

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

Complaint no. : 475 of 2022
First date of hearing: 08.03.2022
Date of decision : 08.03.2022

Mayank Manjul
R/O: - H. no. 239, Sector-45,
Gurugram, Haryana

Complainant

Versus

Pareena Infrastructure Private Limited
Regd. Office at: - Flat no. 2, Palm Apartment,
Plot no. 13B, Sector-6, Dwarka, New Delhi-
110075

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Rishabh Jain
Shri Prashant Sheoran

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 10.02.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia

prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of 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. No.	Heads	Information
1.	Name and location of the project	"Coban Residencies" at sector 99 A, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2024
5.	Name of Licensee	M/s Monex infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 35 of 2020 issued on 16.10.2020 up to 11.03.2024
7.	Apartment no.	T-2, 1402 [page no. 37 of complaint]
8.	Unit measuring	1997 sq. ft. [page no. 37 of complaint]
9.	Date of provisional allotment	27.11.2013

	letter	[page no. 33 of complaint]
10.	Date of execution of Flat buyer's agreement	04.04.2014 [page no. 35 of complaint]
11.	Date of start of construction	16.10.2014 [as per applicant's ledger dated 24.01.2022 on page no. 71 of complaint]
12.	Total consideration	Rs. 1,17,57,716/- [as per applicant's ledger dated 24.01.2022 on page no. 74 of complaint]
13.	Total amount paid by the complainant	Rs. 1,17,52,968/- [as per applicant's ledger dated 24.01.2022 on page no. 74 of complaint]
14.	Due date of delivery of possession	16.10.2018 [calculated from the date of start of construction as it is later than the date of execution of agreement]
15.	Possession clause	3.1 POSSESSION 3.1 "That the developer shall, under normal conditions subject to the 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 , as per the said plans and specifications seen and accepted by the Flat Allottee.
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Delay in handing over of	3 years, 04 months, 20 days

	possession till the date of decision i.e., 08.03.2022	
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B. Facts of the complaint

3. That the respondent published very attractive brochure, highlighting the group housing complex called '**Coban Residences**' at sector - 99A, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers including the complainant to buy the apartment in the project. There are fraudulent representations, incorrect and false statements in the brochure.
4. That complainant was impressed by their oral statements and representations and ultimately booked an apartment in the project by paying Rs.8,50,000/- as booking amount to the respondent via two cheques amounting 4,00,000/- and Rs. 4,50,000/-.
5. That complainant made various payments and in total, paid a sum of Rs.20,49,096/- i.e., more than 17% of the apartment cost till 15th October 2013 but even then, the respondent did

not execute the apartment buyer agreement with the complainant.

6. That respondent violated section 13 of the Act, 2016 by taking more than 10% cost of the apartment before the execution of the apartment buyer agreement. The total cost of the apartment is Rs.1,18,38,230/- while he had collected a total sum of Rs.20,49,096/- till 15th October 2013, which is more than 17% of the total cost of the apartment.
7. That the provisional allotment letter for the above said unit was issued on 27.11.2013.
8. That an apartment buyer agreement was executed between the parties on 4th April 2014 for a total sale consideration of Rs. 1,18,38,230/- inclusive of preferential location charges for three side open amounting Rs.2,03,694/-, EDC & IDC amounting Rs.9,80,527/-, club membership charges amounting Rs.2,00,000/-, interest free maintenance security deposit amounting Rs.99,850/-, car parking charges amounting Rs.3,50,000/- and power back up charges amounting Rs.1,25,000/-. At that time, the respondent had already received a sum of Rs.20,49,096/-.

9. That the date of handing over the possession of the apartment as per clause 3.1, page-14 of the apartment buyer agreement comes out to be 4th April 2018, calculated from the date of execution of the said agreement.
10. That the complainant, in total, paid a sum of Rs.1,19,07,141/- as and when demanded by the respondent. Still the respondent failed to timely handover the possession of the apartment, even after a delay of 3 years and around 10 months and has failed to pay delay possession charges to the complainant till date.
11. That complainant approached the respondent and pleaded for delivery of possession of his apartment as per the apartment buyer agreement on various occasions. But respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of his apartment.
12. That respondent is responsible and accountable to the terms and conditions prescribed in the apartment buyer agreement. The respondent is bound to pay the interest on the deposited

amount to the complainant if there is a delay in handing over the possession of the apartment.

C. Relief sought by the complainant:

13. The complainant has sought the following relief:

(i) Direct the respondent to handover the physical possession of the apartment at the prescribed rate of interest and after receiving all the required permissions and approvals from the competent authorities.

14. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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.

15. 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.

16. That the construction of the said project is at an advance stage and the structure of various towers has already been

completed and remaining work is endeavoured to be completed as soon as possible.

17. That the project is near completion and within a very short span of period it will be completed and thereafter possession shall be offered after obtaining occupancy certificate as agreed in builder buyers' agreement.
18. That baseless and unsubstantiated oral allegations are made by allottee 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, the interest of other genuine allottee of the project will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.
19. That admittedly completion of the project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfill the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulting in the delay of completion of the

project, yet the respondent is trying to complete the project as soon as possible by managing available funds.

20. That over a period of time numerous allottees have defaulted in their payments at the relevant stages of construction and it is not possible to construct with inadequate funds. Thus, the situation of non-payment of the amount by the allottees is beyond the control of the respondent. It is submitted that even in the apartment buyer agreement it was stated that a period of 4 years was subjected to normal conditions and force majeure and with any stretch of imagination situations faced by respondents are not normal.

21. That other than above stated factor there are lots of other reasons which either hamper the progress of construction of and in many cases complete stoppage of construction work. Such as detailed below:

- NGT vide order dated 07.04.2015 had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It had further been directed by virtue of the aforesaid order that all the registration authorities in

the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.

- NGT vide order dated 19.07.2017 had directed that no stone crushers be permitted to operate unless they obtain consent from the State Pollution Control Board, no objection from the concerned authorities and the environmental clearance from the competent authority.
- NGT vide order dated 08.11.2016 had directed that all brick kilns operating in NCR, Delhi would be prohibited from working for a period of one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.
- Environment Pollution (Prevention and Control) Authority vide its order dated 07.11.2017 had directed to closure of all brick kilns, stone crushers, hot mix

plants etc. with effect from 7th of November 2017 till further notice.

- NGT had passed the said order dated 9th of November 2017 completely prohibiting the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing (17th of November 2017). By virtue of the said order, National Green Tribunal had only permitted the completion of interior finishing/interior work of projects. The order dated 9th of November 2017 prohibiting construction activity was vacated vide order dated 17th of November 2017.
- Haryana State Pollution Control Board, Panchkula had passed the order dated 29th of October 2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27th of October 2018. By virtue of order dated 29th of October 2018 all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) were

directed to remain closed in Delhi and other NCR Districts from 1st to 10th November 2018.

- NGT vide order dated 24.07.2019 had again directed immediate closure of all illegal stone crushers in Mahender Garh, Haryana who have not complied with the siting criteria, ambient air quality, carrying capacity and assessment of health impact. The Tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.
- That Municipal Corporation, Gurugram had passed order dated 11th of October 2019 whereby construction activity had been prohibited from 11th of October 2019 to 31st of December 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.

22. That from March 2020 till now, there have been several months where construction work was completely stopped either due to nationwide lock down or regional restrictions,

furthermore metro cities like Gurgaon and Delhi suffered from a major outburst of COVID cases and deaths in such a number which can't be comprehended.

23. That developers were helpless in these times since they had no alternative but to wait for the situation to come under control. That even RERA has extended the time limits for completion of project vide notification dated 26-05-2020, by six months. But the aforesaid was the period evidencing the first wave but the relaxation in restrictions were seen at the end of year 2020 however soon thereafter our country saw a more dangerous variant of COVID from the month of March 2021 and only recently restrictions have been lifted by the government. That whole of this consumed more than 11 months wherein 2/3rd time there could be no construction and rest of the time construction progressed at very slow pace to several restrictions imposed by state government on movement and number of persons allowed etc.

24. That it is the admitted fact that the builder buyer agreement was executed between the parties on 04-04-2014. However, certain extremely important facts were concealed by the

complainant while drafting the present complaint. That the complainant has intentionally provided details of payments only but concealed the facts whether the payments were made on time or not. It is submitted that material, labour and other requirements does not comes for free and if allottees wishes to get the possession on time than it is their legal duty to pay on time, since without money it is not possible to construct on time.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

26. 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

27. 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 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; The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

28. 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.

F. Findings on the objections raised by the respondent.

F.1 Objection regarding delay due to force majeure.

25. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic, stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 04.04.2014, as per the possession clause of the agreement the possession of the said unit was to be delivered within 4 years from the date of start of construction or execution of this agreement whichever is later. The due date of possession is calculated from date of start of construction as it is later than the date of execution of agreement i.e., 16.10.2014, which comes out to be 16.10.2018. The authority is of the view that the events

taking place do not have any impact on the project being developed by the respondent. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

F. II. Objection regarding Timely payments:

26. The respondent has alleged that the complainant having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. The authority is of view that the respondent cannot take advantage of this objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of 3 years, 04 months, 20 days. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Moreover, there is no document on file to support the contentions of the respondent regarding delay in timely payments.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant had sought following relief(s):

- (i) **Direct the respondent to handover the physical possession of the apartment at the prescribed rate of interest and after receiving all the required permissions and approvals from the competent authorities.**

28. In the present complaint, the complainant intend to continue with the project and is 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."

27. Clause 3 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

***"Clause 3.1-* That the developer shall, under normal conditions subject to the 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**, as per the said plans and specifications seen and accepted by the Flat Allottee (with additional floors for**

residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the developer may consider necessary or may be required by any competent authority to be made in them or any of them. To implement all or any of these changes, supplementary sale deed/agreement. If necessary, will be got executed and registered by developer which the flat allottee undertakes to execute. If as a result of the above alteration etc., there is either reduction or increase in the super area of the said flat or its location, no claim, monetary or otherwise will be raised or accepted except that the original agreed rate per sq. mtr./sq. ft. and other charges will be applicable for the changed area i.e., at the same rate at which the said flat was registered/booked or as the developer may decide and as consequence of such reduction or increase in the super area, the developer shall be liable to be refund without any interest only the extra basic price and other pro rate charges recovered or shall be entitled to recover the additional basic price and other proportionate charges without any interest as the case may be. If for any reason, the developer is not in position to allot the said flat applied for, the developer, at its sole discretion, shall consider for any alternative property or refund the amount deposited with simple interest @10% per annum.

28. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreements and in compliance with all provisions, formalities and

documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

29. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood

by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, proviso to section 18 provides 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 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 subsection (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.

31. 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.
32. 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., 08.03.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% per annum.
33. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be

liable to pay the allottees, 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.”*

34. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

35. 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 section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of fact that flat buyer's agreement executed between the parties on 04.04.2014, the possession of the booked unit

was to be delivered within a period of 4 years of the start of construction or execution of this agreement, whichever is later. The due date of possession is calculated from date of start of construction as it is later than date of execution of agreement i.e., 16.10.2014, which comes out to be 16.10.2018.

36. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 16.10.2018 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

37. 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 is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 16.10.2018 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The complainant is also directed to pay the outstanding dues, if any.

iv. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

38. Complaint stands disposed of.

39. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.03.2022


HARERA
GURUGRAM