

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

Complaint no. : 2280 of 2018
First date of hearing : 20.03.2019
Date of decision : 20.03.2019

Smt. Sonia Bansal

R/o : House no 2190, Sector 13, Urban Estate,
Karnal

Complainant

Versus

M/s. Pareena Infrastructure P. Ltd.

Corporate Address : C-1 (7A), 2nd floor, Omaxe
City Centre, Sohna Road, Gurugram, Haryana.

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE

Shri Parkash Singh Advocate for the complainant

Shri Prashant Sheoran Advocate for the respondent

ORDER

1. A complaint dated 21.12.2018 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 Smt. Sonia Bansal against the respondent M/s. Pareena Infrastructure Pvt Ltd, for the unit described below in the project "Mi Casa"



located at Sector 68, Gurugram being developed by the respondent on account of delay in delivery of possession which is in violation of section 11(4)(a) of the Act.

2. Since the allotment letter was issued on 15.07.2015 i.e prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	"Mi Casa" at Sector 68, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	12.25 acres
4.	DTCP license no.	92 of 2014 94 of 2014 111 of 2013
5.	Date of allotment letter	15.07.2015
6.	Date of apartment buyer's agreement	Not executed
7.	Allotted flat/unit no.	1204-A, tower 5
8.	Measuring area of the allotted unit	1245 sq. ft.
9.	RERA Registration status	Registered
10.	RERA registration no	99 of 2017
11.	Revised date as per RERA registration certificate	30.06.2022



12.	Due date of delivery of possession	cannot be ascertained
13.	Total consideration (as per page no 4 of application form)	Rs. 83,85,367.50/-
14.	Total amount paid by the complainant till date	Rs.14,02,192/-
15.	Payment plan	Construction linked payment plan
16.	Delay in delivery of possession till date	Cannot be ascertained

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 allotment letter dated 15.07.2015 is available on record for the aforesaid unit. 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 appeared on 20.03.2019. The case came up for hearing on 20.03.2019. The reply has been filed by the respondent which has been perused by the authority.



FACTS OF THE COMPLAINT

6. The complainant submitted that one of the representative of the respondent company contacted the complainant and inspired him to book 2 BHK flat in a group housing colony purposed in Sector 68, Gurugram.
7. The complainant also submitted that he paid total amount of Rs 14,02,192/- to the respondent duly acknowledged by the respondent vide receipts.
8. The complainant also submitted that on 18.02.2015, the complainant sent a letter through registered post to the respondent requesting for refund of total amount of Rs 14,02,192/-. After receipt of the letter dated 18.02.2015, the respondent sent the allotment letter on 15.07.2015.
9. The complainant also submitted that the respondent vide letter dated 17.08.2016 assured to settle the matter and the complainant visited the office of the respondent but the matter was not solved.
10. The complainant also submitted that the complainant received the copy of draft apartment buyer agreement for signing wherein the price of the flat was abnormally escalated and due



to which the complainant has not submitted the same in the office of the respondent.

11. The complainant also sent a legal notice to the respondent.

ISSUES TO BE DETERMINED

12. The issues raised by the complainant as follows :-

- i. Whether the respondent is liable to refund the total amount of Rs 14,02,192/- along with interest at the rate of 18% per annum from the date of deposit i.e 20.11.2013, 30.04.2014 and 22.05.2015 ?
- ii. Whether the respondent has failed to deliver the possession of the booked unit by the due date?

RELIEF SOUGHT

13. The relief sought by the complainant is as follows :

Direct the respondent to refund the entire amount of Rs. 14,02,192/- to the complainant along with interest from the date of payment.

RESPONDENT'S REPLY

14. The respondent submitted that the construction work 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.



15. That the respondent is committed a real estate developer, who is developing various residential colonies as per rules and law.
16. That as it would be detailed extensively here-in-after despite of non-payment of due charges including the instalments regarding the sale price of the unit in question and development charges, the respondent owing to its commitment to its customers has been raising the construction of the said colony.
17. That quite conveniently certain pertinent fact has been concealed by the complainant. The concealment has been done with a motive of deriving undue benefit through an order, which may be passed by this Hon'ble Authority at the expense of the respondent.
18. The respondent also submitted that after having gaining the knowledge from a broker namely axiom properties qua development of "Coban Residences" in Sector-99A, Gurugram, the complainant approached the respondent and requested for an allotment of a unit in Coban Residences and paid an amount of Rs. 5,00,000 for the same vide cheque dated 20-11-2013. Thereafter on 06-02-2014 complainant moved an application form in this regard through a broker namely



Axiom properties. That the said cheque which was given against booking was got cleared on 10-02-2014. The respondent also obtained a licence for development of a residential group housing colony in Sector-68, Gurugram, which is being developed as the project in question, i.e. MICASA, the complainant gained the knowledge of development of the project in Sector-68 as well. To her sole discretion, the complainant decided that she was more interested in having an unit in the project in question than in Coban Residences. Accordingly, the complainant yet again approached the respondent through same broker namely axiom properties and made a request for substituting the unit on 22-05-2015, which she had been allotted in Coban Residences with a unit in the project in question.

19. That on account of this particular situation and strenuous request made by the complainant, the respondent acceded to the request of the complainant and accordingly, agreed to substitute the unit in Coban Residences with a unit in the project in question. A request for substitution had been made by the complainant in writing.



20. That in order to confirm the allotment of a unit in the project in question, yet, another application form was submitted by her on same day i.e 22-05-2015, seeking allotment of an unit in the project in question. That the complainant even paid an amount of Rs. 2,19,621 vide cheque dated 22-05-2015. That thereafter on 15-july-2015 a unit was allotted in favour of complainant and an allotment letter was issued to complainant in this regard. That there two copies of apartment buyer agreement was sent to complainant along with letter dated 09-09-2015.
21. That the complainant is bound by the terms and conditions of the allotment, which had been agreed through the application form. In terms of the terms and conditions contained therein as well as legally the complainant has no unilaterally right to cancel the allotment or to seek refund of the amount in question
22. That all the allegations which the complainant has made in the complaint are merely oral, false allegations. The allegations of allotment of a flat in the price range of Rs.55 to 60 lacs are unsupported by any sort of documentation.



23. That a legal notice was issued by the complainant through her counsel on 15.03.2018 to the respondent. The said legal notice was duly replied with by the respondent and the correct facts were duly disclosed in the reply.
24. That the respondent continues to develop the project in question despite of there being various instances of non-payments of instalments by the allottees, such as the present complainant.
25. That no reason whatsoever is legally made out for refund of any amount. On the other hand the respondent is still ready to deliver the unit in question of this due completion to the complainant, of course, subject to payment of due instalments and charges including delayed interest by the complainant.
26. The respondent also submitted that it has become a matter of routine that bare 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, who will stand to be



adversely affected. In these circumstances, the present complaint deserves to be dismissed.

DETERMINATION OF ISSUES:

27. As regards the **first issue**, the respondent has committed 30.06.2022 as the date for completion of the project in question in RERA registration certificate no 99 of 2017. After perusal of the photographs of the project in question available on record at page no. 58, the authority is of the view that the structure of the project is complete. Therefore keeping in view the current status of the project in question and revised, the authority cannot grant refund in the interest of the project in question and other allottees.

FINDINGS OF THE AUTHORITY:

28. 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 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.

29. In the present case, the authority has observed that the complainant had paid Rs.14,02,192/- against a total sale consideration of Rs.83,85,367/- for unit no. 1204-A, tower-5, in project "Mi Casa", Sector-68, Gurugram. However, no builder buyer agreement was executed inter-se the parties. Counsel for the respondent contended that the respondent had already sent them a copy of builder buyer agreement which is placed on record. However, the complainant did not come forward to sign the builder buyer agreement which is a lapse on his part. It was a construction linked payment plan. Project is registered with the authority and the revised date of delivery of possession is 30.6.2022. Structure of the project is complete vide photographs at page no. 58 and the due date of delivery of possession is 30.06.2022. The respondent kept on writing to the complainant to make timely deposit of instalments. Again, he did not come forth to deposit the



amount. However, now at this juncture, complainant has come forward to seek refund of his deposited amount under the provisions of Real Estate (Regulation and Development) Act, 2016. Complainant himself is under certain obligations as per provisions of chapter 4, section 19 (6) of the Act *ibid*. If the complainant intends to wriggle out of the project, in that case, the respondent is entitled to forfeit 10% of the basis sale price. Since the complainant himself at a volition and wants to come out of the project, as such, no interest shall be paid on the balance amount.

DECISION AND DIRECTIONS OF THE AUTHORITY:

30. 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. Keeping in view the default on the part of complainant, respondent is directed to forfeit 10% of basis sale price and refund the balance amount deposited by the complainant within 90 days from today



31. The order is pronounced.
32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 20.03.2019

Judgement uploaded on 17.04.2019



HARERA
GURUGRAM

