

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

**Complaint no. :** 5561 of 2024  
**Date of filing complaint:** 22.11.2024  
**Date of Decision:** 09.05.2025

Hemant Kumar Ahuja  
**R/O:** S20/3, DLF Phase-3, Sector-24, Gurugram

**Complainant**

**Versus**

M/s Pareena Infrastructure Pvt. Ltd.  
**Office:** 2, Palms Apartment, Plot no-13B,  
Dwarka, New Delhi-110075

**Respondent**

**CORAM:**  
Shri Arun Kumar

**Chairman**

**APPEARANCE:**  
Shri Animesh Goyal (Advocate)  
Shri Prashant Sheoran (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and Project-related details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the due date of proposed handing over of the possession, and the 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.	Date of booking	25.08.2023 (Page no. 39 of complaint)
7.	Unit allotted	3202, Tower 5, 32 <sup>nd</sup> floor (Page 40 of complaint)
8.	Unit admeasuring area	1245 sq. ft. (super area) (Page 40 of complaint)
9.	Allotment letter	21.08.2023 (Page 40 of complaint)
10.	Date of builder buyer agreement	Not executed
11.	Due date of possession	21.08.2026 (Taken as 3 years from the date of allotment letter)
12.	Total sale consideration	Rs. 98,50,000/-

		(As per payment schedule on page 41 of complaint) Rs. 1,00,02,715/- (As per SOA annexed with offer of possession)
13.	Total amount paid by the complainant	Rs. 29,15,150/- (As per SOA annexed with offer of possession)
14.	Occupation certificate	03.06.2024 (Page no. 20 of reply)
15.	Offer of possession	05.06.2024 (Page no. 50 of complaint)
16.	Reminder letter	01.07.2024 (Page no. 61 of complaint)
17.	Cancellation letter	09.09.2024 (Page no. 62 of complaint)

### B. Facts of the complaint:

3. The complainant has made following submissions in the complaint:

- I. That in the year 2023, complainant booked the flat by giving initial amount of Rs. 10,00,000/- to respondent. After receiving the amount from the complainant, the respondent issued a cost sheet for a total sale consideration of the apartment as Rs. 98,50,000/- inclusive of each and every cost of the said apartment, and allotted a residential unit no. T5-3202 on 32nd floor, situated at Sector-68 Gurugram.
- II. That the complainant sent an email dated 25.08.2023 to the respondent and requested to issue allotment letter, costing of AC units and Kitchen is including in this price and when the BBA will be issued, but the respondent did not reply to the said email of the complainant.
- III. That after persistent request of the complainant regarding execution and registration of the agreement to sell of the said unit, the respondent sent an

email dated 08.09.2023 to the complainant and sent a draft copy of the agreement to sell for reference.

- IV. That after persistent request by complainant for execution/registration of the agreement to sell, respondent on 18.09.2023 sent an email regarding registration date of BBA is scheduled for 26.09.2023 and also received the call regarding the same and official of the respondent assured that on 26.09.2023 we will sign the agreement for sale and registered on the same day.
- V. That when the complainant is ready to go to the Tehsil for registration and execution of the builder buyer agreement, he received a call from executive of the respondent and he told that today it is not possible to execute and register the agreement for sale for the said unit and also told that I will call you as and when it is possible for us to execute and register the builder buyer agreement.
- VI. That subsequently on 16.10.2023, the complainant received a call from the executive of the respondent to submit balance 20% payment i.e. Rs. 19,15,150/- according to the payment plan of the said unit in order to execute and register the BBA. After receiving the call the complainant immediately made a payment of Rs. 19,15,150/- on 19.10.2023.
- VII. That till date the complainant is waiting for the call and email from the respondent for execution and registration of the agreement for sale in favour of complainant, but the respondent failed to do so despite various reminders by the complainant to execute and register the agreement and agreement for sale is important according to the Act and Rules of the RERA.
- VIII. That the respondent sent a letter for offer of possession dated 05.06.2024 of the unit to the complainant vide email dated 06.06.2024 to the email id of the complainant along with statement of account and demanded the

amount of Rs.70,87,567 /- and acknowledge the amount paid by the complainant till date i.e. Rs.29,15,150/-.

- IX. That in the statement of account dated 05.06.2024 annexed with offer of possession the respondent arbitrarily increased the total cost of the unit from Rs. 98,50,000/- to Rs. 1,00,02,715/-.
- X. That the respondent has also demanded an amount of Rs. 1,00,000/- on account of club membership charges, when in fact there was no club existing at the actual site. Further demanded an amount of Rs. 66,110/- on account of advance maintenance charges.
- XI. That as such upon receipt of the offer of possession letter dated 05.06.2024 received via email on 06.06.2024 the complainant visited the project site and was shocked to see that the apartment was in a dilapidated condition and was not habitable for taking the possession.
- XII. That all the defects of the apartment/project were duly communicated to the officials of the respondent. It was assured by respondent officials, that upon making of the part of balance payment, respondent shall complete the apartment in all aspects and then hand over the possession of the same.
- XIII. That believing the false assurances given by the officials of the respondent, it was mutually agreed between respondent & complainant an amount of Rs. 30,00,000/- to be paid immediately and the balance payment shall be paid when all the discrepancies/defects as highlighted by respondent are rectified and apartment is in a habitable condition.
- XIV. That the respondent pressurized the complainant to give an amount of Rs. 30,00,000/- in cash so that apartment can be completed at the earliest. On 15.06.2024 complainant paid a cash of Rs. 30,00,000/- However. respondent having malafide intentions refused to give any receipt of the payment of Rs. 30,00,000/- and instead agreed to issue a fresh offer of



possession with back date of 05.06.2024 along with revised statement of account.

- XV. That the total sale consideration of the unit was reduced to Rs. 69,33,410/- from Rs 1,00,02,715/- in the fresh offer for possession and statement of account acknowledging the payment of Rs. 30,00,000/- paid to respondent by the complainant in cash.
- XVI. That to the utter shock and surprise respondent sent an email dated 01.07.2024 to the complainant and reminder letter for taking possession along with payment of balance sale consideration of the apartment without reconciling the revised statement of account dated 05.06.2024.
- XVII. That to the dismay of the complainant, the complainant received a cancellation letter dated 09.09.2024 illegally and unauthorizedly without any rhyme and reason and till date they do not execute and register the agreement to sell and send the corrected demand statement.
- XVIII. That the said alleged cancellation of the unit by the respondent and their officials in collusion with each other, vide alleged letter dated 09.09.2024 is totally illegal, unauthorized, null, void and nullity in the eyes of law being result of planned conspiracy by the officials of the respondent in collusion with each other and even colluding with the promoters of the respondent company.
- XIX. That the complainant was/is always ready and willing to make payment of the aforesaid amount which was demanded by the respondent, but the officials of the respondent assured that they will do the needful very soon and intimate about the same, so complainant is in trust of the officials of the respondent and believing their words waited for execution and registration of agreement for sale and fresh statement of account of the said unit.
- XX. That the complainant also visited the project site, and he was found that the even till date the said unit is not habitable for taking the possession of the

said unit, but despite being completing the project they have issued the alleged cancellation letter which is illegal and unauthorized in the eyes of law.

XXI. That as terms of the application form clause 15, respondent should give a 30 days' notice period before cancelling the allotment of the apartment. However, respondent has arbitrarily and illegally without issuing any such notice, had cancelled the allotment of the apartment allotted to the complainant. Thus, on this ground alone, the cancellation letter dated 09.09.2024 ought to be revoked.

XXII. That the conduct of the respondent has resulted in wrongful loss to the complainant and wrongful gain to the respondent herein, for which the respondent is liable to be prosecuted under Indian Penal Code.

**C. Relief sought by the complainant:**

4. The complainant has sought the following relief(s):

- a) Declare the cancellation dated 09.09.2024 as totally illegal, unauthorized, null, void and nullity in the eyes of law and the complainant is still allottee of the unit No. TS-3202, 32nd Floor, MI Casa, Sector-68 Gurugram and further entitled to possession of the same followed by execution and registration of the agreement to sell and after that the conveyance deed in terms of agreement to sell.
- b) Direct the respondent to execute and get registered the agreement for sale in favour of the complainant.
- c) Direct the respondent to withdraw the offer of possession letter dated 09.09.2024 and issue fresh offer of possession after providing the copy of occupation certificate to the complainant and removing the arbitrary charges levied.
- d) Direct the respondent to hand over the possession of the said unit complete in all respects along with all amenities as agreed to be provided by the respondent.

**D. Reply by the respondent:**

5. The respondent has made following submissions in the reply:

- I. That the respondent is, in the process of developing several residential group housing colonies in Gurugram, out of them one is, "Mi Casa" at sector 68 and already received occupancy certificate qua the unit/tower in question. The present complaint is, not maintainable before the Hon'ble Haryana Real Estate Regulatory Authority as the facts disclosed by the complainant are incorrect and incomplete.
- II. That vide allotment letter 21st of August 23 unit bearing number 3202 on 32nd floor in Tower 5 was allotted in favour of the complainant. That as per the said letter the cost of the unit was Rs. 98,50,000/- with GST plus other charges. The payment plan opted by the complainant was 30:70 which is duly mentioned in the said letter itself. The total cost of the unit was Rs. 1,00,02,715/-.
- III. That the complainant initially paid an amount of Rs. 10 lakh i.e., 10% of the cost of the unit. That after payment of initial 10% amount respondent company vide email dated 08.09.2023 sent a copy of builder buyer agreement to the complainant. That thereafter on 18.09.2023 respondent inform the complainant that BBA execution date is, scheduled for dated 26.09.2023. The complainant never came forward to get the agreement registered before the sub- registrar. The complainant wrongly portrayed the circumstances, as the respondent had received more than 10% of the sale consideration prior to execution/registration of the agreement.
- IV. That the respondent had issued a demand letter dated 21.08.2023 demanding an amount of Rs.19,15,148/-, wherein the due date of payment was mentioned as 05.10.2023. The respondent requested the complainant to get the builder buyer agreement executed within the month of September 2023 which is clearly seen from the emails annexed by the complainant himself. The said payment was made by the complainant on 21.10.2023.



- V. That in order to raise construction within time frame timely payment is, one of the foremost requirements. The respondent within time frame had constructed the tower in question and offered possession vide letter dated 5th of June 2024. That the respondent cannot wait indefinitely for the allottee to get the buyer's agreement registered and only thereafter raised the demands. That after receiving of offer of possession, allottee fails to pay the balance sale consideration. As per the provisions of relief as per the provisions of RERA respondent issued a reminder letter to the complainant vide email dated 1st of July 2024 qua offer of possession. That thereafter respondent waited for 90 days and ultimately on 9th of September 24 cancelled the unit of the complainant. As per the "In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment" the offer of possession was made on 5th of June 2024 and unit was cancelled on 9th of September 24 after expiry of 96 days. Thus, the cancellation is, absolutely valid and legal.
- VI. That the conduct of the complainant can be seen from the fact that, complainant is, trying to cheat the respondent by taking benefit of typographical error in the offer of possession whereby due to a mistake basic sale price of the unit in question was wrongly typed as 4114 per square feet. The said mistake was rectified by the respondent by issuing another offer of possession whereby basic sale price of the unit in question was mentioned as 6409 per sq. ft. By taking benefit of said typographical error, complainant wrongly claimed that he had paid an amount of ₹ 30 lakh to the respondent. That no such amount was ever received or paid by the complainant to the respondent. That while drafting present reply it came into notice and knowledge of the respondent that even the basic sale price

was again wrongly typed as 6409 per sq. ft. rather same is, 6458.75 per sq. ft is, duly explained above.

### **E. Jurisdiction of the Authority:**

6. 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**

7. 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 completed territorial jurisdiction to deal with the present complaint.

#### **E. II Subject-matter jurisdiction**

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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.*

9. Hence, 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.

**F. Findings on relief sought by the complainant:**

- i. Declare the cancellation dated 09.09.2024 as totally illegal, unauthorized, null, void and nullity in the eyes of law and the complainant is still allottee of the unit No. TS-3202, 32nd Floor, MI Casa, Sector-68 Gurugram and further entitled to possession of the same followed by execution and registration of the agreement to sell and after that the conveyance deed in terms of agreement to sell.
  - ii. Direct the respondent to execute and get registered the agreement for sale in favour of the complainant.
  - iii. Direct the respondent to withdraw the offer of possession letter dated 09.09.2024 and issue fresh offer of possession after providing the copy of occupation certificate to the complainant and removing the arbitrary charges levied.
  - iv. Direct the respondent to hand over the possession of the said unit complete in all respects along with all amenities as agreed to be provided by the respondent.
10. The above mentioned relief no. (i), (ii), (iii) and (iv) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
11. In the present complaint, the complainant booked a unit in the project of respondent namely, Micasa, situated at sector 68, Gurugram. The complainant was allotted a unit bearing no. 3202 on 32<sup>nd</sup> floor in Tower 5 admeasuring 1245 sq. ft. vide allotment letter dated 21.08.2023. The total sale consideration of the unit was Rs. 98,50,000/- as per the payment plan annexed with allotment letter. The complainant had made a payment of Rs. 29,15,150/- against the same in all. The respondent company completed the construction and development of the project and got the occupation certificate on 03.06.2024.
12. The complainant has pleaded that the respondent has cancelled his unit on 09.09.2024 which is illegal and invalid as the respondent has raised demand without execution of builder buyer agreement between the parties and further offered the possession of the unit but the unit which is not in habitable condition.

Therefore the respondent should be directed to withdraw its cancellation letter and reissue the offer the possession.

13. The plea of the respondent is otherwise and stated that the demand were raised as per payment plan annexed with allotment letter dated 21.08.2023 and the complainant has made payment of Rs. 29,15,150/-. However, the respondent has obtained the occupation certificate on 03.06.2024 and further offered the possession on 05.06.2024. the reminder letter for payment was also issued on 01.07.2024 but despite repeated follow ups the complainant failed to act further and comply with their contractual obligations and therefore the unit of the complainant was finally terminated vide letter dated 09.09.2024.
14. Now the question before the authority is whether the cancellation issued vide letter dated 09.09.2024 is valid or not.
15. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the allotment letter was issued in favor of the complainant on 21.08.2023. The builder buyer agreement was not executed between the parties. The respondent had issued the draft agreement to the complainant on 08.09.2023 and schedule its execution on 26.09.2023 which is evident from the email dated 18.09.2023 annexed at page no. 44 of complaint. The plea of the complainant that respondent has failed to execute the agreement is declined as the complainant has not substantiated any proofs in this regard although the email dated 18.09.2023 is an evident that respondent asked the complainant for execution of same. As per the payment plan annexed with the allotment letter at page 41 of the complaint, the total sale consideration was Rs. 98,50,000/- and the complainant has paid an amount of Rs. 29,15,150/- against the same in all. As per the payment plan the complainant was required to make payment as per 30:70 plan duly agreed between the parties. The complainant made the initial 10% payment on time thereafter respondent raised a demand of Rs. 19,15,150/- which was due on 05.10.2022 but the



complainant made such payment on 21.10.2023 which is also evident from account statement annexed at page no. 48 of complaint.

16. 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. Accordingly, in terms of the payment schedule agreed upon by the parties and the fact of completion evidenced by the OC, the respondent has offered the possession of the unit on 05.06.2024 and raised a further demand but the complainant failed to honour the demand and make payment as per the agreed terms. The failure to do so amounts to a breach of contractual obligations.
17. 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. The respondent also gave reminder on 01.07.2024 for making payment for outstanding due as per payment plan. Despite issuance of aforesaid reminder, the complainant has failed to take possession and clearing the outstanding dues. Therefore, the respondent cancelled the unit on 09.09.2024.
18. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.
19. 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 framed providing as under-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

20. 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 complainant 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

09.09.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions issued by the Authority:**

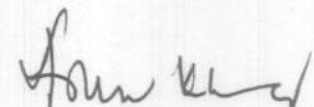
21. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent/builder is directed to refund the deposited amount of Rs. 29,15,150/- after deducting 10% of the sale consideration along with an interest @11.10% on the such balance amount, from the termination/cancellation 09.09.2024 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.

22. Complaint stands disposed of.

23. File be consigned to the Registry.

**Dated: 09.05.2025**



**(Arun Kumar)**

Chairman  
Haryana Real Estate  
Regulatory Authority,  
Gurugram