

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

Complaint no. : 5851 of 2024
Date of complaint : 13.12.2024
Order pronounced on: 14.07.2025

1. Rekha Malik
2. Puneet Malik

Both resident of: B2-202, Ahad Excellencia,
Chikkanayakanahalli, Choodasandra, Bengaluru,
Karnataka-560035.

Complainants

Versus

M/s Pareena Infrastructures Pvt. Ltd.

Registered office: Flat no.2, Palm Apartments, Plot
no.13B, Sector-6, Dwarka, New Delhi-110075.

Corporate address: C7A 2nd Floor, Omaxe City
Centre Mall, Sohna Road, Sector-49, Gurugram,
Haryana-122018.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sidharth Arora, Advocate

Complainants

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 provisions of the Act or the Rules and regulations made thereunder 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Micasa", Sector-68, Guurguram.
2.	Project area	13.48275 acres
3.	Nature of Project	Group housing colony
4.	DTCP license no. and validity status	111 of 2013 dated 27.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2024 (area 0.64 acres) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acres)
5.	Name of Licensee	M/s Pareena Infrastructure Pvt. Ltd. & others
6.	Rera registered/ not registered and validity status	Registered Vide no. 99 of 2017 dated 28.08.2017 Valid up to 30.06.2022
7.	Extension of RERA Registration	RC /REP /HARERA /GGM /99 of 2017/ 7(3)/47/2024/ 06 Valid up to 30.12.2025
8.	Unit No.	201, 2nd Floor, Tower-5 (As per page no.70 of complaint)
9.	Unit area admeasuring	1245 sq. ft. (super area) (As per page no.70 of complaint)
10.	Allotment letter	16.04.2015 (As per page no.70 of complaint)
11.	Date of buyer agreement	25.07.2015 (As per page no.72 of complaint)
12.	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

		<i>start of construction or execution of this agreement, whichever is later..."</i> [Emphasis supplied] (As per page no.85 of complaint)
13.	Date of start of construction	26.04.2016 (As mentioned in demand letter at page 28 of reply)
14.	Due date of possession	26.10.2020 [26.04.2020 + 6 months] (Note: Due date to be calculated 4 years from the date of start of construction i.e., 26.04.2016, being later plus grace period of 6 months) [Note: Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020]
15.	Basic Sale Consideration	Rs.71,58,750/- (as per schedule for payment annexed with buyer's agreement at page 101 of complaint)
16.	Total Sale Consideration	Rs.86,49,930/- (as per schedule for payment annexed with buyer's agreement at page 101 of complaint)
17.	Amount paid by complainant	Rs.77,03,976/- [i.e., 89.06% of TSC & 107.61% of BSC] (As per SOA annexed with offer of possession at page no.138 of complaint)
18.	Occupation certificate/ Completion certificate	03.06.2024 [For Tower IV, V, VII (EWS), Community Building & Convenient Shopping] (As per page no.85-87 of reply)
19.	Offer of possession	05.06.2024 (As per page no.136 of complaint)
20.	Reminder letter via email	02.07.2024 (As per page no.76 of reply)
21.	Cancellation of unit	13.09.2024 (As per page no.158 of complaint)
22.	Original copy of Legal notice (w.r.t restoration of cancellation letter dated 13.09.2024)	08.10.2024 (As per page no.159-173of complaint) <i>[Note: during proceedings dated 14.07.2025, the date of legal notice is inadvertently recorded as 18.03.2024 instead of 08.10.2024.]</i>

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B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. The present complaint is preferred being aggrieved by non-handing over of possession of the apartment to the complainants by the respondent in clear breach of the apartment buyers' agreement dated 05.10.2015 duly executed between the parties and on account of illegal cancellation of the allotment cancelled vide cancellation letter dated 13.09.2024 not even received by the complainants herein.
- II. That the complainants along with their family members are not having any permanent residence of their own. That the complainants along with their family were living in a rented accommodation in Gurugram from the year 2010 till as latest as 2023. Further, as on date also, it will be also trite to mention here that the complainants are living in a tenanted accommodation in Bangalore.
- III. That the complainants and their family in the year 2014 were living in a tenanted accommodation and as such, being desirous of living in their own house, came across the project being developed by the respondent. The respondent represented the complainants and their family members of the projects being developed by them namely "Mi Casa" situated at Sector-68, Gurugram, Haryana.
- IV. That the complainants applied for an allotment of residential apartment admeasuring 1245 sq. ft. approximately @ basic sale price of Rs.5,750/- per square feet in the said project on 03.02.2014 and as such paid the booking amount of Rs.5,00,000/- duly acknowledged by the respondent. That as such in furtherance of the booking amount, the complainants herein paid a further payment of Rs.7,44,812/- on 21.04.2014, thus totalling to Rs.12,44,812/-, duly acknowledged by the respondent.



- V. The complainants made a further payment of Rs.2,31,800/- on account of the sale consideration duly acknowledged by the respondent vide their receipts dated 07.07.2015.
- VI. The respondent vide their allotment letter dated 16.07.2015, allotted 2 BHK Type-II residential unit no.201, second floor in Tower-5 admeasuring 1245 sq. ft. in the said project. However, the respondent took the booking date as 27.05.2015, when in fact the booking was done by the complainants herein on 03.02.2014.
- VII. That the parties hereto entered into an apartment buyer's agreement dated 05.10.2015 so as to govern the rights and obligations with regard to the said apartment. In terms of the said apartment buyer agreement dated 05.10.2015, the total basic sale price of the apartment was fixed at Rs.71,58,750/- excluding some other charges as mentioned in the said agreement. Further, the respondent had acknowledged the payment of Rs.14,75,990/- duly paid by the complainants on account of the sale consideration of the said apartment in the apartment buyer's agreement dated 05.10.2015. Notably, since the complainants wanted the apartment for their own use, they had opted for a preferentially located apartment on account of which the respondent were charging an additional amount of Rs.2,80,125/- as mentioned in the agreement.
- VIII. That in terms of the said agreement and more specifically clause 13 thereof, the respondent assured to hand over the possession of the apartment in question within 4 years from the date of start of construction or execution of the agreement, whichever is later. As such, if the complainants were to assume the date of handing over of the apartment within 4 years from the date of execution of the agreement, the respondent were to hand over the possession of the apartment on or before 04.10.2019. Whereas, in other eventuality, if the date of 4 years was to be



computed from the start of construction at the actual site, the date of start of excavation mentioned therein was 26.04.2016, in which case, the respondent was to hand over the possession of the apartment on or before 24.04.2020.

- IX. That in order to ensure payment of the total sale consideration of the apartment in a timely manner, the complainants availed a housing loan from ICICI Bank. As such, the complainants and the ICICI Bank entered into a facility agreement dated 30.07.2016, in terms whereof, an amount of Rs.68,82,667/- was sanctioned in favour of the complainants repayable with Rs.61,686/- equal monthly instalments.
- X. That out of the sanctioned loan amount, the ICICI Bank as on 30.08.2019 had disbursed an amount of Rs.62,53,074/- in favor of the respondent on account of total sale consideration. Whereas some payments have been duly disbursed by ICICI Bank to the respondent, however, no receipts were ever issued by the respondent.
- XI. Further, the respondent vide their cancellation letter dated 13.09.2024 have admitted the total payment of Rs.77,29,066/- being received by them on account of the total sale consideration.
- XII. However, despite passage of 24.04.2020, the maximum date by which the respondent was to hand over the possession of the apartment in question in terms of the agreement duly executed between the parties, failed to hand over the possession of the same.
- XIII. That, after a delay of more than 4 years from the promise date of offering the possession of the apartment in terms of the agreement, the respondent vide their email dated 06.06.2024, intimated the complainants about the receipt of occupation certificate for the tower in which they had booked the apartment. Pertinently, the respondent vide their letter dated 05.06.2024 offered the possession of the apartment in question.



- XIV. However, the respondent vide their offer of possession letter dated 05.06.2024 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. The complainants were further shock to see that the respondent were charging an amount of Rs.66,110/- on account of advance maintenance charges, which was clearly beyond the scope of the agreement duly executed between the parties.
- XV. Being aggrieved by the receipt of the statement of accounts dated 05.06.2024 received on 06.06.2024 and the illegal demands raised by the respondent therein, the complainants immediately contacted the officials of the respondent and demanded justification for the illegal demands being raised by them and the discrepancies in the said statement of accounts. Further, the complainants also sought for delayed compensation on account of delay in offering the possession of the apartment in question and requested to send an revised statement of account after accounting for the delayed compensation.
- XVI. That the complainants temporarily shifted to Bangalore, on account of which, they vide their email dated 13.07.2024 requested the respondent that they on their behalf are sending authorized representative to visit the actual site and apprise them the status of their unit in question.
- XVII. Upon, the officials of the respondent informed the authorised representative of the complainants that they vide their letter dated 13.09.2024 sent to the complainants vide an email dated 14.09.2024 on email Id malikarun@yahoo.in (the email id of the husband and father of the complainants) have cancelled the allotment of the apartment in question. It will be imperative here to state that the purported Cancellation Letter dated 13.09.2024 issued on the email id malikarun@yahoo.in, though being the Email Id of the husband and father of the Complainants

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herein, was not in use. Further, it is reiterated that prior to the issuance of the purported cancellation letter dated 13.09.2024 on the said Email id, no correspondence whatsoever was done between the parties on the said Email Id. Thus, making the said Cancellation Letter dated 13.09.2024 redundant on this ground alone.

- XVIII. That the complainants through their counsel, issued an legal notice dated 08.10.2024 reiterating the facts mentioned hereinabove and further sought for revocation of the purported cancellation notice dated 13.09.2024. However, despite the receipt of the aforesaid legal notice, the respondent chooses not to file any reply to the said legal notice. That the complainants always were and still are ready and willing to make the balance payment of the apartment in question, subject to they are being compensated on account of delay in handing over.
- XIX. That the respondent has failed to provide the apartment in question and has taken an excess amount without their being any development at the site and has enjoyed the monies of innocent buyers including the complainants. That the respondent after taking the substantial amount entire amount has utilized higher bargain position and has never redressed the genuine grievance of the complainants. That the cancellation letter dated 13.09.2024 issued by the respondents is unilateral and arbitrary, therefore, the said letter is liable to be withdrawn/quashed and the apartment of the complainant shall be reinstated.
- XX. That the complainants being left with no other remedy are approaching this Authority for redressal of its legitimate and well-documented grievances. At present, the complainants are continuing to reside in tenanted premises and are having to pay the rent as well as the repayment of the loan. In addition to the above, the respondent has in an illegal and

arbitrary manner, cancelled the allotment of the Apartment in question done in favor of the Complainants.

C. Relief sought by the complainant:

4. The complainants have sought following relief:

- i. Pass an appropriate order thereby directing the respondent to revoke/withdraw the cancellation letter dated 13.09.2024 issued vide email dated 14.09.2024 never received by the complainants herein, thereby declaring the said cancellation letter dated 13.09.2024 as null and void;
- ii. Pass an order directing the respondent to immediately hand over the possession of the apartment in question in a habitable condition with all the basic amenities as per the specifications in terms of the apartment buyer agreement dated 05.10.2015 duly executed between the parties within stipulated time as this Authority may deem fit;
- iii. Pass an order directing the respondent to issue a fresh offer of possession and reconciled statement of account as on that date thereby accounting for compensation on account of delay in handing over the possession;
- iv. To award simple interest @ 18% per annum on the amount already paid by the complainants i.e. Rs.77,29,066/- w.e.f. 24.04.2020 till the physical possession of the apartment in a habitable condition is handed over to the complainants i.e. for the period of delay in giving possession.
- v. To adjust the balance payment payable by the complainants at the time of offer of possession of the apartment in habitable condition to them, as last instalment, against the penalty amount accrued to them from the respondent;
- vi. To direct the respondent not to charge an amount of Rs.1,00,000/- on account of club membership charges till the time club exist at the actual site;
- vii. To direct the respondent to pay to the complainants a sum of Rs.10,00,000/- towards the mental agony and harassment suffered by the complainants at the hand of respondent herein; and
- viii. To award a sum of Rs.2,00,000/- to the complainants towards the cost of litigation charges.
- ix. Pass an appropriate order directing the respondents to not charge any interest on the balance payment to be made to the respondent;

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- x. Pass any other order or direction as this Authority may deem fit and proper by exercising the judicial powers vested with the Authority under relevant provisions of the Real Estate (Regulation and Development) Act, 2016.
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 by filing reply on the following grounds: -

- I. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residencies" at sector 99 A.
- II. That the claims made by the complainant in the brief facts such as "demands being duly met without any delay or demurer" or "Complainant have always been adhering to the payment Schedule" are completely false. The complainant has repeatedly failed to fulfil his payment obligations within the stipulated time frames, despite time being of the essence with respect to the payment of instalments. At the very outset, the complainant did not comply with the initial demand raised by the respondent at the commencement of excavation and only made the requisite payment after receiving two reminders. Furthermore, on ten separate occasions, the complainant failed to make timely payments in accordance with the demand letters issued, as detailed in the table below. The complainant's present allegations appear to be a fabricated narrative intended to obscure his consistent delays and failure to adhere to his contractual obligations.
- III. That the cancellation letter was duly communicated to the complainant, having been sent to the email address provided and registered by the

allottee himself, i.e., malikarun@yahoo.in and a copy of cancellation letter was also sent to the address of the complainant. This email ID was furnished by the allottee at the time of registration and has been used for correspondence. The complainant's assertion that no communication ever occurred between this email ID and the respondent is entirely false and baseless. At no point did the respondent receive any request from the complainant regarding the discontinuation, non-usage, or closure of the aforementioned email ID. Neither did the allottee raised any request to substitute his registered email with the new one. Therefore, the respondent acted appropriately and in good faith by sending the cancellation letter to the registered email address of the allottee. The present claims of the complainant appear to be an afterthought, constructed merely to deflect from their own continued failure to make timely payments, including the critical default at the stage of the offer of possession, which ultimately led to the cancellation of the unit.

- IV. That the complainant, through an email communication, attempted to authorise an individual to visit the office premises, allegedly to take over possession and carry out various duties and responsibilities on their behalf. However, such a method of appointment does not constitute a valid legal authorisation. An email alone, without following the proper legal steps, is not enough to give someone the authority to act as a representative. When it comes to important matters like taking possession or managing property, the appointment of a representative must follow the legal process by issuing a valid power of attorney. In the absence of such formal and legally binding documentation, the respondent had no legal basis or obligation to recognise or engage with the purported representative. Consequently, the respondent was well within their rights to deny access to the premises, as the individual in

question did not possess any valid or enforceable authority to act on behalf of the complainant.

- V. That the complainant had the knowledge regarding the occupational certificate and the demand raised with the offer of possession. The complainant himself acknowledged that in his email dated 24.06.2024 and even requested for a grace period of 2 weeks to make the final payment. The complainant despite having the knowledge regarding the OC and final offer of possession still chose not to pay the remaining balance. Resulting in cancellation after waiting for more than 3 months.
- VI. That the complainant made payment prior to the formal allotment in 2015. However, the complainant was at liberty to withdraw from the project at that stage but willingly chose to continue despite being aware. The complainant opted to proceed with the allotment; the complainant cannot now raise the issue of pre-allotment payment as a grievance. This issue cannot be used to claim relief at this stage.
- VII. That the cancellation of the unit should not be set aside, as the complainant has been in default of payment obligations from the very beginning. The allegation that the condition of the flat was not habitable is entirely false and baseless, especially considering that the Occupation Certificate (OC) for Tower 5 was duly obtained by the respondent in 2024. The complainant has consistently used this false claim to justify his repeated payment defaults. Despite multiple opportunities, the complainant even failed to make the final payment as demanded in the offer of possession, thereby breaching the terms of the Agreement for Sale.
- VIII. The complainant further alleged that the respondent charged an amount of Rs.66,110/- towards advance maintenance charges, claiming it to be beyond the scope of the agreement executed between the parties. However, this claim is not correct. The demand was neither arbitrary nor



excessive, and was in line with the obligations of the promoter under Section 11(4)(d) of the RERA Act, 2016. The allegation that the respondent should not charge club membership on the ground that the club does not exist at the site is entirely false. The complainant is duly liable to pay the amount raised towards the club membership charges as a part of the offer of possession. It is evident that the complainant is merely attempting to evade payment of the legitimate outstanding dues by raising frivolous objections.

- IX. That the prescribed period of 4 years is however subject to force majeure circumstances. 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. That on account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed. That the total number of days for which despite of their being an absolute willingness on the part of respondent, respondent could not raise construction; totals to 141 days.
- X. That completion of the project shall be considered as 4 years after addition of force majeure circumstances. The date of grant of environmental clearance which was granted on 15.03.2016. Thus, from the above detailed 141 days should be added to the period of 4 years. 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 .That even Town and Country Planning extended the period of 6 months from 01.03.2020 to 30.09.2020 and further 2 months from 01.04.2021 to 31.05.2021 and



imposed moratorium for the period qua all the real estate projects for all purpose and intents as stipulated in those notifications and the present project is squarely covered under said notifications and is entitled for benefits provided in said notifications.

XI. 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, that other than above stated factor there are lots of other reason which either hamper the progress of construction of in many cases complete stoppage of construction work. Few of the examples of such factor are

- Delay in construction due to various orders/ restrictions dated 07.04.2015, 19.07.2017, 07.11.2017, 29.10.2018 & 11.10.2019 passed by National Green tribunal, New Delhi and other competent authorities for protecting the environment of the country.
- Ban in construction due to various court orders as well as government guidelines.
- The major outbreak of Covid-19.

XII. That the cancellation of the allotment was in accordance with the terms agreed upon by both parties in the allotment letter. The complainant's failure to make the necessary payments on time and failure to make the demand raised with the offer of possession led to the cancellation.

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 those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the Authority

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11....

(4) 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.

11. 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 complainant at a later stage.

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F. Finding on the objections raised by the respondent.**F.1 Objection regarding force majeure circumstances.**

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts and adverse effects of covid etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration which does not make a huge impact on project which can cause and justify inordinate delay of 3-4 years. Secondly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020, due to Covid-19 there may be a delay but the same has been set off by the government as well as authority while granting extension in registration of the projects, the validity which expired from March, 2020 for a period of six (6) months. The due date of possession in the present case as per clause 13 is come to 26.04.2020, which is after March, 2020. Therefore, an extension of six months is to be given over and above the due date of handing over of possession in view of HARERA Notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Accordingly, the due date for handing over of possession is comes out to 26.10.2020. Thus, no period over and above grace period of 6 months can be given to the respondent-builder. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrong.

G. Finding on the reliefs sought by the complainant.

G.1 Pass an appropriate order thereby directing the respondent to revoke/withdraw the cancellation letter dated 13.09.2024 issued vide email

dated 14.09.2024 never received by the complainants herein, thereby declaring the said cancellation letter dated 13.09.2024 as null and void;

13. In the present complaint, the complainants intend to continue with the project and is seeking setting aside of cancellation letter dated 13.09.2024 and to restore the originally allotted unit.
14. In the present complaint, vide letter of allotment dated 16.04.2015, the complainants were allotted a unit bearing no.201 at second floor in tower-T5, admeasuring area of 1245 sq. ft. super area. However, the buyer's agreement was executed on 25.07.2015 inter-se parties for the unit bearing no.201 at second floor in tower-T5, admeasuring area of 1245 sq. ft. super area for total sale consideration of Rs.86,49,930/- against which the complainants-allottees have paid an amount of Rs.77,03,976/- till August, 2019. The complainants have opted for construction linked payment plan. The respondent has raised a demand on 05.06.2024 for making payment of Rs.17,95,885/- outstanding but the complainants have not made the payment as per the demand and have sent email dated 13.07.2024 and 03.10.2024 to the respondent w.r.t visits at site and inspection of the allotted unit by their authorised representative. Thereafter, the respondent has cancelled the unit of the complainants vide cancellation letter dated 13.09.2024 after issuing demand letter dated 02.07.2024. Now the question arises before the Authority whether the cancellation is valid or not, in the eyes of law?
15. On the consideration of documents available on records and submissions made by both the parties, the Authority observes that the cancellation by the respondent to be unfair and invalid for several reasons. Firstly, as per record, the complainants had already paid Rs.77,03,976/- against the basic sale price of Rs.71,78,750/- i.e., 107.31% in August, 2019. Also, as per the agreed payment plan in BBA executed between the parties the total sale

consideration of the subject unit is mentioned to be Rs.86,49,930/-. Secondly, as per clause 13 of buyer's agreement, the due date of possession comes to 26.10.2020 (including grace period of 6 months on account of Covid-19) and the occupation certificate w.r.t the tower in which unit of the complainants is situated was obtained by the respondent on 03.06.2024 (i.e., after a delay of 4 years). Thereafter on 05.06.2024, the respondent has raised additional demand at the time of offer of possession to the complainants along with a demand letter dated 05.06.2024 and demanded an amount of Rs.17,95,885/- via email dated 06.06.2024 at email id puneet0481@gmail.com of the complainant no.2 and thereafter, the reminder letter dated 02.07.2024 and the cancellation letter dated 13.09.2024 were sent at the email: malikarun@yahoo.in i.e., email id of the father of the complainant no.2. Also, the respondent neither explained the reasons of delay of 4 years in completing construction to the complainants nor issued any revised statement of account after adjustment of delay possession charges. The interest accrued during the delay period significantly reduces the amount payable by the complainant. The respondent's actions were in bad faith, as they failed to adjust the delay period interest and issue.

16. Further, during proceedings dated 14.07.2025, the counsel for the respondent confirms that although the unit in question was cancelled on 13.09.2024, however, no third-party rights have been created till date.
17. Therefore, in view of the above submissions, reasons quoted above and documents placed on record, the Authority is of the view that the cancellation of the allotment vide letter dated 13.09.2024 is not valid in the eyes of law and is hereby set aside and the respondent is directed to restore the allotted unit of the complainants within a period of 30 days from the date of this order.

- G.II To award simple interest @ 18% per annum on the amount already paid by the complainants i.e. Rs.77,29,066/- w.e.f. 24.04.2020 till the physical possession of the apartment in a habitable condition is handed over to the complainants i.e. for the period of delay in giving possession.
- G.III Direct the respondent to immediately hand over the possession of the apartment in question in a habitable condition with all the basic amenities as per the specifications in terms of the apartment buyer agreement dated 05.10.2015 duly executed between the parties within stipulated time as this Authority may deem fit;
- G.IV Direct the respondent to issue a fresh offer of possession and reconciled statement of account as on that date thereby accounting for compensation on account of delay in handing over the possession;
- G.V Direct the respondent to adjust the balance payment payable by the complainants at the time of offer of possession of the apartment in habitable condition to them, as last instalment, against the penalty amount accrued to them from the respondent;
- G.VI Pass an appropriate order directing the respondents to not charge any interest on the balance payment to be made to the respondent;
18. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
19. In the present complaint the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Sec. 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, —
.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."
20. Clause 13 of the buyer's agreement dated 25.07.2015 provides the time period of handing over possession and the same is reproduced below:
- 3.1 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 with 4 years of the start of construction or execution of this agreement whichever is later...***
(Emphasis Supplied)



21. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to Section 12, Section 18 and sub-Section (4) and sub-Section (7) of Section 19]

*(1) For the purpose of proviso to Section 12; Section 18; and sub-Sections (4) and (7) of Section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant Section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to her in case of delayed possession charges.

26. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 4 years from the start of construction or execution of agreement, whichever is later. The builder buyer agreement was executed between the parties on 25.07.2015 whereas construction (excavation) was started by the respondent is 26.04.2016. Therefore, the due date of possession is calculated from the date of start of construction, being later and comes 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 date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 26.04.2020 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes out to be 26.10.2020 (including grace period). The occupation certificate was granted by the competent authority on 03.06.2024 and thereafter, the possession of the subject unit was offered to the complainants on 05.06.2024. Copies of the same have been placed on

record. The Authority is of the considered view that there is delay on the part of the respondent to offer the possession of the subject unit to the complainants-allottees and there is failure on part of the respondent-promoter to fulfil its obligation and responsibilities as per the buyer's agreement 25.07.2015 to handover the possession within the stipulated period.

27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 03.06.2024. The respondent offered the possession of the unit in question to the complainants only on 05.06.2024, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 month's time from the date of offer of possession. These two months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking of possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (05.06.2024) which comes out to be 05.08.2024.
28. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 26.10.2020 till the expiry of 2 months from the date of offer of possession (05.06.2024) which comes out

to be 05.08.2024 as per provisions of Section 18(1) of the Act read with rule 15 and Section 19(10) of the Act.

29. Further, as per Section 19(10) of the Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months. Also, the respondent shall handover the possession of the allotted unit as per specifications of the buyer's agreement entered into between the parties.

G.VII To direct the respondent not to charge an amount of Rs.1,00,000/- on account of club membership charges till the time club exist at the actual site;

30. The complainants submitted that the club does not exist as of today and the respondent has already raised a demand w.r.t club membership charges. Therefore, requested to restrain the respondent from charging any amount on account of club membership charges until the club exist at the actual site.
31. The Authority observes that the respondent vide demand letter dated 05.06.2024 has also demanded an amount of Rs.1,00,000/- on account of club membership charges in terms of "summary of dues" Annexure-I with the buyer's agreement. While deciding the issue of club membership charges in **CR/4031/2019 and others titled as Varun Gupta Vs. Emaar MGF Land Limited and Anr.** decided on 12.08.2021, the Authority has observed as under:

"192. ... However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club membership registration charges from the members only after completion of the club."

32. In view of the above facts and circumstances and judgments, the Authority holds that the demand for club membership charges is legal and justified but club membership charges shall be payable once club comes in existence.

G.VIII Pass any other order or direction as this Authority may deem fit and proper by exercising the judicial powers vested with the Authority under relevant provisions of the Real Estate (Regulation and Development) Act, 2016.

33. The respondent-promoter is directed not to charge anything from the complainants which is not the part of buyer's agreement.

G.IX To direct the respondent to pay to the complainants a sum of Rs.10,00,000/- towards the mental agony and harassment suffered by the complainants at the hand of respondent herein; and

G.X To award a sum of Rs.2,00,000/- to the complainants towards the cost of litigation charges.

34. The complainants are seeking above mentioned relief w.r.t compensation cost and litigation expenses. The 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 complaints in respect of compensation costs and legal expenses.

H. Directions of the Authority

35. 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 cancellation letter dated 13.09.2024 is not valid in the eyes of law and is hereby set aside, and the respondent-promoter is directed to restore the allotted unit of the complainants within a period of 30 days from the date of this order.
- ii. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% per annum for every month of delay from the due date of possession i.e., 26.10.2020 till offer of possession (i.e., 05.06.2024) plus two months i.e., 05.08.2024, as per Section 18(1)(a) of the Act read with Rule 15 of the Rules, *ibid*. The arrears of the



interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
 - iv. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues, if any remains, after adjustment of delay possession charges within a period of next 30 days.
 - v. The respondent is directed to handover the physical possession of the allotted unit to the complainants complete in all aspect of buyer's agreement.
 - vi. The respondent-promoter shall not charge anything from the complainants which is not the part of buyer's agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated:14.07.2025


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