

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

Complaint no.	4444 of 2023
Date of complaint	27.09.2023
Date of order	24.04.2025

M/s Skynet Enterprises Private Limited

Registered address at: 609, Katra Ishwar Bhawan,
Khari Baoli, Delhi-110006.**Complainant**

Versus

M/s Pareena Infrastructure Private Limited

Registered address at: Flat no.2, Palam Apartment, Plot
no.13B, Sector-6, Dwarka, New Delhi-110075.**Respondent****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Charan Singh Verma, Advocate

Complainant

Shri Prashant Sheoran, Advocate

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 provision 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 the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name and location of the project	"Coban Residences", Sector-99A, Gurugram
2.	Nature of the project	Group Housing Complex
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	M/s Monex Infrastructure Pvt. Ltd.
6.	RERA Registered or not registered	Registered GGM/419/151/2020/35 dated 16.10.2020 Valid up to 11.03.2024
7.	Unit no. and floor no.	1503 and 15 th floor and Tower-1 (As per page no. 59 of the complaint)
8.	Unit area admeasuring	2352 sq. ft. (Super area) (As per page no. 59 of the complaint)
9.	Provisional allotment letter	22.11.2013 (As per page no. 53 of the complaint)
10.	Date of execution of apartment buyer's agreement	10.12.2013 (As per page no. 57 of the complaint)
11.	Date of start of construction	16.10.2014 (As per page no. 98 of the complaint)
12.	Possession clause	3.1 <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</i>

		<p>seen and accepted by the Flat Allottee.....</p> <p>and</p> <p>5.1</p> <p><i>In case within a period as provided hereinabove, further extended by a period of 6(six) months if so required by 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. 70 and 73 of the complaint)</i></p>
13.	Due date of possession	<p>16.10.2018</p> <p>(Note: Due date to be calculated 4 years from the date of start of construction i.e., 16.10.2014 being later.)</p>
14.	Payment Plan	<p>Construction linked payment plan</p> <p>(As per page no. 82 of the complaint)</p>
15.	Total sale consideration	<p>Rs.1,44,37,584/-</p> <p>(As per summary of payments on page no. 82 of the complaint)</p>
16.	Amount paid by the complainant	<p>Rs.62,39,752/-</p> <p>(As mentioned in the offer of possession at page 165 of complaint and the cancellation letter dated 13.05.2023 page no. 173 of the complaint)</p>
17.	1 st Request for refund through email	<p>05.07.2016</p> <p>(As per page no. 99 & 100 of the complaint)</p>

18.	Demand & reminder letters	16.07.2016, 24.01.2017 & 29.01.2021
19.	Request for refund	12.01.2017 (As per page no. 103 of the complaint)
20.	Legal notice for refund of the paid-up amount	24.01.2018 (As per page no. 109 of the complaint)
21.	Occupation certificate	13.12.2022 (As per page no. 44 of the reply)
22.	Offer of possession	14.12.2022 (As per page no. 163 of the complaint)
23.	Cancellation letter (due to non-payment of outstanding dues of Rs.85,80,210/-)	13.05.2023 (As per page no. 173 of the complaint)
24.	Legal notice cum reply to the cancellation letter	24.05.2023 (As per page no. 176 of the complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint: -
 - a. That the complainant applied for registration of allotment of flat/dwelling unit in the month of January, 2013 in the project of the respondent, known as Coban Residences, Sector 99A, Gurgaon (now Gurugram), vide application dated 24.01.2013 and paid the advance booking amount of Rs.10,00,000/- by way of cheque no.143641, dated 24.01.2013. That though the cheque for the booking amount of Rs.10,00,000/- was handed over to the respondent on 24.01.2013, but the receipt for the same was given to the complainant in July, 2013. That the respondent issued a demand letter dated 03.08.2013, asking the complainant to deposit an amount of Rs.14,63,117/-, against receipt dated 15.10.2013. Accordingly, upon receiving the above said amount, the respondent issued a provisional allotment letter dated 22.11.2013, informing the complainant that an apartment of 4 bedrooms with servant quarters, admeasuring 2352 sq. ft., located on 15th Floor, bearing apartment no.1503, in Tower- T-1, in its

- project known as "Coban Residences" Sector-99A, Gurugram, Haryana, has been allotted in its name.
- b. That vide letter dated 27.12.2013, the respondent sent two copies of the apartment buyer agreement dated 10.12.2013 to the complainant, with the instructions to return both the copies to the respondent after signing the same. That the complainant returned the said apartment buyer's agreement to the respondent after putting its seal and signatures of its authorized representative, vide speed post on 13.01.2014.
- c. That the respondent with mala fide intentions, has mentioned in Annexure-I of the said agreement that the liability of the complainant to pay EDC and IDC is Rs.11,54,832/- @ Rs.491/- per sq. feet, which was objected to by the complainant as the prevailing rate of EDC and IDC prescribed by the Govt. of Haryana at that time was only Rs.373/- per sq. feet and accordingly, the respondent admitted the same by sending a letter. That in the meantime, the complainant paid a sum of Rs.14,631/- against receipt dated 29.09.2014 on account of TDS.
- d. That as per the apartment buyer agreement dated 10.12.2013 and more specifically clause 3.1, the possession of the apartment was to be handed over to the complainant within a period of (4) four years of entering in to the said agreement. The due date of the possession was December, 2017, which the respondent miserably failed to hand over, which is in violation of the obligations as per the said agreement as well as violation of Section 11(4) (a) of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- e. That in terms of demand letter dated 01.10.2014, complainant also deposited Rs.15,20,266/- vide receipt dated 14.10.2014. The complainant also paid Rs.10,78,565/- vide receipt no. COB/R/01117 dated 25.08.2015, against the demand raised by the respondent vide demand letter dated

03.08.2015. Further paid Rs.10,78,565/- vide receipt no. COB/R/01117, dated 25.08.2015, against the demand raised by the respondent vide demand letter dated 03.08.2015. The complainant also paid Rs.11,66,328/-vide receipt no. COB/R/01247, dated 04.04 2016, against the demand raised by the respondent vide demand letter dated 4th February, 2016, vide receipt dated 04.04.2016. Thus, in total, the complainant paid a sum of Rs.62,42,707/- till April, 2016. As per clause 3.1 of the apartment buyer agreement dated 10.12.2013.

- f. That again the respondent raised a demand vide demand letter dated 13.06.2016, without even disclosing the status of the apartment. However, having suspicious about the activities of the respondent, in the middle of 2016 one of the directors of complainant company visited the site of the respondent and shocked to see the very slow progress at site, whereas, on the other hand the respondent regularly insisted the complainant to make payment after payment and accordingly, after seeing the very little progress at site even after receiving more than 50% amount from the complainant against the total basic cost of the flat amounting to Rs.1,18,75,248/-, the complainant sent an email to the respondent, thereby requesting it to change the payment schedule and to treat it on the same footing as other customers and further asked the respondent to refund the amount already paid to them retaining the 10% amount as did by them in the case of other customers. That in response to the email of the complainant, the respondent acknowledged the same, while sending an email to it asking the complainant to bear a cost of Rs.300/-per sq. feet in case of change of payment plan, which was totally illegal and accordingly, the complainant vide its email dated 05.07.2016 objected the additional demand and the respondent by sending an email, threatened deduction of substantial amount in case of seeking the refund.

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- g. That again, vide letter dated 12.01.2017, the complainant requested the respondent to cancel the allotment and refund the money. However, instead of refunding the money invested by the complainant, respondent vide letter dated 16.01.2017, avoided the same on the pretext of giving flexibility in payment plan, which was refused earlier. That instead of refunding the money, the respondent insisted the complainant to pay more amount by issuing demand after demand. That vide letter dated 27.01.2017, the complainant again requested the respondent to cancel the allotment and to refund its amount with interest.
- h. That even the project in question was still incomplete and was no-where near the completion, which clearly strengthen the points raised by the complainant qua the delay in the completion of the project in as much as director of the complainant personally visited the site on 05.05.2017 and took the photographs of the site, which are sufficient to demonstrate that the project in question would take at least more than two years for the completion, which clearly shows that by threatening the deduction of 15% of basic price and interest on the alleged dues is nothing but an illegal act of the respondent in trying to have the benefits of their own wrongs, which is absolutely illegal and is another attempt to cheat the complainant taking the undue advantage of their dominating position.
- i. That the complainant through its advocate issued a legal notice dated 24.01.2018 in order to afford the respondent one last and final chance to refund the entire amount of Rs.62,42,907/- along with accrued interest within a period of 15 days. However, even after receiving the said legal notice, the respondent miserably failed to refund the amount and even to respond the same. That the complaint also made a complaint to the police authority at Dwarka Police Station. That as the police authority failed to register the FIR against the respondent and its directors, the complainant

filed a criminal case before the Ld. CMM (South West District), Dwarka, New Delhi for seeking directions to register an FIR against the respondent and its directors.

- j. That the complainant filed a complaint before this Authority, which was registered as complaint no. RERA-GRG-307-2019, which was amended subsequently. That the respondent filed a false and frivolous reply to the complaint filed by the complainant before the Authority. Not only this, the respondent took a false plea before this Authority that civil proceedings are going on in a similar case and on account of the pendency of the same, the complaint before the Authority is not maintainable. Whereas, the fact remains that no such civil case was pending before any other authority and accordingly, the counsel for the complainant apprised the Hon'ble Tribunal about the same and further intimated that a criminal case before the Ld. CMM at Dwarka Court is pending, which is absolutely for criminal action and further submitted that pendency of the criminal matter is no bar to file the complaint before the Authority. The false contention raised by the respondent's counsel is reflected in the order dated 23.04.2019, passed by the Authority.
- k. The counsel for the complainant argued the matter and relied upon the case law on the subject and argued in support of the maintainability of the complaint before this Authority, despite pendency of criminal case qua the same transaction. However, the Ld. predecessor of this Authority did not convince and disposed of the complaint, directing the complainant to get the matter sorted out in the criminal case first and then to approach this Authority for seeking justice in the matter.
- l. That in the meantime, the Ld. MM (South West), Dwarka, New Delhi, had been pleased to dismiss the application of the complainant for registration of FIR, vide order dated 17.08.2022. However, the complainant was given



liberty to lead pre-summoning evidence, while the application under Section 156(3) Cr.P.C. was dismissed. However, after dismissal of the application under Section 156 (3) Cr.P.C. the complainant on 7.12.2022, filed an application for revival of its complaint before this Authority, which was disposed of vide order dated 03.05.2019.

- m. That after coming to know about the filing of the case before this Authority and in order to create a false defence as well as to coverup its misdeeds, the respondent issued a possession letter dated 14.12.2022, thereby offering the possession of the unit in question to the complainant with statement of account, asking the complainant to deposit an amount of Rs.1,05,10,424/- which was nothing but an afterthought in as much as the complainant had already withdrawn itself from the project finally in January, 2017 and asked the respondent to refund the entire money deposited by complainant with accrued interest. However, instead of refunding the amount, the respondent keeps on demanding the money from the complainant, which is sufficient to conclude that the act of offering the possession was nothing but an eyewash. Be that it may, the offering of the possession of the unit in December, 2022, after a period of almost 5 years from the assured date, itself is sufficient to strengthen the contention of the complainant that the project in question was nowhere to the completion at the time of withdrawal of the complainant from the said project.
- n. That in order to avoid any technical objection about the pendency of criminal case in Dwarka Court, the complainant filed an application for withdrawal of the said criminal case and as such, vide order dated 30.01.2023, the Ld. MM, South West, New Delhi, the said criminal complaint got dismissed as withdrawn. That the complainant after withdrawing the criminal case, filed an addition application for revival of

its complaint case, which was disposed of by this Authority, vide order dated 03.05.2019.

- o. That the Authority had been pleased to dismissed the application for revival filed by the complainant vide order dated 11.04.2023. However, the complainant was given liberty to file a fresh complaint.
- p. That the respondent vide letter dated 13.05.2023, cancelled the allotment in a high-handed manner without refunding the amount paid by the complainant and interest accrued thereupon. The malafide of the respondent is apparent from a bare perusal of the said letter, whereby the respondent has offered a refund of Rs.41,98,044.02 to the complainant against the total deposit of Rs.62,39,752/- and the accrued interest from the date of the respective deposits, which is illegal in as much as the respondent has utilized the funds of the complainant, since 2013 and is not willing to pay the entire amount and interest accrued thereupon.
- q. That while cancelling the unit, the respondent has totally overlooked the provisions of Section 19(4) of The Real Estate (Regulation & Development) Act, 2016, which gives unfettered right to the allotted to seek refund of its money along with accrued interest from the promotor is the promoters fails to comply or is unable to give possession of the apartment in accordance with the terms of the agreement for sale. That the respondent admitted did not offer the possession within the stipulated time in terms of buyer agreement and admittedly, the possession has been offered in December, 2022 i.e. 5 year after the stipulated date and as such the respondent is not entitled to claim any deduction from the claimant and is liable to refund the entire amount with accrued interest from the date of its respective deposits.
- r. That this complaint is being filed by the complainant, through its authorized representative Mr. Amit Khanna, who has been authorized by

the board of directors of the complainant company by passing a resolution dated 16.05.2022.

- s. That since the act of cancellation of the allotment without refunding the entire amount with accrued interest is illegal and an act of high-handedness of the respondent being in a dominant position, the complainant through its advocate issued a legal notice dated 24.05.2023, dispatched on 26.05.2023. However, despite receipt of the said legal notice, the respondent has failed/neglected and avoided to comply with the terms of the said legal notice.
- t. That as per the apartment buyer agreement dated 10.12.2013 and more specifically, as per clause 3.1 thereof, the possession of plot/flat/apartment was to be handed over within four (4) years of execution of agreement for sale, which was 10.12.2013. Hence, the respondent was under obligation to handover the possession till December, 2017. Whereas; the respondent miserably failed to complete the project within the assured time. That seeing very little progress at site till January, 2017, the complaint asked the cancellation of allotment/unit and specifically requested the respondent to refund its entire deposits with accrued interest, however; despite receiving the said letter, the respondent miserably failed. Even thereafter, the complainant keeps demanding its money with accrued interest, but to no avail and on the contrary, instead of refunding the money, the respondent always insisted for more and more payment, which the complainant did not deposit in as much as the said demands were inconsequential in as much as by that time, the complainant realized that the respondent would not be able to complete the project within the assured time.
- u. That finding no other option, the present complainant is being filed by it before this Authority by the complainant, for seeking the refund of its

entire investment along with applicable interest, from the date of respective deposits in accordance with law.

- v. That the respondent is not entitled to seek any deduction at this stage in as much as if the respondent would have been fair enough, nothing prevented it to refund the amount in January, 2017 in as much as the complainant specifically asked the respondent in January, 2017 to refund its money with interest.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
- To direct the respondent to refund the entire amount deposited by the complainant with applicable/prescribed interest.
 - Any other or further order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.
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 respondent:

6. The respondent contested the complaint on following grounds: -
- That the present complaint is not maintainable in the eyes of law. That as admitted by the complainant itself, the unit has already been cancelled by the respondent, that the cancellation letter is also affixed by the complainant with his complaint. That in the relief clause complainant has not challenge said cancellation, rather only relief sought is to adjudicate as to whether the respondent can deduct amount of Rs.20,41,708/- as detailed in cancellation letter. That since the cancellation was made after getting occupation certificate, thus the respondent has right to deduct non-refundable taxes, along with brokerage and earnest money at the rate of 10%. That the authority in numerous judgements has already held that after a promoter obtained occupation certificate and offered possession

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and thereafter in case of default by the allottee if the cancellation is done, then in that case a builder has right to deduct above stated amount. Thus, the amount so deducted by the respondent in the cancellation letter is perfectly legal and valid. That after receiving said cancellation letter, the complainant failed to provide his account number for transferring of balance amount. That in the cancellation letter itself it was specifically mentioned that you may collect the refundable amount from our office or share your RTGS dated for the same. However, till date and neither complainant approached for taking balance amount nor shared its RTGS details in order to refund the amount after deducting Rs.20,41,708/- from the total amount received by the respondent. That the respondent was always ready and willing to refund the balance amount. However, the complainant out of its own accord in which never approached, contacted, share details of his bank account.

- b. That the present complaint is barred by res-judicata. That the complainant itself, that earlier the year 2019 complainant filed a complaint bearing no.307 of 2019 seeking refund on the basis of same facts and circumstances, however same was disposed of vide order dated 03.05.2019. That no appeal was ever filed against said order by the complainant. That once a complaint has been decided by the authority and the same has not been challenged before appellate court, thus the same shall be treated as final and complainant has no right to file complaint on the basis of same cause of action. That while disposing earlier complaint filed by the complainant in the year 2019, the honourable authority stated that the counsel for the complainant is directed to get the matter sorted out the criminal court first and then approach their authority for seeking justice in the matter. That thereafter complainant stand disposed of.

- c. That the criminal complaint, which was filed by the complainant against the respondent was dismissed as withdrawn by the complainant on 30.01.2023 i.e. After 45 days of issuance of offer of possession by the respondent on 14.12.2022. That the withdrawal of the criminal complaint filed by the complainant in itself clarifies the effect that the complainant never had any case against the respondent and just in order to harass the respondent, the complainant filed criminal case against the respondent. That as the respondent had already offered possession and thereafter waiting for approximate 5 months cancelled the unit on the basis of default committed by the complainant, the complainant has no right to file present complaint to seek refund of the entire amount along with interest. That after the withdrawal of the criminal complaint, the complainant approached authority for revival of the earlier complaint, however same was also dismissed vide order dated 11.04.2023. That though the authority granted liberty to file fresh complaint, however said liberty cannot be construed as, option to the complainant to file present complaint on the basis of same cause of action and pleadings as taken by the complainant in previous complaint. That as the circumstances have changed till the time of passing of order dated 11.04.2023 and the respondent had already offered possession to the complainant much prior to the filing of application for revival as well as present complaint and as the respondent has avail its right to cancel the allotment and the complainant has approached the authority after passing of more than 6 months of cancellation, thus on the basis of same, the complainant has no right to seek complete refund.
- d. That the content of the same may kindly be treated as part and parcel of the present reply. However, the complainant failed to annexed documents filed by the respondent in reply to complaint number 307 of 2019. That

the documents filed by the respondent along with reply to complaint no.307 of 2019 is annexed herein as annexure R1 (Colly). That the document which was not annexed with the previous reply is the occupation certificate obtained by the respondent later on.

- e. Without prejudice to the rights of respondent and without admitting claim of complainant. That as admitted by the complainant, that the apartment buyer agreement was executed between the parties on 10.12.2013 and as per terms and condition of apartment buyer agreement, the developer shall, under normal circumstances, subject to force majeure, complete the construction of the tower 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. That the complainant itself annexed demand letters of the respondent, wherein the date of start of construction was 16.10.2014, thus even if it is assumed that there was no force majeure events and the complainant has paid all the amount on time (which is not the case) , in that case the 4 years would be completed on 16.10.2018 and by way of present complaint the complainant has pleaded that he had already sought refund on 12.01.2017 from the respondent and opted to withdraw from the project much prior from the date of possession as per the agreement. That even in such cases the authority has decided that if an allottee has opted to withdraw from the project prior to the date of possession even in that case, the promoter has right to deduct earnest money as per provisions of RERA from the amount paid by the allottee. That the present complaint has been filed by the complainant in the year 2023. That is after passing of more than 6 years from the alleged surrender of unit, thus the same is also barred by the law of limitation. That though in the RERA act, there is no such limitation as prescribed, however as the limitation act is a central act, thus the same will be applicable on each and every act or

statute, unless and until limitation was specifically mentioned otherwise by way of written provisions. That a letter dated 12.01.2017 issued by the complainant to the respondent, wherein the complainant has offered to surrender the unit with a request refund the complete amount. That as the said request was not as per the agreed terms and conditions same was not accepted by the respondent. That the RERA was already in existence since 2017, thus the complainant could have approached the authority in the year 2017 itself however, the complainant failed to do so and thus waived off its right and the present complaint is barred by law of limitation as allegedly the cause of action would have arisen in 2017 itself, if any. That even thereafter, respondent issued demand to the complainant. However, the complainant failed to pay even a single penny. That instead of availing its remedies before civil court, consumer court, RERA, the complainant chose to file a criminal complaint against the respondent and also filed a complaint before RERA after filing of criminal complaint. That when the respondent came to know about the pendency of complaint number 307 of 2019, the respondent objected the same and stated that complainant had malafidely concealed the filing of earlier complain pending before the criminal court, Delhi and filed a false affidavit before the authority. That the honourable authority considering the said fact vide order dated 03.05.2019 stated that the affidavit submitted by the complainant is defective and taken in consideration of the concealment of fact by the complainant the earlier complaint was disposed of and directed to 1st sort of the criminal complaint. That as stated above said criminal complaint was withdrawn by the complainant. That had there been any substance in the criminal complaint filed by the complainant, he shall never withdraw the same, rather contest it on merit. That the effect of the withdrawal in itself proves that whatsoever allegation was made by the complainant in

the earlier complaint as well as the criminal complaint was incorrect and in order to face the defeat, the complainant chose to withdraw the criminal complaint. That as per action taken report (ATR) filed before Ms. Kartika Charurvedi MM-04, S/w Dwarka Court, New Delhi it was disclosed that the complainant was not making payments of due instalments. That instead of challenging the findings of court complainant later on withdraws said complaint. That once it is clarified by the court itself that the complainant is committing default and complainant accepted the same by withdrawing its complaint, thus it is duly proved the default of complainant.

7. All other averments made in the complaint were denied in toto.
8. 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 written submissions made by the parties.

E. Jurisdiction of the authority:

9. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. 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

10. 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 the entire Gurugram District for all purposes 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 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 with 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, given 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 complainant at a later stage.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.** And followed in case of **Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021** wherein it has been laid down as under: -

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the

relief of adjudging compensation and interest thereon Under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication Under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer Under Section 71 and that would be against the mandate of the Act 2016"

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant:

- F.I Direct the respondent to refund the entire amount deposited by the complainant with applicable/prescribed interest.**
- F.II Any other or further order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.**
15. In the present complaint, the complainant intends to withdraw from the project and is seeking refund as provided under the proviso to Section 18(1) of the Act. Section 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,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"

16. The complainant is claiming refund of amount paid to the respondent-promoter under the provision 18(1) of the Act, 2016. Though, after the request for refund from the complainant-allottee through email dated 05.07.2016, the respondent failed to refund the amount paid by the

complainant, failing which the complainant-allottee filed the present complaint and hence, the complainant is seeking for the refund with interest.

17. The complainant vides provisional allotment letter dated 22.11.2013 and buyer's agreement dated 10.12.2013 was allotted an apartment bearing no.1503 at 15th Floor in Tower-1, admeasuring 2352 sq. ft. super area in project "Coban Residences" being developed by M/s Pareena Infrastructure Private Limited under construction linked payment plan and thereafter an apartment buyer's agreement was executed between the parties on 10.12.2013, for the above-mentioned unit. The complainant has paid an amount of Rs.62,39,752/- for total sale consideration of Rs.1,44,37,584/-. As the possession clause 3.1 of the agreement, the respondent was required to complete the construction of tower/building within 4 years of the start of construction or execution of this agreement, whichever is later. The date of execution of apartment buyer's agreement on 10.12.2013 and the date of start of construction is 16.10.2014. Thereafter, the due date of completion of construction is comes to 16.10.2018, calculated from date of start of construction i.e., 16.10.2014, being later.

18. However, on 05.07.2016, the complainant-allottee made a request to the respondent-promoter through email and expresses its wish to withdraw from the project and sought refund before due date of possession, which is reproduced as under for a ready reference: -

--- Original Message---

From: fin@lutyensresort.com [mailto:fin@lutyensresort.com]

Sent: 05 July 2016 01:46 PM

To: sales@pareena.in

Cc: Feedback@pareena.in; Vic; lutyensaccounts; vijaykchawla

Subject: Skynet Enterprises: Unit no. # T1-1503

Dear Sir/Madam,

..... Pareenaa infrastructure is well respected name and we don't know why customers are treated different. We humbly request that our terms may also be changed and treated the same way as others. since we have paid way more than the initial deposit. **We would kindly request that a refund be sent back to us and only the deposit amount be kept as per your new bookings.**

As you may well be aware these types of schemes are now being offered by most developers keeping the current real estate market.

Thanking you

Skynet Enterprises Pvt. Ltd.

19. The respondent has raised a plea in its reply that the complainant has sought the relief of refund. The respondent submitted that the complainant is defaulter and has failed to make payment as per the agreed payment plan. Therefore, various demand letters, reminders and final opportunities were given to the complainants. Accordingly, the complainant failed to abide by the terms of the apartment buyer's agreement dated 10.12.2013 executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. The occupation certificate was received on 13.12.2022 and offer of possession was made on 14.12.2022. Thereafter, on account of non-payment of outstanding dues the respondent has cancelled the unit on 13.05.2023.
20. Although the complainant formally requested a refund on 05.07.2016, the cancellation notice was issued on 13.05.2023, due to non-payment of outstanding dues as per the demand letter dated 16.07.2016, 24.01.2017, 29.01.2021 & 14.12.2022. Therefore, the ground for issuance of the demands and the subsequent cancellation letter are not legally valid, as the refund request was made prior to the issuance of the aforesaid demand letters.
21. In the instant case, the unit was allotted vide provisional allotment letter dated 22.11.2013 and apartment buyer's agreement dated 10.12.2013 and in terms of clause 3.1 of the buyer's agreement, the due date of possession comes to 16.10.2018. The occupation certificate was received on 13.12.2022 and offer of possession was made on 14.12.2022. However, the complainant-allottee has surrendered the unit through email dated on 05.07.2016 i.e., before the due date of possession. Thereafter filed the present complaint seeking withdrawal from the project. In this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate

Regulatory Authority, Gurugram (Forfeiture of Earnest Money by the builder) Regulations, 11(5) of 2018.

22. It is contended by the respondent that they are liable to forfeit amount towards earned money, statutory charges, brokerage etc. However, 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 Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in **CC/438/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)** and **Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)** and followed in **CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022**, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the

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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-promoter can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent-promoter is directed to refund the amount received against the allotted unit 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 surrender i.e., 05.07.2016 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
24. Further, the respondent-promoter shall also adjust the amount of Rs.41,98,044/- already refunded through RTGS on 14.08.2024 to the complainant-allottee.
25. During proceedings dated 24.04.2024, the counsel for the respondent, contended that the amount of GST may also be deducted/ adjusted from the refundable amount, as the respondent has obtained the occupancy certificate on 13.12.2022. The Authority is of the view, that the complainant has made the request for refund through email 05.07.2016, which is much prior the receipt of occupancy certificate. Therefore, the respondent cannot be allowed to deduction over and above 10% of sale consideration and amount already refunded to the complainant.

G. Directions of the Authority:

26. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations

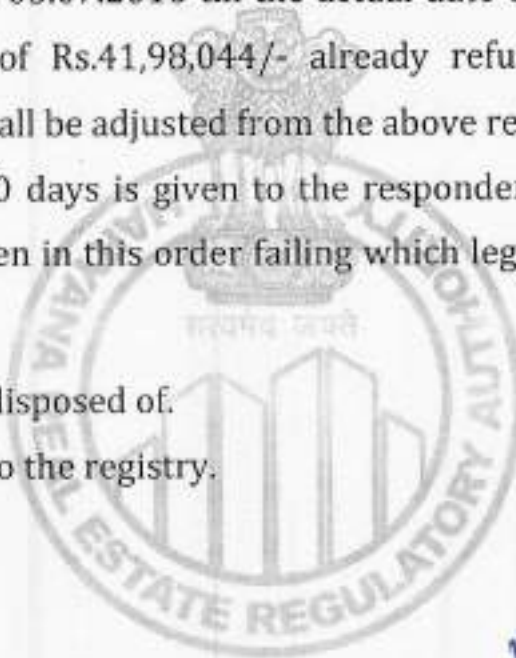
cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. The respondent-promoter is directed to refund the paid-up amount of Rs.62,39,752/- after deduction of 10% of sale consideration being earnest money along with interest at the rate of 11.10% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on such balance amount, from the date of surrender i.e., 05.07.2016 till the actual date of refund of the amount. The amount of Rs.41,98,044/- already refunded vide RTGS dated 14.08.2024 shall be adjusted from the above refundable amount.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to the registry.

Dated: 24.04.2025



HARERA
GURUGRAM


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