interest. The complainant made every possible effort to get possession of his unit, however, all went in vain and now the complainant neither got his unit nor the refund of his hard-earned money.
- VII. That being aggrieved by the acts and misconduct of the respondent, the complainant has no other option left but to knock on the door of

this Authority, therefore, the complainant filed a complaint bearing no. 2496 of 2022 before this Authority and sought relief to get the refund of all money paid by the complainant to the respondent, however, the said complaint was dismissed by this Authority on the sole ground of Res-Judicata vide order dated 28.02.2024.

- VIII. That during the pendency of the said complaint, one fine day on 14.12.2022, the respondent issued an offer of possession in the name of the complainant for unit No. T3-902 admeasuring super area of 1997 Sq. Ft situated in respondent's project i.e., "Coban Residences". It is pertinent to mention here that Annexure A i.e., Statement of Account annexed with the said offer of possession reflects that Sub Total-I of the said SOA i.e., the total cost of the complainant's unit is Rs.1,11,68,009/-. It is highly pertinent to mention here that as per the SOA dated 07.04.2022 issued by the respondent, the complainant has paid a sum of Rs.1,12,08,414/- which is more than 100% of the total cost. It is germane to highlight here that the said offer of possession is a conditional offer of possession since the said offer of possession letter contains several unreasonable demands amounting to Rs.12,21,547/- in total. Furthermore, the respondent has asked the complainant to execute an indemnity cum undertaking for taking possession of his unit, which is also contrary to law. Hence, the said offer of possession is not acceptable and the same is bad in the eyes of law. It is further pertinent to mention here that the respondent has shown the wrong amount paid by the complainant, moreover, the demand of fire fighting charges of Rs.70,694/-, advance maintenance charges of Rs.1,06,041/- and external electrification charges of Rs.98,524/- is over and above the agreed sale consideration.



- IX. That after getting deceived by the respondent over and over again, the complainant visited the sales office of the respondent and asked the respondent to rectify the demand and asked to credit the delayed possession charges, but the respondent refused to do so. However, he is ready to make the balance payments (if any) in lieu of the offer of possession dated 14.12.2022 subject to physical possession of his unit first. It is pertinent to mention here that the respondent did not even give the balance decretal amount as per the undertaking given by it before the court which amounts to more than the demand as mentioned in the said offer of possession. The respondent did not give any firm date for giving the physical possession of the unit upon the visit paid by the complainant to its sales office.
- X. That on 12.03.2024, the respondent out of nowhere sent a unit cancellation letter intimation through email and cancellation letter via post in the name of the complainant. It is pertinent to mention here that the respondent cancelled the unit of the complainant on account of non-payment of the dues as mentioned in the offer of possession. It is relevant to note here that the complainant has already made payments more than 100 % of the total cost of the unit, therefore, the respondent cancelled the unit of the complainant without any reason just to embezzle the hard-earned money of the complainant. It is not incorrect to mention here that the said cancellation letter is an arbitrary and unacceptable letter. It is also relevant to note here that the respondent did not even follow the due course of law before issuance of the said cancellation letter since no pre-cancellation intimation was ever sent by the respondent to the complainant, therefore, the said cancellation letter is null and void.

- XI. That in revert to the above-mentioned cancellation letter, the complainant sent an email on 13.03.2024 to the respondent, thereafter, the complainant reiterated all his concerns in a letter dated 20.03.2024, and the same was sent by the complainant to the respondent through post. In addition to the fact mentioned, the complainant further sent emails on various occasions to the respondent and asked them to withdraw the said cancellation letter since the same is based on false and inappropriate grounds.
- XII. That the complainant does not want to withdraw from the project, the promoter has not fulfilled his obligation therefore as per obligations on the promoter, the promoter is obligated to withdraw the cancellation letter issued by them on 12.03.2024.
- XIII. That the complainant had already paid the full consideration for his unit and the respondent owes Rs.9,16,591/- in delayed possession charges. Therefore, the respondent cannot raise further demand without adjusting the outstanding balance.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to set aside cancellation, handover possession and to execute conveyance deed of the said.
 - II. Direct the respondent to issue valid offer of possession after withdrawal of illegal demands of fire-fighting charges, external electrification charges, advance maintenance charges and after adjustment of DPC.
 - III. Direct the respondent to refrain the demand of indemnity bond.

D. Reply by respondent:

5. The respondent has contested the complaint on the following grounds:



- i. That the present complaint is barred by the law of res judicata. It is submitted that prior to present complaint, complainant had filed a complaint bearing number 2191 of 2018 and sought relief of both refund and possession as admitted by the complainant in its present complaint. That during the proceedings, complainant opted to give up their relief of refund and sought possession along with delayed possession charges and accordingly on 20.03.2019 final order was passed. Since the same relief was already adjudicated and decided earlier by the authority, the complainant has no right to file present complaint.
- ii. That after passing of said order complainant instead of filing an appeal before appellate tribunal to challenge the order or approaching respondent for settlement of accounts, filed a complaint before NCLT Delhi vide complaint bearing number IB-2393 (ND)/2019 and demanded complete refund. That after pursuing said complaint for 2 years, the said complaint was later on withdrawn by the decree holder on 22.03.2021. The complainant even filed another complaint before NCDRC for complete refund in the year 2020 as well and the same was also withdrawn by the complainant on 27.07.2021.
- iii. That after withdrawal of above stated 2 complaints, complainant ultimately filed an execution petition before the authority seeking compliance of order dated 20.03.2019. That in the execution petition respondent raised the objection that as per direction of the authority, parties were directed to first settle their account related dispute qua the amount paid by complainant. Accordingly, matter was referred to chartered accountant and as per his report dated 02.11.2021, it was reported that complainant had paid an amount of Rs.96,16,856/- only.

- iv. That as of now, the respondent has paid delayed possession charges to the tune of Rs.38,58,385/-. The said execution petition qua DPC was later on withdrawn by complainant on 02.09.2022.
- v. That in the present complaint, the complainant has wrongly claimed that that he has paid an amount of Rs.1,12,08,414/- to the respondent. That similar dispute was earlier arose in previous complaint when complainant wrongly claimed an amount to be paid as per statement of account and ultimately in execution petition it was resolved. The statement of account always consisted to various transaction which include discounts, adjustments, credit notes and the total amount shown to be paid by allottee were not the actual amount paid by concerned person, rather the said amount is a sum of various transaction. Thus, the authority may kindly direct the complainant to tender his duly certified bank account statement qua the amount actually paid by him.
- vi. That the respondent has already received occupation certificate and offered possession to complainant and when the complainant failed to pay the balance amount the unit was cancelled as per agreed terms and conditions. It is submitted that the complainant specifically admits that he had received an offer of possession on 14.12.2022. It is submitted that as per clause 7.1 of the apartment buyer agreement, certain defaults were mentioned and agreed by complainant. That one of the defaults as per clause 7.1 is that in case the allottee fails to take over the flat for occupation and use within the time stipulated by the developer. That other than this another default is failure to make payment within the time. That the failure to execute conveyance deed is also a default as agreed by the complainant in agreement. It is



submitted as per clause 7.2 of the agreement, the developer can cancel the unit in case any of the default as mentioned in clause 7.1 was committed by the complainant/allottee in case possession has not been handed over. It is submitted that in the present case, the respondent validly demands an amount of Rs.13,27,588/- against the offer of possession and an additional amount of Rs.7,82,000/- for stamp duty of conveyance deed and Rs.50,003/- for registration charges and pasting fees. That since the complainant failed to take over possession, make payment as per the offer of possession and failed to get the conveyance deed as per the offer of possession thus the allotment was cancelled after waiting for more than a year. That the cancellation was done absolutely in terms of the agreement executed by the complainant himself. It is submitted that even as per RERA a builder has right to cancel the allotment in terms of agreement. It is submitted that the present case, the agreement is Pre-RERA and the terms and conditions qua shall be applicable as per the agreement itself. It is submitted that there is no provision of pre-cancellation and same is not required in the present case. The complainant always knew, if he failed to make payment or take possession, the unit can be cancelled by the respondent. It is therefore prayed that keeping in view of above stated facts and circumstances present complaint may kindly be dismissed.

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 complaint being barred by res-judicata.**

11. The respondent-promoter has raised the contention that the present complaint is barred by the law of res judicata as prior to present complaint, complainant had filed a complaint bearing number 2191 of 2018 and sought relief of both refund and possession as admitted by the complainant in its present complaint. During the proceedings, complainant opted to give up their relief of refund and sought possession along with delayed possession charges and accordingly on 20.03.2019 final order was passed. Since the same relief was already adjudicated and decided earlier by the authority, the complainant has no right to file present complaint. The complainant has submitted that on 12.03.2024, the respondent out of nowhere sent a unit cancellation letter intimation through email and via post in the name of the complainant. It is pertinent to mention here that the respondent cancelled the unit of the complainant on account of non-payment of the dues as mentioned in the offer of possession. It is relevant to note here that the complainant has already made payments more than 100 % of the total cost of the unit, therefore, the respondent cancelled the unit of the complainant without any reason just to embezzle the hard-earned money of the complainant. After considering the documents available on record as well as submissions made by the parties, the authority observes that although a former complaint between the same parties litigating under the same title was heard and decided by this authority, but the cause of action in the present complaint is different from the former complaint. In view of the above, the objection of the respondent regarding complaint being barred by res-judicata is declined.

G. Findings on the relief sought by the complainant:

- G.I** Direct the respondent to set aside cancellation, handover possession and to execute conveyance deed of the said.
- G.II** Direct the respondent to issue valid offer of possession after withdrawal of illegal demands of fire-fighting charges, external electrification charges, advance maintenance charges and after adjustment of DPC.
12. The complainant was allotted an apartment bearing no. T-3, tower T-3, 9th Floor in the project of the respondent named "Coban Residences" at Sector-99A, Gurugram vide apartment buyer's agreement dated 17.04.2014. The background of the complaint is that the complainant had previously filed a complaint bearing no. 2191 of 2018 before the authority and the same was disposed of vide order dated 20.03.2019, vide which delay possession charges (DPC) @10.75% from due date of possession i.e. 16.10.2018 till offer of possession was allowed to him. However, the respondent defaulted in payment of DPC to the complainant. Therefore, in order to execute the order dated 20.03.2019, the complainant has filed an execution petition bearing no. 4119/2021 before the Adjudicating Officer. During pendency of the said execution petition, counsel for the complainant/deGREE holder submitted before executing court that a sum of Rs.23,82,814/- already received by the complainant/D.H and a sum of Rs.1,38,373.75/- is still due and payable. Thereafter, application for withdrawal of execution petition was filed by the complainant/D.H submitting that a complaint bearing no. 2496/2022 has been filed before the Authority for refund of the paid-up amount, so the complainant/D.H does not want to pursue the execution petition. Accordingly, the execution petition no. 4119/2021 was dismissed as withdrawn vide order dated 02.09.2022.



13. The complainant thereafter filed another complaint bearing no. 2496/2022 filed before the Authority seeking refund of amount of Rs.1,12,08,414/- along with interest under Section 11(4), 12, 18, 19(4) of the Act, 2016 and the same was dismissed being not maintainable vide proceedings dated 20.09.2023 on the ground of res-judicata as the matter in issue between the same parties has already been heard and decided by this Authority vide order dated 20.03.2019 in former complaint bearing no. 2191 of 2018. Later on, the complainant filed an application for passing speaking and reasoned order before the Authority and the said application was decided vide order dated 28.02.2024 which re-confirmed the findings of the Authority given in proceedings dated 20.09.2023.
14. Further, the Authority observed that the complainant has also preferred an appeal against the order dated 20.09.2023, passed by the Authority in CR/2496/2022 before the Hon'ble Appellate Tribunal vide Appeal bearing no. 39 of 2024, and the same was dismissed by the Hon'ble Appellate Tribunal vide order dated 12.12.2024 wherein it was observed that:

"4. Surprisingly, allottee-Rajdeep Aggarwal instituted another complaint (CR No.2496/2022) praying for refund of amount of Rs.1,12,08,414/-. Same was dismissed by the Authority vide order dated 20.09.2023 being not maintainable and barred by principle of res judicata. The allottee did not stop here and moved another application before the Authority praying that a reasoned order be passed. It, thus, passed order dated 28.02.2024. It appears that the unit allotted to the allottee was cancelled meanwhile, which he challenged by filing complaint No.1512 of 2022. Same is stated to be pending.

5. From the aforesaid facts, it is evident that no interference in impugned orders is called for. Besides, the present appeal deserves outright dismissal with exemplary costs keeping in view the facts and circumstances of the case."

15. Now the complainant has filed the present complaint seeking direction for setting aside of cancellation letter dated 12.03.2024 issued by the respondent/promoter and further directing the promoter to issue valid offer of possession after withdrawing of illegal demands.
16. The complainant has submitted that on 14.12.2022, the respondent issued an offer of possession for the unit in question to the complainant subject to payment of several unreasonable demands amounting to Rs.12,21,547/- in total and has further asked the complainant to execute an indemnity cum undertaking for taking possession of his unit, which is also contrary to law. Moreover, the demand of fire fighting charges of Rs.70,694/-, advance maintenance charges of Rs.1,06,041/- and external electrification charges of Rs.98,524/- is over and above the agreed sale consideration. Further, the respondent did not even give the balance decretal amount as per the undertaking given by it before the court which amounts to more than the demand as mentioned in the said offer of possession. On 12.03.2024, the respondent out of nowhere sent a unit cancellation letter mentioning that the unit of the complainant has been cancelled on account of non-payment of the dues as mentioned in the offer of possession. It is relevant to note here that as per the SOA dated 07.04.2022 issued by the respondent, the complainant has paid a sum of Rs.1,12,08,414/- which is more than 100% of the total cost of the unit and the respondent did not even follow the due course of law before issuance of the said cancellation letter since no pre-cancellation intimation was ever sent by the respondent to the complainant, therefore, the said cancellation letter is null and void. Furthermore, the respondent owes Rs.9,16,591/- in delayed possession charges. Therefore, the respondent cannot raise further demand without



adjusting the outstanding balance. The respondent has submitted that as of now, the respondent has paid delayed possession charges to the tune of Rs.38,58,385/- to the complainant. The complainant has wrongly claimed that that he has paid an amount of Rs.1,12,08,414/- to the respondent. That similar dispute was earlier arose in previous complaint when complainant wrongly claimed an amount to be paid as per statement of account and ultimately in execution petition it was resolved. The statement of account always consisted to various transaction which include discounts, adjustments, credit notes and the total amount shown to be paid by allottee were not the actual amount paid by concerned person, rather the said amount is a sum of various transaction. Further, the respondent has already received occupation certificate and offered possession to complainant and when the complainant failed to pay the balance amount the unit was cancelled as per agreed terms and conditions. It is submitted that the complainant specifically admits that he had received an offer of possession on 14.12.2022. It is submitted that as per clause 7.1 of the apartment buyer agreement, certain defaults were mentioned and agreed by complainant. That one of the defaults as per clause 7.1 is that in case the allottee fails to take over the flat for occupation and use within the time stipulated by the developer. That other than this another default is failure to make payment within the time. That the failure to execute conveyance deed is also a default as agreed by the complainant in agreement. It is submitted as per clause 7.2 of the agreement, the developer can cancel the unit in case any of the default as mentioned in clause 7.1 was committed by the complainant/allottee in case possession has not been handed over. It is submitted that in the present



case, the respondent validly demanded an amount of Rs.13,27,588/- against the offer of possession and an additional amount of Rs.7,82,000/- for stamp duty of conveyance deed and Rs.50,003/- for registration charges and pasting fees. Since the complainant failed to take over possession, make payment as per the offer of possession and failed to get the conveyance deed as per the offer of possession thus the allotment was cancelled after waiting for more than a year. The cancellation was done absolutely in terms of the agreement executed by the complainant himself. It is submitted that in the present case, the agreement is Pre-RERA and the terms and conditions qua shall be applicable as per the agreement itself. It is submitted that there is no provision of pre-cancellation and same is not required in the present case. The complainant always knew, if he failed to make payment or take possession, the unit can be cancelled by the respondent. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 12.03.2024 is valid or not.

17. 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.1,10,24,831/- against the sale consideration of Rs.1,23,52,419/- and no payment was made by the complainant after April 2022. 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 vide buyer's agreement dated 17.04.2014, 'on offer of possession', the complainant was obligated to



pay 5% of the BSP + stamp duty, registration and other applicable charges. However, despite adjustment and payment of an amount of Rs.12,17,118/- and Rs.23,82,814/- respectively towards delay possession charges from the respondent, the complainant defaulted in making payment towards outstanding dues and ultimately leading to cancellation of unit vide letter dated 12.03.2024. 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. Further, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate. 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.

18. Keeping in view the aforesaid factual and legal provisions, the present complaint stands dismissed being devoid of merits.
19. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.05.2025