

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

Complaint no. :	5762 of 2023
Date of filing the complaint	22.12.2023
Date of decision:	13.01.2026

<p>1. Rajat Chatterjee Mrs Sarbani Chatterjee R/O: Block 1, 1762, 2nd Floor, Chittaranjan Park, South West Delhi, New Delhi- 110019 H. No. D-223, 1st Floor, Defence Colony, Lajpat Nagar, South Delhi, Delhi-110024</p>	Complainants
Versus	
<p>1. M/s Pareena Infrastructures Private Limited Regd. Office at: C7aiindFloor, Omaxe City Centre Mall, Sohna Road, Sector 49, Gurugram, Haryana</p> <p>2. M/s Monex Infrastructure Private Limited Flat no.2, Palm Apartment, plot no.13 B, sector 6 Dwarka</p> <p>3. Armed Forces Officials Welfare organization J-25, Jor Bagh Road, Block J2, BK Dutt Colony</p>	Respondents

CORAM:	
Shri Arun Kumar	Chairman
APPEARANCE:	
Debashish Moitra (Advocate)	Complainants
Prashant Sheoran (Advocate)	Respondent no. 1

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 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	"Coban Residentes", sector-99A, Gurgaon
2.	Nature of the project	Residential
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2029
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 35 of 2020 dated 16.10.2020 Valid up to 11.03.2024
7.	Unit no.	604 on 6 th Floor, Tower-A(T-1) (As per page no.22 of the complaint)
8.	Unit admeasuring area	2352 sq. ft.

		(As per page no.22 of the complaint)
9.	Allotment letter	24.09.2021
10.	Date of execution of flat buyer's agreement	(As per page no.22 of the complaint) 29.09.2021
11.	Possession clause	<p>5 Time is essence:</p> <p><i>The promoter shall abide by the time schedule for completing the project i.e., 11.03.2024 as disclosed at the time of registration of the project...</i></p> <p>7 Possession of the apartment</p> <p><i>7.1 Schedule for possession of the said Unit/ Apartment for Residential purpose - The Promoter agrees and understands that timely delivery of possession of the Unit/ Apartment for Residential along with parking to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement.</i></p> <p>[Emphasis supplied]</p> <p>(As per page 19 & 21 of written arguments by complainant.)</p>
12.	Due date of possession	11.03.2024 (as per RERA Registration certificate)
13.	Total sale consideration	Rs.1,13,10,416/- (As per clause 1.2 of BBA at page 31 of complaint)
14.	Amount paid by the complainant-allottee	Rs.67,86,253/- (60 % of TSC)

		(As per cancellation letter dated 04.07.2023 at page no.43 of complaint and SOA dated 14.12.2022 annexed with OFP at page no.12 of reply)												
15.	Payment plan	<p style="text-align: center;">Payment plan</p> <p style="text-align: center;">Schedule C</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Particulars</th><th style="text-align: center;">Percentage of BSP</th><th style="text-align: center;">Percentage of additional charges</th></tr> </thead> <tbody> <tr> <td style="text-align: center;">At the time of booking</td><td style="text-align: center;">10% of BSP</td><td style="text-align: center;">-Nil-</td></tr> <tr> <td style="text-align: center;">Within 60 days of booking</td><td style="text-align: center;">50% of BSP</td><td style="text-align: center;">60% of EDC/IDC + 60% of car parking + 60% of PLC + 60% of PBC + 60% of CMC + IFMS</td></tr> <tr> <td style="text-align: center;">On offer of possession</td><td style="text-align: center;">40% of BSP</td><td style="text-align: center;">40% of EDC/IDC + 40% of car parking + 40% of PLC + 40% of PBC + 40% of CMC + IFMS</td></tr> </tbody> </table>	Particulars	Percentage of BSP	Percentage of additional charges	At the time of booking	10% of BSP	-Nil-	Within 60 days of booking	50% of BSP	60% of EDC/IDC + 60% of car parking + 60% of PLC + 60% of PBC + 60% of CMC + IFMS	On offer of possession	40% of BSP	40% of EDC/IDC + 40% of car parking + 40% of PLC + 40% of PBC + 40% of CMC + IFMS
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		(As per page no.38 of complaint & page 40 of written arguments by the complainant)												
16.	Occupation certificate/completion certificate	13.12.2022												
17.	Offer of possession	<p>14.12.2022</p> <p>(As per page no.27 of rejoinder by the complainants)</p>												
18.	Demand letter along with offer of possession	<p>14.12.2022</p> <p>((As per page no.27 of rejoinder by the complainants)</p>												
19.	Reminder through email	<p>03.02.2023 & 30.06.2023</p> <p>(As per page no.26-30 of reply)</p>												
20.	Pre-cancellation letter	<p>05.06.2023</p> <p>(As per page no.23 of reply)</p>												
21.	Cancellation letter <i>(on Account of non-payment of Rs.51,62,024/-)</i>	<p>04.07.2023</p> <p>(As per page no.43 of complaint)</p> <p>05.07.2023 (via email)</p>												

		(As per page no.22 of reply)
23.	Legal Notice by the complainants <i>(for setting aside cancellation letter)</i>	14.08.2023 (As per page no.45 of complaint)
24.	Demand Letter for collection of GST of Rs.1,05,276 on EDC/IDC of Rs.8,77,296/-	22.12.2023 (As per page 11 of re joinder by the complainants)
25.	Transaction detail & information via email that payment of GST has been completed by the complainants	Rs.1,05,276/- (As per page 21-24 of replication)

B. Facts of the complainants:

3. The complainants have made the following submissions: -
 - I. That the complainants took membership of the respondent no. 3 and thereafter booked unit no. T1-604 in "coban residences" at Sector- 99 A, Gurugram, Haryana.
 - II. That the respondent no. 1 entered into a joint development agreement with the respondent no. 2 on 25.07.2013 and registered collaboration agreement dated 04.06.2019 for the purpose of a group housing project.
 - III. That the complainants have entered into an apartment buyer agreement with the respondent no. 1 and the respondent no. 2 on 29.09.2021. The complainants have paid a sum of Rs. 67,86,253/- towards the said unit and also took a bank loan from ICICI Bank in respect of the same.
 - IV. That upon receipt of the demand letter dated 14.12.2022 the complainants informed respondent no. 1 as well as respondent no. 3

that the said unit was/is not complete in all respect for the payment of the balance amount. It was assured that the unit will be completed in all respects.

- V. That the respondent no. 1 alleged that some reminder letter was sent on 10.03.2023 and alleged pre-cancellation letter 05.06.2023 demanding an amount Rs. 51,62,024/- which was not received by the complainants and demanding which was/is totally incorrect as the complainants is liable to pay only a sum of Rs. 48,00,000/- only.
- VI. That the complainants were surprised to receive letter canceling abovementioned unit dated 04.06.2023 which is unlawful and illegal and showing a refund of Rs. 33,69,525/- arbitrarily. Furthermore, the respondent no. 1 has noted that the complainants ceased to have any rights/claims/entitlements or lien in the said unit. As the abovementioned unit was not ready hence the complainants did not pay the balance amount and was always ready and willing to pay the said amount as soon as the unit was ready as the complainants had taken a housing loan from ICICI Bank in this regard.
- VII. That the evidence of poor- & low-quality workmanship is evident from the pictures of site. The complainants were shocked to see the condition of the unit allocated to them. When the complainants brought this to notice of the respondent no.1, then the respondent No.1 instead of rectifying the same within 30 days. respondent no. 1 unilaterally cancelled the allotment unilaterally and forfeited a substantial amount which is not permissible under law.
- VIII. That the complainants despite having to pay interest to ICICI Bank yet not getting possession for the last more than 2 years despite having made majority of the payment. However, stand of the respondent no.1

indicating that complainants may not get the allocated unit at all although the complainants paid the GST on same as demanded by respondent no.1 even after cancellation. Further, the agreement to sell executed between the parties was never cancelled which fact cannot be denied by the respondent no.1. aggrieved by unlawful illegal unilateral cancellation the complainants approached this Hon'ble Authority for justice and redressal of grievances.

- IX. That the complainant no. 2 provided a separate address as per the agreement to sell but She was not served at the said address which amounts to non-compliance. Further, the complainants are always ready and willing to pay the balance amount subject to possession of the unit in a habitable condition which was never adhered to till 2024.Further, admittedly the name given on the alleged cancellation letter is not of complainant no.2.
- X. That the complainants have paid the instalments as per agreed schedule. Only one installment (i.e. to be paid upon handing over possession) is pending. The complainants are still ready and willing to pay the balance amount as due as per the schedule.
- XI. Written submissions have been filed by the complainant. The same are taken on record and perused further.

C. Relief sought by the complainants:

- 4. The complainants have sought following relief(s):
 - I. Direct the respondents to pay delay possession charges at the prescribed rate.
 - II. Direct the respondent no. 1 to immediately withdraw the cancellation notice dated 04.07.2023 as the same is unlawful and illegal as the

agreement to sell dated 29.09.2021 has been executed and a right is created upon the complainants on the said unit.

- III. Direct that the allotment cannot be cancelled after execution of the agreement to sell dated 29.09.2021 as the allotment merged in the agreement and same is required to be cancelled in order to deprive the complainants of the said unit.
- IV. Direct the respondent no. 1 to deliver the possession of the said unit to the complainants in inhabitable condition after payment of balance consideration by the complainants.

D. Reply by respondent no. 1 :

5. The respondent by way of written reply made following submissions: -
 - i. That the respondent has already completed the concerned unit as the list of and occupation certificate was received on 13.12.2022 and vide letter dated 14.12.2022 offer of possession was issued to the complainants. It is submitted that the complainants alleged in their complainant that on receiving demand letter dated 14-12-2022 i.e offer of possession complainants informed respondents that unit was not complete. The construction of the concerned unit as well as tower was stands completed in the month of April 2022 itself and thereafter an application for obtaining occupation certificate was filed by the respondent before the concerned authority.
 - ii. That the complainants failed to pay demand raised on 14.12.2022 along with offer of possession, respondent issued a reminder on 03-02-2023 for payment of outstanding amount even thereafter complainant never came forward to pay the balance amount. Thereafter respondent issued a pre cancelation letter on 05.06,2023 demanding balance amount of Rs. 51,62,024. Even thereafter

complainants fail to pay said amount. After waiting for further 30 days respondent ultimately cancelled the allotment of complainants.

- iii. That as admitted by the complainants that on 14.12.2022 they have received a demand from respondent and the cancellation was done on 04.07.2023 i.e after passing of 200 days and as per RERA respondent has to wait for 90 days from date of default. Thus, more than sufficient time was granted to the complainants for payment of amount due, yet as the complainants were not coming forward to pay the balance demand, the unit was cancelled by respondent.
- iv. That the respondent continues to bona fide develop the project in question despite of there being various instances of non-payments of instalments by various allottees.
- v. That from above facts it is clear that complainants fails to pay any amount after receiving offer of possession on 14.12.2022. It is submitted that without fulfilling ones duty no one has any right to seek any relief. Vide rejoinder filed by the complainants, complainants had claimed that since a letter dated 22.12.2023 was issued by the respondent, thus the issuance of same render the cancellation invalid. A mere issuance of demand against GST cannot be considered as invalidation of the cancellation, validly done by the respondent. Even the letter dated 22.12.2023 was raised qua the past liability of complainants and same was issued just to clarify that along with GST deducted in the cancellation letter, the respondent is also entitled to deduct GST on the EDC and IDC. In the said letter it was specifically clarified that earlier the company was under an impression that GST is not liable to be paid on EDC and IDC however later on it was clarified

that GST is also applicable on EDC and IDC thus said amount is also liable to be paid by you.

- vi. That said letter was only issued to clarify the issue of GST on EDC and IDC and under no circumstances the same can be treated as revocation of cancellation. The letter dated 22.12.2023 was issued as the liability of GST was of the complainants and same pertains to the period before cancellation, rather till the date of offer of possession as specifically mentioned in the said letter itself. In the present case the possession was offered to the complainants after obtaining occupation certificate and when the complainants failed to pay the demand raised by the respondent, the unit of the complainants was cancelled by the respondent.
- vii. That after obtaining of occupation certificate, respondent can't take GST from a new allottee qua services provided to the earlier allottee, thus it is the liability of the earlier allottee to pay said GST. That merely because the unit was cancelled, does not absolved the complainants to pay its past liabilities and the respondent is entitled to deduct said GST as well along with other charges/taxes as mentioned in the cancellation letter.
- viii. That the complainants are wrongly interpreting the letter dated 22.12.2023. That issuance of said letter under no circumstances can be treated as revocation of cancellation letter. That merely because complainant had alleged to have paid an amount of Rs. 1,05,276/- being 12% GST on EDC and IDC amount of Rs. 8,77,296/- does not change the fact that the cancellation is already done validly and the respondent is also entitled to deduct/forfeit said amount of Rs.1,05,276/-.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
7. That despite given specific directions and providing sufficient opportunities, no written reply has been filed by the respondent no.2 and 3. That despite a lapse of two year the respondent no. 2 and 3 have failed to file the reply in the registry .On 09.12.2025 no one appeared on behalf of respondent no. 2 and 3 and has failed to put in appearance before the Authority and has also failed to file a reply. In view of the same, the matter was proceeded ex-parte against respondent no. 2 and 3.

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 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

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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.

F. Findings on the relief sought by the complainants:

F.I Direct the respondents to pay delay possession charges at the prescribed rate.

F.II Direct the respondent no. 1 to immediately withdraw the cancellation notice dated 04.07.2023 as the same is unlawful and illegal as the agreement to sell dated 29.09.2021 has been executed and a right is created upon the complainants on the said unit.

F.III Direct that the allotment cannot be cancelled after execution of the agreement to sell dated 29.09.2021 as the allotment merged in the agreement and same is required to be cancelled in order to deprive the complainants of the said unit.

F.IV Direct the respondent no. 1 to deliver the possession of the said unit to the complainants in inhabitable condition after payment of balance consideration by the complainants.

12. The above-sought relief(s) by the complainants are taken together being interconnected.

13. The complainants were allotted an apartment bearing no. 604, tower A(T-1), 6th Floor in the project of the respondent named "Coban Residences" at Sector-99A, Gurugram vide allotment letter dated 24.09.2021. Thereafter a buyer's agreement was executed between the parties on 29.09.2021 for a sale consideration of Rs.1,13,10,416/- . Out of the said sale consideration, the complainants have paid an amount of Rs.67,86,253/- in all against the said allotment.
14. The complainants have submitted that the said unit was not complete. The complainants have paid the instalments as per the agreed schedule. Only one instalment which was to be paid on handing over possession is pending. However, the complainants are still ready and willing to pay the balance amount as per the schedule. The respondent has submitted that the occupation certificate for the tower in question was obtained by the respondent on 13.12.2022 and thereafter possession of the apartment was offered to the complainants vide offer of possession letter dated 14.12.2022, subject to payment of outstanding dues on or before 30.12.2022. Thereafter, on non-payment of the outstanding dues, a demand/reminder letter dated 03.02.2023 and 30.06.2023 was issued to the complainants to pay the outstanding dues. Afterwards the respondent issued a pre cancellation letter on 05.06.2023 and finally terminated the allotment of the unit on 04.07.2023 on failure of payment of outstanding instalments as the complainants never paid the said raised demand. Copies of the same is available on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 04.07.2023 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 on the basis of provisions of allotment, the complainant has paid an amount of Rs. 67,86,253/- against the sale consideration of Rs.1,13,10,416/-and no payment was made by the complainants as per the demands which were raised by the respondent. The occupation certificate for the tower in question was obtained by the respondent on 13.12.2022 and thereafter possession of the apartment was offered to the complainants vide offer of possession letter dated 14.12.2022, subject to payment of outstanding dues. As per the payment plan agreed between the parties, 'on offer of possession', the complainant was obligated to pay 40% of the BSP + other charges. However, the complainants defaulted in making payment and the respondent was to issue demand letter dated 03.02.2023 to the complainants to comply with their obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 04.07.2023. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. As per clause 9.3(ii) of the buyer's agreement if the allottee fails to make payments for a period of beyond ninety days after notice from the promoter, then the promoter may cancel the allotment of the unit. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement and the payment plan annexed with the buyer's agreement dated 29.09.2021 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the

respondent are not as per the law of the land laid down by the Hon'ble apex court of the land 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."

16. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.67,86,253/- after deducting 10% of the sale consideration of Rs.1,13,10,416/- being earnest money along with an interest @10.80% 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 refundable amount, from the date of cancellation i.e., 04.07.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. Out of the total amount so assessed, the amount paid by the bank/financial institution will be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainants.
17. In view of the findings detailed above, the rest of the reliefs sought by the complainants became redundant and no direction to the same is given.

H. Directions of the Authority:

18. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - i. The respondent/promoter is directed to refund the paid-up amount of Rs. 67,86,253/- after deducting 10% of the sale consideration of Rs. 1,13,10,416/- being earnest money along with an interest @10.80% 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 refundable amount, from the date of cancellation i.e., 04.07.2023 till its realization.

ii. Out of the total amount so assessed, the amount paid by the bank/financial institution will be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainants.

iii. 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.

19. The complaint stands disposed of.

20. Files be consigned to the registry.


(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 13.01.2026