

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

**Complaint no. : 2465 of 2018**  
**First date of hearing: 20.03.2019**  
**Date of decision : 20.03.2019**

Mr. Abhay Y. Deshmukh  
Address: - J-1201, Bestech Park View SPA Next,  
Sector- 67, Gurugram, Haryana.

**Complainant**

Versus

M/s. Pareena Infrastructure Pvt. Ltd.  
Address: - C- 7A, 2<sup>nd</sup> floor,  
Omaxe City Centre Mall,  
Sohna Road, Gurugram, Haryana.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav Advocate for the complainant.  
Shri Prashant Sheoran Advocate for the respondents.  
Shri Sanjeev Kumar Representative on behalf of  
respondent company

**ORDER**

1. A complaint dated 03.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Abhay Y Deshmukh, against the respondent M/s. Pareena Infrastructure Pvt. Ltd. (through its authorised representative), on account of

violation of clause 3.1 of apartment buyer agreement dated 21.01.2014 for allotted flat/unit no. T-6/803 of the project “Coban Residencies” located at Sector 99 A, Gurugram for not handing over possession by due date which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer agreement dated 21.01.2014 was executed prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of obligation on the part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the Project	“Coban Residencies” at Sector 99 A, Gurugram.
2.	Nature of real estate project	Group housing colony.
3.	Total area of the project	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid upto 11.03.2017
5.	Date of booking	08.08.2013 <b>(Annx P 2)</b>
6.	Date of allotment letter	22.11.2013 <b>(Annx P 4)</b>
7.	Date of apartment buyer’s agreement	21.01.2014 <b>(Annx P 6)</b>
8.	Allotted flat/unit no.	T-6/803, tower T 6
9.	Measuring area of the allotted unit	1,550 sq. ft.

10.	RERA Registered / not registered	Not registered.
11.	Due date of delivery of possession <b>Clause-3.1:</b> 4 years from the date of start of construction i.e 16.10.2014 or execution of agreement i.e 21.01.2014, whichever is later.	<b>16.10.2018.</b> <b>Note</b> - Due date has been calculated from the date of start of excavation.
12.	Date of start of excavation as per demand letter cum invoice dated 03.01.2017	16.10.2014 ( <b>Annx P 12</b> )
13.	Total consideration as per the agreement	Rs. 96,21,400/- ( <b>Pg.39 of the complaint</b> )
14.	Payment plan	Construction linked payment plan
15.	Total amount paid by the complainant till date as per demand cum invoice dated 01.11.2018 plus receipt dated 21.11.2018	Rs. 86,68,911/- ( <b>Annx P 21,22</b> )
16.	Delay in delivery of possession till date	5 months and 4 days
17.	Penalty clause 5.1 of the said agreement	Rs 5/- per sq.ft. per month of the super area.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer agreement dated 21.01.2014 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainant by 16.10.2018. But the respondent has failed to fulfil its contractual obligation till date, which is in violation of section 11(4)(a) of the Act *ibid*.
5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance.

The respondent through its counsel appeared on 20.03.2019.

The case came up for hearing on 20.03.2019. The reply filed by the respondent has been perused by the authority.

**Facts of the complaint: -**

6. Briefly stated, facts relevant for the disposal of the present complaint are that on 08.08.2013 complainant booked a residential unit in the respondent's project, namely 'Coban Residencies' located at Sector 99 A, Gurugram. In pursuance to the aforesaid booking of the complainant, respondent vide allotment letter dated 22.11.2013 allotted flat/unit no. 803, in tower T 6, measuring 1,550 sq. ft. in favour of the complainant. On 21.01.2014, an apartment buyer agreement for the allotted unit was executed between the parties. The agreed consideration of the unit was fixed at Rs. 96,21,400/- out of which the complainant has made total payment of Rs. 86,68,911/- on various dates under construction linked payment plan.
7. As per clause 3.1 of the agreement dated 21.01.2014, possession of the unit was to be delivered within a period of 4 years from the date of starts of construction or execution of agreement whichever is later which comes to be 16.10.2018.

The complainant alleged that respondent has failed to complete the construction and deliver the possession till date despite collecting substantial amount of sales consideration.

8. Losing all its faith from the respondent in getting the project complete, the complainant has approached the authority by filing the present complaint.

**Issues to be determined -**

- i. Whether there is any reasonable justification for delay to give possession of flat?
- ii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developer for delay in giving possession?
- iii. Whether complainant is entitled for compounding compensatory interest at prescribed rate from due date of possession till actual delivery of possession?
- iv. Whether the respondent is liable to refund the entire amount as paid by the complainant?

**Relief sought:-**

Direct the respondent to refund the entire amount of Rs. 86,65,913/- to the complainant alongwith interest at prescribed rate the date of payment.

**Respondent's reply:-**

9. The respondent submitted that the construction work of the said project is at an advance stage and the structure of various towers have already been completed and remaining work is endeavoured to be completed as soon as possible.
10. The present complaint has been filed by the complainant by concealing the material facts from this authority. Since the complainant had signed the apartment buyer agreement out of his own accord and free will, he is also bound by the terms and condition of the said apartment buyer agreement. It is submitted that as per clause 3.1, the date of possession will be 4 years from the start of construction or execution of this agreement, whichever is later. It is submitted that the agreement in question was executed on 21.01.2014 and the complainant on said date had specific knowledge that the construction was yet to be started and it was specifically made aware that the construction of the project shall begin soon. It

is submitted that the construction of the project started on 16.10.2014 as duly mentioned in annexure P16 submitted by complainant himself. Thus, legally the period of offer of possession shall start from said date and the date of possession comes to 15.10.2018.

11. 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 unwaiverly commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one has seriously hampered the capability of the respondent to deliver the project as soon as possible. The amounts which were realised from the complainant have already been spent in the development work of the proposed project. On the otherhand, the respondent is still ready to deliver the unit in question after due completion to the complainant, of course, subject to payment of due instalments and charges.

12. It has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of

balance consideration and charges of the unit in question. If such frivolous and foundation less allegations will be admitted then its other genuine allottees of the project, will stand to be adversely affected. In these circumstances, the present complaint deserves to be dismissed.

13. Admittedly completion of project is dependent on collective payment by all the allottees and just because few of the allottees paid the amount demand does not fulfil the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by respondent, resulting in delay of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds. A brief detail of the expenditure showing the bonafide intention of the respondent that the respondent is trying to complete structure out of his own fund is as follow:

- Total no. of units – 544
- Units sold - 238
- Total amount spent on construction - Rs. 165.13 Cr
- Total amount received from customers - Rs. 123.23 Cr



- Total amount demanded from customers - Rs. 162.46 Cr (it could increase further since company has stopped raising demand to defaulter customer service)
- Developers contribution - Rs. 41.90 Cr

14. In the present case in order to compensate the delay against the project in question i.e Coban Residencies, the respondent had also paid an amount of Rs. 3,10,000/- against the unit of complainant, but now the complainant has become dishonest and is trying to get dual benefit by seeking interest. It is submitted that the respondent had already paid an amount equivalent to interest at the prescribed rate as per RERA upto the month of January 2019 to the complainant. The credit notes issued in lieu of said payment are attached herein as annexure R-1 to R4. The amount paid by respondent is must more than the interest for the period of 16.10.2018 (i.e. date of delivery of possession) to 16.01.2019 and the balance amount shall be adjusted in future payments. It is submitted that prescribed rate of interest on the payment made by complainant comes to Rs. 2,97,000/- and the respondent had already compensated the complainant by Rs. 3,10,000/-.

**Determination of Issues-**

15. As regards **the issue no. i, iii and v** raised by the complainant, it is to be noteworthy from the perusal of record and the submissions made by the parties, as per clause 3.1 of the apartment buyer agreement dated 21.01.2014, possession of the unit in question was to be delivered within a period of 4 years from the date of commencement of construction or date of execution of agreement, whichever is later. Relevant portion of the clause 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 within 4 years of the start of construction or execution of this Agreement whichever is later.”

As per demand letter cum invoice dated 03.01.2017, the date of start of construction is 16.10.2014 which is later than the date of execution of buyer's agreement dated 21.01.2014. Hence on calculation the due date of delivery of possession from the date of start of construction comes out to be 16.10.2018, However, the respondents has failed to deliver the possession till date even after a delay of 5 months and 4 days which is in violation of section 11(4)(a) of the Act ibid.

However, the authority is of the view that order for refund of amount paid by the complainant at this belated stage would not serve the ends of justice and also hamper the interest of other allottees as well who wishes to continue with the project. Thus, the complainant is entitled for delayed possession charges at prescribed rate of interest @ 10.75% p.a. on the deposited amount in terms of section 18 of the Act ibid till offer of possession.

16. As regards **issue no. ii** raised by the complainant, the complainant has failed to produce any documentary evidence to prove that there is any kind of alleged misrepresentation made by the respondents regarding the timeframe of delivery of unit as well delay in giving possession. Hence, this issue cannot be decided in favour of complainant for the want of documentary evidence.

**Findings of the authority-**

17. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s Emaar MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later

stage. 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. 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.

18. As per clause 3.1 of the apartment buyer agreement dated 21.01.2014 for unit no. T-6/803, tower T6, in project 'Coban Residencies' Sector 99-A, Gurugram, possession was to be handed over to the complainant within a period of 4 years from the date of commencement of construction or date of execution of agreement, whichever is later i.e 16.10.2014 which comes out to be 16.10.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs 86,68,911/- to the respondent against a total sale consideration of Rs 96,21,400/-. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest @ 10.75% p.a. w.e.f 16.10.2018 as per the

provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

**Decision and directions of the authority -**

19. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:-

- (i) The respondent is liable to pay delay possession charges at the prescribed rate of interest @ 10.75% from the due date of delivery of possession i.e. 16.10.2018 till offer of possession to the complainant.
- (ii) The interest so accrued from due date of delivery of possession i.e. 16.10.2018 till the date of order i.e. 20.03.2019 be paid within 90 days from the date of order and monthly interest be paid subsequently on 10<sup>th</sup> of every month.
- (iii) Both the parties are directed to sort out their matter amicably w.r.t payment as per statement of account.

20. Since the project is not registered, so the authority has decided to initiate necessary actions against the respondent under section 59 of the Act and the registration branch is directed to do the needful. A copy of this order be endorsed to the registration branch.
21. Complaint stands disposed of.
22. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.03.2019

Judgement Uploaded on 12.04.2019

**(Subhash Chander Kush)**

Member