

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

**Complaint no.** : 2009 of 2021  
**First date of hearing:** 06.05.2021  
**Date of decision** : 08.03.2022

Sarvesh Kumar  
Address: H4-703, AWHO Society,  
Gujinder Vihar, Pari Chowk, Greater Noida.

**Complainant**

Versus

Pareena Builders & Promoters Pvt. Ltd.  
**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 Rakshith Srivastava  
Shri Prashant Sheoran

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 08.04.2021 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(5) 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	"Om Apartments" at village bajghera, sector-112, Gurugram
2.	Nature of the project	Affordable group housing colony
3.	Project area	5.025 acres
4.	DTCP license no.	49 of 2019 issued on 07.03.2019 valid up to 06.03.2024.
5.	Name of license holder	Pareena Builders & Promoters Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 24 of 2019 issued on 13.05.2019 valid up to 31.03.2024
7.	Apartment no.	2504, 25 <sup>th</sup> floor, tower- T2 [annexure C/10 on page no. 46 of complaint]
8.	Unit measuring	601.27 sq. ft. [annexure C/10 on page no. 46 of complaint]
9.	Date of execution of Flat buyer's agreement	16.12.2020





		[annexure C/10 on page no. 43 of complaint]
10.	Date of allotment letter	01.07.2020 [annexure 3 on page no. 31 of complaint]
11.	Tripartite agreement	13.01.2021 [page no. 72 of complaint]
12.	Environment clearance date	Not provided
13.	Building plans date	Not provided
14.	Total consideration	Rs. 24,54,110/- [as per the agreement on annexure C/10 on page no. 47 of complaint]
15.	Total amount paid by the complainant	Rs. 1,22,706/- [as alleged by complainant in his complaint]
16.	Percentage of Amount paid	5%
17.	Possession clause	<b>8. Possession</b> <b>8.1.</b> Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the promoter/developer and not being in default under any part hereof and apartment buyers agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, stamp duty and registration charges, the promoter/ developer proposes to offer possession



		of the said apartment to the allottee <b>within a period of 4 years from the date of approval of building plans or grant of environmental clearances(herein refereed to as the commencement date), whichever is later.</b> (page 52 of complaint)
18.	Due date of possession	<b>Cannot be ascertained</b>
19.	Offer of possession	Not offered
20.	Occupation certificate	Not obtained

**B. Facts of the complaint**

3. That the complainant approached the respondent for booking a residential unit in the project named as Om Apartment located at village bajghera at sector 112 Gurugram under the affordable group housing policy.
4. That complainant submitted a booking form and paid a booking amount of Rs. 1,22,706 as 5% of the total sale consideration as per the payment plan.
5. That on 01.07.2020, the complainant was allotted unit no. 2504 on 25<sup>th</sup> floor, in tower 2 vide draw of lots as per the rules of the said policy.
6. That the clause 5(iii)(b) of the Haryana Affordable Housing Policy, 2013 mentions that the applicant would be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. The balance 75% amount would be recovered in six equated six-monthly instalments spread over three-year period, with no interest falling due before the due date for payment. The same was agreed upon by the





complainant through the application for allotment of the project.

7. That post receiving the allotment letter, complainant approached the bank (SBI) for sanction of loan towards the unit allotted to him, for payment of further instalments without any delay. However, the bank informed him that it need signed copy of agreement for sale along with other documents in order to process the loan for paying further instalments.
8. That vide e-mail dated 14.07.2020 and demand letter dated 01.07.2020, respondent demanded next instalment due "at the time of allotment" along with the next demand due "within the period of 6 months from the date of the issuance of the allotment letter" i.e., 32.5% of the total price instead of 20% of the total cost, all at once for a total sum of Rs.8,06,824 - without even executing the agreement for sale.
9. That after receiving such huge demand at once, the complainant approached bank for early sanction of loan so that he can pay the due demands on time. However, the complainant was informed by bank that the loan amount cannot be sanctioned without executing the agreement for sale. So, complainant communicated the same to the respondent via email dated 19.07.2020 and asked for agreement for sale to which he had no prior knowledge as a first-time buyer. The respondent never even informed the complainant of all the documenting formalities which were supposed to be done at the time of allotment of unit.





10. That the respondent vide its email dated 24.07.2020 informed the complainant that due to some technical issue at court, there is a temporary halt and agreement for sale cannot be executed for the time being.
11. That the respondent without executing the agreement for sale and registering the same at first place, started sending reminders asking complainant to clear the untimely raised demands and started incurring interest on same. When complainant again requested the status of agreement for sale, the respondent informed through email that there is no exact information regarding registration but tentatively it will start after 15th August 2020.
12. That again the respondent raised the next demand due at the stage of "within 12 months from the date of allotment" on 19th August 2020 amounting to Rs.3,09,832/- along with previous dues and interest thereon, which was supposed to be raised around June'2021 and asked to clear the amount on or before 03rd September 2020 which is way before the timeline of the payment plan agreed and stated by the Haryana Affordable Housing Policy, 2013.
13. That, to the shock of complainant, respondent again sent a reminder letter dated 09.12.2021 for payment of the pending dues along with interest without entering in agreement for sale with the complainant, for which he was regularly following up with the representatives of the respondent.





14. That, after many requests and much persuasion by the complainant, respondent finally executed agreement for sale on 16.12.2020, with complainant.
15. That the complainant soon after executing the agreement for sale approached the State Bank of India, branch- Delhi RACPC with all the documents and the bank generated the sanction letter dated 05.01.2021 in favour of complainant for home loan amounting to Rs.22,00,000/ and further on 13.01.2021, the complainant entered into a tripartite agreement with bank and the respondent for disbursal of such loan amount to pay of the demands raised by respondent.
16. That the complainant through various emails requested the respondent to issue a fresh demand and NOC for disbursal of loan amount in order to pay for demands raised. However, the respondent paid no heed to the innumerable requests of complainant and kept on ignoring the emails and voice calls for no reason whatsoever.
17. That respondent issued a final intimation letter dated 10.02.2021 to him, informing that, if the pending dues are not cleared by 24th February 2021, the unit allotted to him would be cancelled. The respondent even published the notice in the local newspapers regarding the same in accordance with the Affordable Housing Policy, 2013. The said intimation did not even mention the amount payable, or the interest amount imposed upon the complainant to be cleared.
18. That after receiving such letter, complainant visited respondent's office several times in order to get the NOC



released so that the loan amount can be disbursed, and he can save his first owned property. However, nobody even met him personally or provided with the documents required for making necessary payments which is clear from the emails dated 10.02.2021, 16.02.2021, 18.02.2021 & 19.02.2021 sent by the complainant. It was clear from the respondent's behaviour that it didn't want the demands to be paid but to cancel the allotment and sell it to somebody else on premium amount, paid in cash, over and above the cost of the said unit.

19. That complainant tried to settle the matter amicably and issued a legal notice also to avoid litigation, to get the rightful reversal of the penalty unjustifiably levied upon him and to save the allotted unit from cancellation but the respondent was in no mood to admit its wrong doings and reverse the unfounded illegal penalty amount or to avoid the cancellation by accepting the payment.
20. That respondent vide email dated 24.03.2021 informed the complainant that his refund cheque is ready, and the said unit has been cancelled which is a clear abuse of power and the way of harassing the innocent customers like complainant.

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

21. The complainant has sought the following relief:
  - (i) Direct the respondent to revoke the interest/penalty imposed by the respondent for the delay in payment of untimely demands raised by the complainant.





- (ii) Direct the respondent to restore the said allotment and revoke the final intimation letter dated 10.02.2021.

22. 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(5) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

23. That the present complaint is not maintainable in the present form, since the allotment of complainant has already been cancelled thus the complainant is not an allottee of the respondent. Thus, he has no right to approach this hon'ble authority as per provisions of RERA.
24. That the project in question is an affordable housing project, governed by affordable housing policy for all purposes. The said policy very clearly defines the mode of payment, time of payment, interest on defaults, and cancellation on account of non-payment. Thus, both complainant and respondent are bound by those terms and conditions.
25. That total sale consideration of the flat booked by the complainant was 24,50,110 without taxes and taxes were be charged as per prevailing taxes. That as per the payment plan of affordable housing policy as defined in clause 5(iii) (b) initial 5% was paid by the complainant at the time of filing of the application. 20% of the amount was paid by the complainant at the time of allotment. The rest of the amount





was to be paid by the complainant in 6 equated six-monthly instalments spread over three years.

26. That as per affordable housing policy as amended in 2019 "In case of re-allotment resulting after the surrender of flats as well as allotment of leftover flats, the maximum amount recoverable at the time of such allotment was to be equivalent to the amount payable by other allottees in the project at that stage" and in the present case the unit in question was allotted to the complainant in a third draw of flats. Thus, it was a case of re-allotment. That earlier the unit in question was being allotted to Sh. Gurpreet Singh. However, first allottee opted to withdraw from the project and requested to cancel the unit allotted to him vide e-mail dated 07-01-2020. The unit was cancelled, and the appropriate amount was refunded to the said allottee after deducting money as per provisions of affordable housing policy.
27. That thereafter in due course of procedure the unit in question was allotted to the present complainant. That complainant specifically knew that his allotment was done as re-allotment and as per affordable housing policy (amended), he was bound to pay the same amount which other allottees were paying at that time. Thus, the respondent demanded 20% amount for allotment and 12.5% amount charged within six months of allotment as six months had already passed from previous allotment and currently the period of first demand out of the six demands was going on. Thus, respondent had demanded an amount of Rs. 8,06,792 from the complainant as per terms





of affordable housing policy, but the complainant never paid the amount due towards allotment and the first instalment out of six. The reminder for the same was sent on 08.08.2020.

28. That yet again the complainant did not adhere to the request of respondent and failed to pay the amount due. Consequently, respondent sent another letter on 19 Aug 2020 demanding an amount of Rs. 11,24,742 against second milestone i.e., 2nd instalment out of six instalments. But as always, no payment has been made by the complainant. The reminder for the same has been sent on 09.12.2020.
29. That in the present case the complainant has challenged the cancellation of the unit on several grounds. The one of the grounds is the issuance of untimely demand letters i.e., 01-07-2020 and dated 19-08-2020. To understand the validity of these demand letters, it is important to clarify the allotment process in the project in question from its very inception, since as per affordable housing policy 2019 "the maximum amount recoverable at the time of such allotment was be equivalent to the amount payable by other allottees in the project at that stage" thus all the allottees who have allotted flats either from leftover flats or from surrendered flats are liable to pay the amount which the builder was entitled to receive from other earlier allottees in the same project.
30. That following facts play the crucial role i.e.,
- That after launching the project the respondent advertised for the draw of flats in its project in the newspaper on 17th June 2019.



- That based on said notification/advertisement, first draw was held on 14th August 2019. That after successful draw the respondent issued second advertisement for leftover flats on 27 August 2019. That in that draw of lot the previous owner of the flat in question i.e., Gurpreet Singh applied for allotment and the same was allotted to him on 24-12-2019.
- That even after the above-stated advertisement few flats were still left over. Thus, the respondent issued third advertisement on 06-01-2020 for allotment of flats. That in the meantime on 07-01-2020 the previous owner requested for cancellation of his unit and the same has been cancelled accordingly and in the due course of procedure same was allotted to the complainant.
- That from these circumstances, it is clear that the complainant falls within the case of re-allotment as per affordable housing policy 2019 and the respondent is entitled, and the complainant is liable to pay the same amount which other allottees are paying at that stage. i.e., allottees from the first draw.

31. That thereafter, an agreement to sale was executed between the parties on 16-12-2020. After execution of an agreement to sale, a tripartite agreement dated 13-01-2021 was also executed between the parties and state bank of India to obtain a loan. That even after all this, the complainant has failed to pay even a single penny to the respondent against demands





raised. Thus, as a last resort the respondent issued a final letter cum intimation of cancellation on 10-Feb-2021 and granted 15 days as per the affordable housing policy after complying necessary procedure.

32. That instead of making payment the complainant issued a legal notice dated 23-Feb-2021 to the respondent taking false and frivolous ground and allegations and the said legal notice has been duly replied by the respondent through its counsel vide reply dated 03-03-2021. Since, the complainant failed to pay the amount, demanded the unit allotted was cancelled and an e-mail was sent in this regard to the complainant to collect the balance amount after appropriate deductions as per affordable housing policy.
33. That the complainant is trying to hide behind the alleged non-execution of the builder buyer agreement and taking of loan and trying to create a fictitious reason for not making the payment of balance instalments by making completely illogical allegations against the respondent. It is submitted that the affordable housing policy in terms of which complainant had been allotted a flat has no concern with the execution of the builder buyer agreement. The policy clearly states that the payments have to be made in the context of the allotment of the flat and not in the context of the builder buyer agreement. Furthermore, there is no lapse on part of the respondent to execute the builder buyer agreement.
34. That when the builder buyer agreement was executed, the complainant was bound to make payment of all the due



instalments which were payable not only in the context of the affordable housing policy but in the context of the payment plan adopted by him. Despite the execution of the agreement, the complainant continued to withhold the payment of balance instalments. As far as the loan is concerned, the respondent had extended all possible cooperation to the complainant for availing of a loan. Even a tripartite agreement in this regard with the State Bank of India has been executed.

### **E. Jurisdiction of authority**

35. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. 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**

36. 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**

37. 11(5) of the Act provides that the promoter may cancel the allotment only in terms of the agreement for sale. Section 11(5) of the Act is reproduced as hereunder:



**Section 11(5)**

*The Promoter may cancel the allotment only in terms of the agreement for sale:*

*Provided that the allottee may approach the authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.*

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 relief sought by the complainant.**

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

- (i) Direct the respondent to revoke the interest/penalty imposed by the respondent for the delay in payment of untimely demands raised by the complainant.
- (ii) Direct the respondent to restore the said allotment and revoke the final intimation letter dated 10.02.2021.

38. On consideration of the documents available on record and submissions made by both the parties, the authority observes





that the project is an affordable housing project, and it shall be governed as per affordable housing policy 2013. As per the affordable housing policy the respondent advertised for the draw of flats in its project in the newspaper on 17.06.2019. The first draw was held on 14.08.2019. After successful draw the respondent issued second advertisement for leftover flats on 27.08.2019. In that draw, previous owner of the flat sh. Gurpreet Singh applied for the allotment and the same was allotted to him on 24.12.2019. Further on 07.01.2020, previous owner requested for cancellation of flat allotted to him and as per request, the said flat has been cancelled. Thereafter on 01.07.2020 the said flat was allotted to the complainant under those circumstances. Thus, the complainant falls under the case of re allotment as per affordable housing policy, 2013 which was amended vide order dated 05.07.2019. The relevant part of the Affordable housing policy 2013 amended vide order dated 05.07.2019 is reproduced as under:

4 c. After existing clause no. 5 (iii) (j) of the Annexure -A of notification dated August 2013, the following **clause 5(iii) (k)** is inserted: -

*"k. In case of re- allotment resulting after surrender of flats as well as allotment of left-over flats, the maximum amount recoverable at the time of such allotment shall be equivalent to the amount payable by other allottees in the project at that stage."*

39. Thus, the complainant falls within the case of re allotment as per the affordable housing policy, 2019 and he is liable to pay the same amount which other allottees are paying at that stage i.e., allottees from the first draw. It is clear that the allottees





were on the stage of 2<sup>nd</sup> instalments after allotment in August 2020. Thus, the new allottee such as complainant was also liable to pay as per the same stage in view of affordable housing policy 2019 and he cannot demand fresh start of payment plan. The demand raised by the respondent is legal and valid and the respondent has every right to raise the demand and the complainant is liable to pay the same.

40. The respondent has demanded 20% of the amount for allotment and 12.5% amount charged within 6 months of instalments as 6 months has already been passed from the previous allotment and the first demand out of six demands was going on at that time. The respondent had demanded Rs. 8,06,792 from the complainant due towards allotment and the first instalment out of six. For such amount a reminder was sent on 08.08.2020. Further, the demand for Rs. 11,24,742 was raised on 19.08.2020 and reminder for such payment was issued on 09.12.2020. The respondent further issued final intimation letter dated 10.02.2021 to complainant and informed that if pending dues were not cleared by 24.02.2021, the unit allotted to him would be cancelled.
41. In consonance of clause 5(iii) (i) of the Affordable Group Housing Policy, the respondent issued a public notice in the hindi newspaper i.e., The Hindustan and the english newspaper 'Hindustan Times'. As per the notice all the applicants whose payments were not received within 15 days from the date of the advertisement would be termed as surrender as per the affordable housing policy,2013. The



relevant part of the Affordable housing policy 2013 is reproduced as under:

**Clause 5(iii) (i) of the affordable housing policy:**

*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also **an amount of Rs 25.000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant.** Such flats may be considered by the committee for offer to those applicants falling in the waiting list"*

42. This shows that the respondent has followed the prescribed procedure as per clause 5(i) of the policy 2013 and cancelled the unit of the complainant after due notice and following the due procedure as prescribed.
43. As per section 11(5) of Act of 2016, the promoter shall cancel the allotment in terms of agreement for sale only. The allotments in this project were made as per provisions of affordable housing policy and accordingly, this becomes part and parcel of the agreement for sale. The cancellation has been done after following the due procedure and complainant was unable to give any reason that cancellation has not been done as per provisions of the Affordable Housing Policy.
44. As the cancellation of the unit is valid as per due procedure of law, the respondent-promoter should have refunded the





amount after deducting Rs.25,000/- as specified under clause 5 (iii) (i) of said policy and refund the balance amount to the complainant.

**G. Directions of the authority**

45. 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 refund the balance amount of complainant after deducting Rs.25,000/- within period of 90 days and failing which legal consequences would follow.

46. Complaint stands disposed of.

47. File be consigned to registry.

V.K. Goyal

(V. K Goyal)  
Member

**HARERA**  
**GURUGRAM**

Dr. K.K. Khandelwal

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 08.03.2022