BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**5109 of 2023**
Order reserved on:	**28.03.2025**
Order pronounced on:	**23.05.2025**

1. Kapil Pal
2. Rita

Both R/O: H. no. 258, GP, Sector-33, Gate no. 2, Hisar-125001 **Complainants**

Versus

M/s Pareena Infrastructure Pvt. Ltd.
Regd. office: Flat no. 2, Palm Apartment, Plot no. 13B, Sector-6, Dwarka, New Delhi-110075 **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:

Sh. Dushyant Yadav Advocate for the complainants
Sh. Prashant Sheoran Advocate for the 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.N.	Particulars	Details
1.	Name and location of the project	"Micasa", sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Allotment Letter	16.07.2015 (page no. 18 of complaint)
7.	Apartment buyer's agreement	06.10.2015 (page no. 21 of complaint)
8.	Unit No.	603, 6th floor, Tower 5 (page no. 28 of complaint)
9.	Unit admeasuring area	1245 sq. ft. of super area (page no. 28 of complaint)
10.	Possession clause	13. Completion of Project 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 agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee(s) .....
11.	Date of start of construction	26.04.2016 (as per demand letter at page no. 97 of reply)
12.	Due date of possession	26.10.2020 (calculated from the date of construction including grace period of 6 months on account of COVID-19)
13.	Basic sale consideration	Rs.83,76,030/- (as per payment plan at page no. 49 of complaint)
14.	Total amount paid by the complainants	Rs.42,95,869/- (as per cancellation letter at page no. 94 of reply)
15.	Demand Letters and Reminders	06.04.2016, 02.06.2016(reminder), 04.07.2016 (reminder), 03.09.2016 (reminder), 02.02.2017, 02.06.2017(reminder), 17.07.2017, 31.01.2018(reminder), 19.04.2018(reminder), 09.01.2019 (reminder), 14.05.2019 (reminder), 18.07.2019 (reminder), 05.09.2019(reminder) 10.09.2020(final opportunity)
16.	Pre cancellation letter	13.09.2022

		(page no. 134 of reply)
17.	Cancellation Letter	07.10.2023 (page no. 94 of reply)
18.	Occupation certificate	03.06.2024 For tower 4-5 (as per DTCP website)
	Offer of possession	05.06.2024 (as per additional documents filed by complainant)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

I. That complainants i.e. Mr. Kapil Pal & Mrs Rita jointly booked a residential unit bearing no. 603 on 6th Floor in Tower -5, MICASA, Sector –68, Gurugram Haryana.

II. That on dated 05.10.2015 an apartment buyer agreement dated 05.10.2015 was executed between the respondent and the complainants.

III. That as per buyer's agreement the possession of the apartment shall be handed over within 48 months and the same got expired on 04.10.2019. However, no possession has been handed over to complainants / allottees. There is already a delay of 48 months and the possession of the same is not expected soon as the project is not even completed.

IV. That the complainants have already paid 60 % of the total consideration amount including GST, however the construction is still

lagging far behind. Complaints are unable to disburse any amount raised by the respondent as the respondent has already delayed the project and crossed the date of final possession with all amenities.

V. That complainants are requesting to provide the compensation and delay penalty as the possession has already been delayed and date for possession has already been expired. Also requesting the respondent to pay for interest on the loan amount till the possession of the unit is not offered as assured in the agreement or refund the entire amount paid by the complaints along with interest @ 24% per annum, penalties and litigation charges.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

(i) Direct the respondent to pay compensation and delay penalty for the delay in possession till the offer of possession of the unit with prevailing interest as per the provisions of RERA Act.

(ii) Direct the respondent to provide possession of the said unit to the complainants.

(iii) Direct the respondent to pay interest on loan amount.

(iv) Direct the respondent to pay Rs. 55,000/- as litigation expenses.

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.

I. That the present complaint is not maintainable in the eyes of law. That the unit of the complainants has already cancelled prior to filing of

present complaint and complainant have specific notice and knowledge of same and yet mischievously they concealed the same. That once the unit has been stand cancelled, the complainant has no right to seek possession or delayed possession charges. In the brief facts complainants are completely silent about cancellation letter.

II. That the complainant is estopped from filing the present complaint by his own act and conduct, admission, omission, laches and acquiescence.

III. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "MICASA" at Sector 68.

IV. That the construction of the said project is at an advance stage and the construction of various towers has already been completed and occupation certificate has been received.

V. 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.

VI. That it has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundation less allegations will be admitted then, interest of other

genuine allottees of the project, will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.

VII. That as per apartment buyer agreement the date of delivery of possession was not absolute and was subject to terms and conditions of agreement itself. That admittedly it has been written in the clause 13 that the company shall endeavour to complete the construction within period of 4 years from start of construction or execution of this agreement, whichever is later but said time period of 4 years are not absolute. That further extension of 6 months is also agreed between the parties at the discretion of respondent, however said period of 4 years 6 months is also not absolute and it is subject to several reasons beyond the control of respondent and it was also agreed by the complainant that if the project gets delayed due to force majeure circumstances than the said period consumed during concerned circumstances shall stand extended. That it is admitted fact by both the parties that construction was started on 26-04-2016, thus the starting dated for calculation of date of possession would be 26-04-2016 and final date of possession shall be calculated after considering all the relevant circumstances.

VIII. That since prescribed period of 4.6 years is subject to force majeure circumstances. It is submitted that 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. On account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed.

IX. That completion of the project shall be considered as 4 years after addition of force majeure circumstances. Similarly on account of corona virus pandemic HRERA 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.

X. 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. It is submitted that whenever construction activity remains in abeyance for a longer period of time, then the time required gathering resources and re-commence construction; also became longer, which further wasted considerable time. That longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.

XI. That project is not only delayed due to force majeure events but also get delayed due to non-payment of allottees and in the present case complainants is also among those allottees who never paid on time, rather delayed from few weeks to several months and now started blaming for non-delivery of possession.

XII. That after issuance of allotment letter the respondent raised demands against the ongoing construction however the complainant failed to pay the same on time. The complainant intentionally annexed only payment details but conceal demand letter just in order to hide their mistake of not making payment.

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.

E. Written Submissions filed by complainants

8. The complainants on 18.12.2024 has filed written submissions has made following submissions.

I. That basic sale price was Rs. 67,29,225/- as per the scheduled payment plan linked with the construction and out of which the complainant had already paid Rs. 42,95,869/-. The respondent had slept over his responsibility for more than 3 years to apply for the occupancy certificate on time and had applied on dated 13.05.2023. The respondent has levied a penalty of Rs. 18,72,624/- even when there is delay on the part of the respondent to deliver the unit.

II. That the respondent on the other hand sent an offer letter dated 05.06.2024 had communicated through email dated 06.06.2024 and asked for documents to escalate the price of the flat. However, the construction is not complete till date even after the offer of possession.

III. That as per the statement of account annexed with offer letter dated 05.06.2024 some prices are increased including the preferential location charges and some charges are levied upon the complainant's that was not there at the signing of buyers agreement and the total price payable as per the buyer agreement including basic selling price, PLC, Car Parking, Club Membership, EDC/ IDC etc including GST was Rs. 83,76,030 /- however it has been increased to Rs. 1,09,53,182/-.

IV. That the complainant was shocked to know that the cancellation letter issued by the respondent on 07.10.2023 however the same was not

received by the complainants. That the cancellation letter was nothing but deliberately and intentionally delaying tactics to shine away from the responsibility to hand over the possession of the flat on time.

V. That the respondent not only failed to apply the occupancy certificate but also failed to inform the same to complainant on or before time which indicated his mala fide intent and made false commitments to complete the project on time.

F. Jurisdiction of the authority

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

F.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.

F.II Subject-matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the*

allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the relief sought by the complainants:

(i) Direct the respondent to pay compensation and delay penalty for the delay in possession till the offer of possession of the unit with prevailing interest as per the provisions of RERA Act.

(ii) Direct the respondent to provide possession of the said unit to the complainants.

(iii) Direct the respondent to pay interest on loan amount.

13. The above mentioned relief no. (i), (ii) and (iii) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

14. In the present complaint, the complainants booked a unit in the project of respondent namely, Micasa, situated at sector 68, Gurugram. The complainants were allotted a unit bearing no. 603, 6th floor in Tower 5 admeasuring 1245 sq. ft. vide allotment letter dated 16.07.2015. Thereafter, the apartment buyer's agreement was executed between the complainants and the respondent on 06.10.2015 for the total sale consideration of was Rs. 83,76,030/- and the complainants has made a payment of Rs. 42,95,869/- against the same in all. As per clause 13 of

the agreement, the respondent was required to hand over possession of the unit within a period of 4 years from the date of start of construction or execution of agreement whichever is later. The date of execution of agreement is 06.10.2015 and the date of start of construction is 26.04.2016. Therefore, the due date of possession is calculated from the date of start of construction being later which comes out to be 26.04.2020. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. hence, the due date of possession comes out to be 26.10.2020.*** The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 03.06.2024 and thereafter, has offered the possession on 05.06.2024.

15. The complainants in the present complaint is seeking delay possession charges as well as possession of the unit. The complainants have pleaded that the respondent has delayed in handing over of possession as per buyer's agreement dated 06.10.2015.

16. The plea of the respondent is otherwise and stated that the demand were raised as per payment plan annexed with apartment buyer's agreement dated 06.10.2015 and the complainants have made payment of Rs. 42,95,869/-. However, various reminder letters were issued followed by pre cancellation letter dated 13.09.2022 but despite repeated follow ups the complainants failed to act further and comply with their contractual obligations and therefore the unit of the complainants was finally terminated vide letter dated 07.10.2023.

Now the question before the authority is whether the cancellation issued vide letter dated 07.10.2023 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 the apartment buyer agreement was executed between the complainants and respondent on 06.10.2015. The sale consideration of the unit was Rs. 83,76,030/- and the complainants has made a payment of Rs. 42,95,869/- against the same in all. As per the payment plan annexed as Annexure II in the agreement dated 06.10.2015 at page 50 of the complaint, the complainant was required to make payments as per the stage of construction. The complainants has taken the plea that they withheld payment on the ground that construction was not fully completed. However, this contention is not sustainable in light of the material available on record. The respondent has obtained the Occupation Certificate (OC) from the competent authority on 03.06.2024, which conclusively establishes that construction of the project has been duly completed.

18. Accordingly, in terms of the payment schedule agreed upon by the parties and the fact of completion evidenced by the OC, it was incumbent upon the complainant to honour the demand and make payment as per the agreed terms. The failure to do so amounts to a breach of contractual obligations.

19. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale dated 06.10.2015. The respondent after giving various reminders dated 06.04.2016, 02.06.2016, 04.07.2016, 03.09.2016, 02.02.2017, 02.06.2017, 17.07.2017, 31.01.2018, 19.04.2018, 09.01.2019, 14.05.2019, 18.07.2019, 05.09.2019, 10.09.2020 issued pre

cancellation letter on 13.09.2022 for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid numerous reminders, the complainants have failed to take possession and clearing the outstanding dues. Therefore, the respondent cancelled the unit on 07.10.2023.

20. It is further pertinent to note that even after the cancellation of the unit due to non-payment, the respondent, in good faith and without prejudice to its rights, extended an offer of possession to the complainant upon completion of the construction and receipt of the occupation certificate. Despite being provided this opportunity, the complainant failed to discharge his payment obligations and did not remit the outstanding dues required to take possession of the allotted unit. Surprisingly, the complainant is now seeking possession of the unit through the intervention of the authority without having complied with the fundamental terms of the agreement including timely payment. This conduct reflects a lack of bona fides and a clear attempt to take advantage of the process while remaining in breach of the contractual and statutory obligations.

21. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainants is hereby declined as the complainants-allottee have 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.

22. 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. Urs., (2015) 4 SCC 136, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** *(decided on 29.06.2020) and* ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** *(decided on 12.04.2022)* ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed 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."*

23. 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, and 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 07.10.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

***(iv)* Direct the respondent to pay Rs. 55,000/- as litigation expenses.**

24. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that the adjudicating officer has exclusive jurisdiction to deal with the relief with respect to the compensation.

H. Directions of the authority

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

i. The respondent/builder is directed to refund the deposited amount of Rs. 42,95,869/- after deducting 10% of the sale consideration along with an interest @11.10% on the refundable amount, from the

termination/cancellation 07.10.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

26. Complaint as well as applications, if any, stands disposed off accordingly.

27. File be consigned to registry.

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.05.2025