

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

**Complaint no.:** 3786 of 2024  
**Date of complaint:** 30.08.2024  
**Date of order:** 13.11.2025

Shashank Mittal

**Resident of:** 801/D, Sukhdev Nagar, Mubarak Pur, New  
Delhi-110003.

**Complainant**

Versus

M/s Pareena Infrastructures Pvt. Ltd.

**Having Regd. Office at:** - Flat no. 2, Palm Apartment,  
Plot No. 13B, Sector - 6, Dwarka, New Delhi-110075.

**Also at:** C-7A, 2<sup>nd</sup> floor, Omaxe City Centre Mall, Sohna  
Road, Sector- 49, Gurugram-122018.

**Respondent**

**CORAM:**

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman  
Member**

**APPEARANCE:**

Shri Karan Rawal (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 thereunder or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Mi Casa", Sector-68, Gurugram
2.	Nature of the project	Residential Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	i. 111 of 2013 dated 27.12.2013 valid up to 12.08.2024 (area 10.12 acre) ii. 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) iii. 94 of 2014 dated 13.08.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	Name of licensee	Pareena Infrastructure Pvt. Ltd. and others
6.	RERA Registered or not registered	<b>Registered</b> 99 of 2017 dated 28.08.2017 Valid up to 30.12.2022 (30.06.2022 plus 6 months Covid-19)
	Extension of registration	12 of 2023 dated 19.06.2023 Valid up to 30.12.2023
	Project Continuation-RC/REP/HARERA/GGM/99 OF 2017/	7(3)/47/2024/06 dated 23.07.2024 Valid up to 30.12.2025
7.	Unit no. and floor no.	803 and 8 <sup>th</sup> floor and Tower-5 (As per BBA at page no.23 of the complaint)
8.	Unit area admeasuring	1245 sq. ft. (Super area) (As per BBA at page no.23 of the complaint)
9.	Date of execution of apartment buyer's agreement	05.09.2015 (As per page no. 17 of the complaint)
10.	Possession clause	<b>13. Completion of Project</b> <i>That the developer shall, under normal conditions, subject to force majeure, complete construction of</i>

		<p><i>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 seen and accepted by the Flat Allottee(s) ...</i></p> <p style="text-align: right;"><i>[Emphasis supplied]</i></p> <p>(As per page no.30 of the complaint)</p>
11.	Date of start of construction	26.04.2016 (As mentioned in demand letter at page 81 of reply)
12.	Due date of possession	26.10.2020 (Note: Due date to be calculated 4 years from the date of start of construction i.e., 26.04.2016 plus grace period of 6 months) (Note: Grace period of 6 months allowed as per <i>HARERA notification no. 9/3-2020 dated 26.05.2020</i> )
13.	Payment Plan	Construction linked payment plan (As per page no. 46 of the complaint)
14.	Basic sale price	Rs.67,29,225/- (As per summary of dues annexed with BBA at page no. 45 of the complaint)
15.	Total sale consideration	Rs.83,76,030/- (As per summary of dues annexed with BBA at page no. 45 of the complaint)
16.	Amount paid against the allotted unit	Rs.61,86,817/- <i>[91.93% of BSP and 73.86% of TSP]</i> <i>(last payment was made in May, 2019)</i> (As mentioned in cancellation letter on page no. 18 of the reply)
17.	Demand letter <i>(on completion of top floor roof slab)</i>	01.08.2019 For payment of Rs.12,94,721/- (as per page no.39-41 of reply)

18.	Objection raised by the complainant via email upon receipt of demand	16.08.2019, 13.08.2020, 09.03.2022 & 10.03.2022 (As per page no.55-73 of complaint)
19.	Reminder letters	27.08.2019, 05.10.2019, 24.06.2020, 05.03.2022 & 29.03.2022 (as per page no.25-38 of reply)
20.	Pre-cancellation letter	14.04.2022 (As per page no.21 of the reply)
21.	Cancellation letter (due to non-payment)	20.05.2022 (As per page no.18 of the reply)
22.	Occupation Certificate/ completion certificate	03.06.2024 [For Tower IV, V, VII (EWS), Community Building & Convenient Shopping] (As per page no.15-17 of the reply)
23.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submission: -

- I. That the complainant had entered into an apartment buyer's agreement dated 04.09.2015 with the respondent vide which the respondent had agreed to build and sell residential flat/unit no. 803, tower T-5, 8<sup>th</sup> floor in group housing complex namely, Micasa in Sector-68, Gurugram, Haryana-122101 being a 2 BHK flat having super area of 1245 sq. ft. to the complainant for a total basic sale price of Rs.67,29,225/-.
- II. The complainant as on date has paid a total sum of Rs.61,86,817/- as per various demands raised by the respondent from time to time. The complainant undertakes to file the complete bank record for the said payments as and when directed by this Authority.
- III. That as per clause 13 of the apartment buyer's agreement, the respondent had undertaken to complete the construction of the said flat within 4 years of the start of construction or the date of execution of the said agreement. The complainant regularly started making payments to the respondent as

per the payment plan/schedule of payments mentioned in annexure-II of the said agreement but in the first week of August, 2019, the complainant upon his visit to the site was shocked to notice that the unit was nowhere near completion as per the timeline promised by the respondent and the work being done at the site was of poor and sub-standard quality.

- IV. That further to the notice of the complainant, the respondent had raised illegal demands of payment even though the work against the said demands was not done on the site. There were other discrepancies as well which were also pointed out to the respondent vide emails dated 16.08.2019, 05.07.2020, 13.08.2020, 09.03.2022, 10.03.2022 along with the photographs of the condition of the site on the said dates, but the respondent never clarified upon the same.
- V. That despite various requests and reminders via phone calls and personal visits from time to time, the flat was not completed by the respondent on time. On a recent visit to the office of the respondent on 12.07.2024, the complainant again requested the representatives of the respondent to complete the civil work/finishing of the flat and hand over the flat as per the said agreement, but to no avail. The representatives of the respondent instead started stating that since the complainant has failed to make timely payments, he will now have to pay interest on delayed payments. The said demands are illegal and unjustified.
- VI. That the respondent has miserably failed to handover possession and execute title documents of the said flat to the complainant within the time stipulated in the said agreement. Furthermore, the demands being raised by the respondent seeking interest on delayed payments are illegal as the demands were raised prior to reaching the milestone as per annexure-II of the said agreement.

VII. That under these circumstances the complainant has no other option but to approach this authority for the enforcement of his rights as the respondent is yet to do the needful as per law.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to handover possession of the unit no. 803, tower T-5, 8<sup>th</sup> floor in group housing complex namely, Micasa in Sector-68, Gurugram, Haryana - 122101 to the complainant after obtaining occupation certificate and execute necessary documents as per law;
  - ii. Direct the respondent to pay delay in possession charges to the complainant as per the RERA Act, 2016 and applicable Rules;
  - iii. The demand for interest on delayed payments made by the respondent from the complainant be directed to be withdrawn and the unit should be allocated to the complainant at the original cost as agreed upon in the apartment buyer's agreement dated 04.09.2015.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds: -
  - I. That the present complaint is not maintainable in the eyes of law. That allotment of the complainant was already cancelled way back in May 2022 and yet in the present case which was filed after more than 2 years of cancellation of allotment cancellation was not challenged. That the complainant is estopped from filing the present complaint by his own act and conduct, admission, omission, laches and acquiescence.

- ii. That the complainant has not come with clean hands before this Authority and have concealed the true and material facts. That the complainant has made blatantly false allegations in the complaint.
- iii. That the construction of the concerned tower was already complete and occupation certificate was received on 03.06.2024. That when the complainant came to know about obtaining of occupation certificate, he becomes greedy and filed present false and frivolous complaint on 01.08.2024 seeking possession.
- iv. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of instalments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible.
- v. That as per apartment buyer agreement the date of delivery of possession was not absolute and was subject to terms and conditions of agreement itself. That admittedly it has been written in the clause 13 that the company shall endeavour to complete the construction within period of 4 years from start of construction or execution of this agreement, whichever is later but said time period of 4 years are not absolute. That further extension of 6 months is also agreed between the parties at the discretion of respondent, however said period of 4 years 6 months is also not absolute and it is subject to several reasons beyond the control of respondent and it was also agreed by the complainant that if the project gets delayed due to force majeure circumstances than the said period consumed during concerned circumstances shall stand extended. That it is admitted fact by both the parties that construction was started on 26.04.2016.

- vi. That since prescribed period of 4.6 years is 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 completion of the project shall be considered as 4 years after addition of force majeure circumstances. Similarly on account of corona virus pandemic HRERA granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01.04.2021 to 30.06.2021.
- vii. That the 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 longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.
- viii. That the orders are absolute and beyond the control of developers. That there are several others order and notifications which cases delay in the construction of project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:
- a) Delay in construction due to various orders/restrictions passed by National Green Tribunal, Delhi and other competent authorities for protecting the environment of the country.
  - b) Ban on construction due to various court orders as well as government guidelines.
  - c) The major outbreak of Covid-19.

- ix. That even the Hon'ble Apex court has already held that notice, order, rules, notification of the Government and/or other public or competent authority, including any prohibitory order of any court against development of property comes under force majeure and period for handing over of the possession stood extended during the prevalence of the force majeure event.
- x. That project is not only delayed due to force majeure events but also get delayed due to non-payment of allottees and in the present case complainants is also among those allottees who never paid on time, rather delayed from few weeks to several months and now started blaming for non-delivery of possession.
- xi. That the complainant has not come before the authority with clean hands. That the complainant has tried to manipulate and twist the facts and circumstances in order to gain undue benefit from the authority. That after issuance of allotment letter the respondent raised demands against the ongoing construction however the complainant failed to pay the same on time. That the complainant intentionally did not annex any payment details and demand letters received by him just in order to hide their mistake of not making payment. That demand letters and reminders issued by respondent are as follow:

S.N.	Demand stage	Amount demanded	Demand date	Due date	Payment made	Date of payment	Status
1.	On start of excavation	6,80,243	06.04.16	26.04.16			Not paid
2.	Reminder 1	6,29,991	02.06.16	ASAP	6,80,243	21.06.16	Late & Insufficient payment
3.	On completion of basement roof slab	5,27,404	02.02.17	22.02.17	5,02,485	17.03.17	Late & insufficient payment
4.	Reminder 1	54,866	02.05.17	ASAP			
5.	On completion of 3 <sup>rd</sup> floor roof slab	5,38,395	17.07.17	07.08.17	5,38,395	25.08.17	Late payment

6.	On completion of 7 <sup>th</sup> floor roof slab	3,54,227	26.10.17	16.11.17	3,21,415	22.11.17	Late & insufficient payment.
7.	On completion of 11 <sup>th</sup> floor roof slab	5,34,984	23.01.18	12.02.18	4,97,239	06.03.18	Late & insufficient payment.
8.	On completion of 15 <sup>th</sup> floor roof slab	4,03,278	11.04.18	01.05.18	3,62,168	09.05.18	Late & insufficient payment.
9.	On completion of 19 <sup>th</sup> floor roof slab	5,43,281	03.07.18	23.07.18	4,97,440	11.08.18	Late & insufficient payment.
10.	On completion of 23 <sup>rd</sup> floor roof slab & brick work slab	11,57,147	04.10.18	24.10.18	4,00,000	20.11.18	Late & insufficient payment.
11.	On completion of 27 <sup>th</sup> floor roof slab	13,59,381	12.01.19	01.02.19	5,00,000	09.02.19	Late & insufficient payment.
12.	On completion of 31 <sup>st</sup> floor roof slab	14,41,437	11.04.19	01.05.19	5,00,000	22.05.19	Late & insufficient payment.
13.	On completion of top floor roof slab	12,94,721	01.08.19	21.08.19			
14.	Reminder 2	12,94,721	27.08.19	ASAP			
15.	Reminder 3	12,94,721	05.10.19	ASAP			
16.	Reminder 4	12,94,721	24.06.20	ASAP			
17.	Reminder 5	17,50,352	05.03.22	ASAP			
18.	Reminder 6	17,59,250	29.03.22	ASAP			
19.	Pre Cancellation Letter	17,94,721	14.04.22	14.05.22			
20.	Final cancellation letter dated 20-05-2022						

- xii. That from joint reading of payment details provided by complainant and demand raised by respondent it is crystal clear that complainant is habitual defaulter and he himself is responsible for cancellation.
- xiii. That from joint reading of payment details provided by complainant and demand raised by respondent it is crystal clear that complainants are habitual defaulters and they themselves are responsible for delayed construction. Thus, the period of default to the part of complainant cannot be attributed upon the respondent and respondent is not liable to pay any sort of interest qua the time period within the complainants themselves are on default. That the unit was cancelled as a last resort, since respondent has to complete a project and for the same respondent needs allottees who

can pay on time, whereas the complainant is neither making payment on time and as mentioned above stopped making payment in the year 2018 itself. It is submitted that without admitting anything and without prejudice to the rights of respondent it is submitted that if we take due date of possession as 4 years from date of start of construction thus the due date will be 26.04.2020 and due to covid 19 extra 6 months the due date comes to 16.10.2020, whereas complainant stopped making payment in 2018 itself i.e., 2 years prior to alleged date of possession without any valid explanation. That such allottees have not right to allege that builder has not handed over possession on time. Thus, the complainant cannot be allowed to be benefitted from his own wrongs.

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 submission made by the parties.

**E. Jurisdiction of the authority**

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E.1 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 entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

**F. Findings on the objections raised by the respondent.****F.1 Objection regarding force majeure conditions.**

13. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, ban on construction due to various court orders as well as government guidelines and are covered under clause 13 of the buyer's agreement dated 05.09.2015. 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. Findings regarding relief sought by the complainant:**

- G. I Direct the respondent to handover possession of the unit no. 803, tower T-5, 8th floor in group housing complex namely, Mi-casa in Sector-68, Gurugram, Haryana - 122101 to the complainant after obtaining occupation certificate and execute necessary documents as per law;**
- GII Direct the respondent to pay delay in possession charges to the complainant as per the RERA Act, 2016 and applicable Rules;**
- G.III The demand for interest on delayed payments made by the respondent from the complainant be directed to be withdrawn and the unit should be allocated to the complainant at the original cost as agreed upon in the apartment buyer's agreement dated 04.09.2015.**
14. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act and the same is reproduced below for ready reference:

***"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."*

***(Emphasis supplied)***

16. The complainant was allotted an apartment bearing no. 803, Tower-5, 8<sup>th</sup> floor, admeasuring 1245 sq. ft. (super area) in project of the respondent named 'Micasa' situated at Sector 68, Gurgaon vide apartment buyer's agreement dated 05.09.2015 for a total sale consideration of Rs.83,76,030/- against which the complainant has paid a sum of Rs.61,86,817/- in all. The due date of possession as per clause 13 of the buyer's agreement dated 05.09.2015 is comes to be 26.10.2020 (calculated from the date of start of construction, being later) inclusive of an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. The complainant has submitted the respondent failed to timely construct and develop the project. The respondent has submitted that numerous demand letter/reminders were sent to the complainant to pay the outstanding dues as per the payment plan. However, the complainant defaulted in making payments despite giving several opportunities to the complainant to comply with his obligation before finally cancelling the allotment of the unit vide cancellation letter dated 20.05.2022. Copies of the same along with dispatch proof have been placed on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 20.05.2022 is valid or not.
17. Upon perusal of documents available on record and submissions made by both the parties, the Authority observes that, the complainant has paid an amount of Rs.61,86,817/- (which consists approximately 91.93% of BSP and 73.86% of TSC) against the total sale consideration of Rs.83,76,030/- and it is evident from the records that no further payment has been made by the

complainant after July, 2018. It is also on record, that multiple demand/reminder letters dated on 01.08.2019, 27.08.2019, 05.10.2019, 24.06.2020, 05.03.2022, 29.03.2022 and 14.04.2022 were sent by the respondent to the complainant, to clear the outstanding dues prior to the cancellation of the allotment. It is observed that as per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. Despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues. Thus, the respondent has cancelled the allotment of the subject unit due to non-payment on 20.05.2022. Moreover, the respondent has completed the construction and has obtained the requisite occupation certificate on 03.06.2024.

18. Further, despite several requests and demand letters, the complainant neither contacted the respondent nor deposited the outstanding dues. And as per clause 7 of the buyer's agreement dated 05.09.2015, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 7 of the buyer's agreement is reproduced as under for a ready reference:

**7. TIME IS ESSENCE**

*That the Time is the essence with respect to the Flat Allottee(s) obligations to pay the Sale Price as provided in Annexure-1, Summary of dues along with other payments such as applicable Service Tax, stamp duty, registration fee and other charges stipulated under this Agreement to be paid on or before due date or as and when demanded by the Developer as the case may be and also to perform or observe all the other obligations of the Flat Allottee(s) under this Agreement. It is clearly agreed and understood by the Flat Allottee(s) that it shall not be obligatory on the part of the Developer to send reminders regarding the payments to be made by the Flat Allottee(s) as per the Schedule of Payments in Annexure-II or obligations to be performed by the Flat Allottee(s). In case of delay in making payment by the Flat Allottee(s) to the Developer as per the Schedule of Payments as stated in Annexure-II, then the Flat Allottee(s) shall pay interest on delayed payments@ 18% p.a. compounded quarterly at the time of every succeeding instalment which shall be calculated*

*from the due date of outstanding payment/amount without prejudice to the Company's right to cancel the allotment. Even then, if the Flat Allottee(s) fails to pay the Instalments) along with interest within 60 days, from the due date, the Developer shall have the right to terminate the Agreement and forfeit the EARNEST MONEY as detailed hereinabove and allotment of the said apartment shall stand cancelled and the flat Allottee(s) shall not have any lien/charge/interest/right on the said apartment.*

19. Upon receipt of demand vide letter dated 01.08.2019 and email dated 16.08.2019, the complainant sent an email to the respondent stating that as per Mr. Soni (senior auditor) has commented that there is no due from my side as per builder buyer's agreement and project progress. And requests to kindly check the records and then communicate with relevant facts. The said email dated 16.08.2019 is reproduced for ready reference:

*From: Shshank Mittal [skprojectsindia@gmail.com](mailto:skprojectsindia@gmail.com)  
Date: Fri, 16 Aug, 2016 at 5:12 PM  
Subject Re: Regarding payment outstanding of your unit in Mi-casa  
To Kirti Kurkreti [kirti.kurkreti@pareena.in](mailto:kirti.kurkreti@pareena.in)  
Cc: Amit.soni@pareena.in, Radhika Sehdev [rashika.sehdev@pareena.in](mailto:rashika.sehdev@pareena.in),  
[ravikumarmittal@yahoo.co.in](mailto:ravikumarmittal@yahoo.co.in)  
Hi Kirti,  
Thank you for your email  
As discussed with Mr. Soni, my senior auditor has commented that there is no due from by side as per builder buyer agreement and project progress.  
Strictly, writing, kindly check your records and then communicate with relevant facts.  
Thanks  
Shshank  
9910200101*

20. The respondent replied to queries raised by the complainant via email dated 10.03.2022 The said email dated 10.03.2022 is reproduced for ready reference:

*On Thu, 10 Mar 2022 at 1:07 PM, Amit Soni [amit.soni@pareena.in](mailto:amit.soni@pareena.in) wrote:  
Dear Sir,  
Greetings of the day!!!  
With reference to the below mail: -  
1. Correction of statement shared by you - Kindly elaborate about the correction point  
ADJUST DELAY PENALTY AMOUNT - possession DATE & YEAR 2019  
2. TAXES are not rightly accounted - will get it check in department and get back to you.  
PLEASE CONFIRM DATE*

3. Delay penalty amount to be adjusted in the statement – Penalty amount will be adjusted in Demand for Offer of Possession, if any.

WE REQUEST YOU TO ADJUST DELAY COMPENSATION

4. Stage payment dates to be corrected as non of the payment demands are linked to actual work at site. – The last milestone which is the "On Completion of Brick Work: is achieved at the site, and demand is being raised accordingly, requested you to kindly visit the site.

AS PER OUR LAST VISIT AND DEMAND RAISED, final slab was not casted – SITE VISIT ALREADY DONE.

We request you twice for joint site visit to verify the progress, but you declined as final slab was not casted, following works were pending: - interior brick walls, plaster, electrical work, plumbing work, external development, parking space, drive way etc.

Please find attached reference images –

5. Adjustment of interest capitalized (on payment made by me) due to delayed project delivery. – Amount will be adjusted in demand for offer of possession, if any.

KINDLY Adjust the same, we have already over paid.

There is an outstanding of Rs.12,94,721.00 + Interest of Rs.4,57,486.00

False BUGUS claims.

Kindly remit the amount to the companies' account at the earliest to avoid further accrual of interest.

Amount if payable shall be paid after adjustment of delay compensation and confirm possession dates.

21. In view of the above observation and findings, the Authority observes that the complainant is not entitled for the reliefs being sought under the present complaint as the subject unit of the complainant was cancelled by the respondent after issuing proper demand, reminders as per the terms and conditions of the payment plan annexed with the buyer's agreement dated 05.09.2015. Therefore, the cancellation letter dated 20.05.2022 is hereby held to be valid in the eyes of law.
22. But after cancelling the unit, the respondent is not entitled to keep the money paid by the complainant with it and the respondent is under obligation to return the paid-up amount after deducting the amount of earnest money. The Authority observes that clause 5 of the buyer's agreement talks about that in the event of default or breach of any terms and conditions of the buyer's agreement by the allottee, the respondent is entitled to forfeit the amount of

earnest money. The relevant Clause 5 of the buyer's agreement is reproduced as under for a ready reference:

**5. EARNEST MONEY**

*The Allottee(s) agrees that out of the amounts) paid/payable towards booking amount for provisional allotment of the apartment or towards total price; the amount paid by the Allottee(s) towards booking amount along with the application for the provisional allotment of the said apartment and all other amounts paid towards the said apartment till, at the time of or after the execution of the Apartment Buyers Agreement, up to 15% of the basic sale price, shall be treated as earnest money (as the case may be) to ensure fulfilment by the applicants) of the terms and conditions as contained in this application and Apartment Buyers Agreement. The applicant(s) hereby authorizes the Company to forfeit this earnest money along with interest paid, due or payable along with any other amount non-refundable in nature.*

*In the event; the Allottee(s) fails to perform any obligations or commits breach of any terms and conditions mentioned in the Application, Allotment Letter and the Apartment Buyer Agreement including but not limited to the occurrence of any event of default as stated in this Apartment Buyer Agreement or default in payment of instalments, despite having been issued demand/ notice in that regard, the Developer shall have the right to forfeit the amount of Earnest Money without any further notice to the Allottee(s). If the amount paid by the Allottee(s) is less than the forfeitable amount, then the Allottee(s) undertake to make good the shortfall of the forfeitable amount. This is in addition to any other remedy/right, which the Developer may have. The parties agree that the conditions for forfeiture of earnest money shall survive till the execution and registration of the conveyance deed for the Apartment*

23. 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/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."*

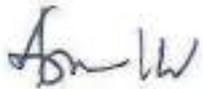
24. So, keeping in view the law laid down by the Hon'ble Apex Court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.61,86,817/- after deducting 10% of the sale consideration of Rs.83,76,030/- being earnest money along with an interest @10.85% p.a. (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 on the such balance amount, from the date of cancellation i.e., 20.05.2022 till actual refund of the

amount within the timelines provided in rule 16 of the Haryana Rules 2017  
ibid.

**H. Directions of the authority: -**

25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- i. The cancellation letter dated 20.05.2022 is held to be valid in eyes of law. Therefore, the respondent/promoter is directed to refund the paid-up amount of Rs.61,86,817/- after deducting 10% of the sale consideration of Rs.83,76,030/- being earnest money along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) to the complainant as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the such balance amount, from the date of cancellation i.e., 20.05.2022 till its actual realization.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
26. Complaint stands disposed of.
27. File be consigned to the registry.

  
(Phool Singh Saini)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 13.11.2025