

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

Complaint no. : 4732 of 2023
Date of complaint : 03.11.2023
Date of order : 28.08.2024

Rajesh Ahuja,
R/o: H. No. 1623, Near Dynasty International
School, Sector-28, Faridabad-121008.

Complainant

Versus

M/s Pareena Infrastructures Pvt. Ltd.
Having Regd. Office at: - Flat no. 2, Palm
Apartment, Plot No. 13B, Sector - 6, Dwarka,
New Delhi-110075.
Also at: C-7A, 2nd floor, Omaxe City Centre Mall,
Sohna Road, Sector- 49, Gurugram-122018.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Kalyan Singh Bhati (Advocate)
Prashant Sheoran (Advocate)

Complainant
Respondent

HARERA
GURUGRAM

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 provision 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	"Micasa", Sector-68, Gurgaon
2.	Nature of the project	Group Housing
3.	Project area	12.25085 acres
4.	DTCP license no.	111 of 2013 dated 30.12.2013 valid up to 12.08.2024 (area 10.12 acre) 92 of 2014 dated 13.08.2014 valid up to 12.08.2019 (area 0.64 acre) 94 of 2014 dated 13.04.2014 valid up to 12.08.2024 (area 2.73 acre)
5.	RERA Registered/ not registered	Registered vide no. 99 of 2017 issued on 28.08.2017 up to 30.06.2022
6.	Allotment letter	16.07.2015 (page 19 of complaint)
7.	Unit allotted	1002, Tower-5, 10 th floor (page 28 of complaint)
8.	Unit admeasuring area	1245 sq. ft. (super area) (page 28 of complaint)
9.	Date of builder buyer agreement	24.11.2015 (page 22 of complaint)
10.	Possession clause	13. COMPLETION OF PROJECT <i>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.</i> (page 35 of complaint)
11.	Date of start of construction	26.04.2016 (date of start of excavation) (page 62 of complaint)
12.	Due date of possession	26.10.2020 [Calculated as 4 years from the date of start of construction i.e., 26.04.2016 as per possession clause + 6 months as per

		HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
13.	Demand letter	04.03.2022 (page 164 of reply)
14.	Pre-cancellation letter	26.03.2022 (page 167 of reply)
15.	Cancellation letter	30.04.2022 (page 169 of reply)
16.	Total sale consideration	Rs.83,32,455/- (as per payment schedule on page 51 of complaint)
17.	Total amount paid by the complainant	Rs.17,16,952/- (as per cancellation letter dated 30.04.2022 on page 169 of reply)
18.	Occupation certificate	Not yet obtained
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submission: -

- I. That the complainant was allotted a residential apartment bearing no. 1002, Tower 5, having 1245 sq. ft. super area in the project of the respondent named "MI CASA" at Sector-68, Gurugram vide apartment buyer's agreement dated 23.07.2015.
- II. That as per clause 13 of the buyer's agreement, the respondent was obligated to hand over possession of the above said apartment to the complainant within 04 years from the date of execution of buyer's agreement.
- III. That the terms in the buyer's agreement are unilateral and therefore it is void ab-initio and does not bind upon the complainant. Further, it is also not mentioned in the said agreement that in case of delay in handing over the possession of the said flat, then how much compensation against delayed possession will be provided to the complainant.

- IV. That according to the said agreement, the complainant had deposited the installments with the respondent as per its demand letter w.e.f. 31.03.2014 to 28.12.2019 and paid the total amount of Rs.17,16,952/- with the respondent in all.
- V. That the respondent had not handed over the possession of the above said apartment to the complainant up to 22.07.2019 which is a sheer violation of the terms and conditions of the said agreement.
- VI. That the complainant also got a loan sanctioned from SBI, RACPL, Sector-16, Faridabad for the balance amount in the month of February 2020 and disbursement was in March 2020, but due to the covid-19 pandemic, lock down, declared on 25.03.2020, all the sanctioned loans were cancelled and postponed for further due course of action due to none of the fault of the complainant.
- VII. That the complainant has many times requested the respondent to handover the possession of the above said apartment, but the respondent always delayed the matter on one pretext or the other and has not handed over the possession to the complainant till date as the project is not completed yet.
- VIII. That seeing the situation of the flats and having discussion with the commercial manager of the respondent, the complainant through its email dated 21.09.2022, cancelled the booking and demanded refund of the amount paid as the flats at the sight were still in doldrums condition and not completed and there were no chances for the completion. Subsequently, the complainant on 11.10.2022, 26.10.2022, 21.11.2022, 09.07.2023, 12.07.2023, 17.07.2023 and 30.07.2023 sent genuine requests and reminders for refund of the paid-up amount but to no avail.
- IX. That through reliable sources it has come into the notice of the complainant that the respondent has cancelled the booking of the complainant in the

year 2021 itself and has sold/re-allotted the said flat to some other customer and which is also not informed to the complainant.

- X. That from above said act and conduct it is crystal clear that the respondent is not interested in handing over the possession of the said apartment to the complainant and also did not want to return/refund the amounts deposited with it.
- XI. That as per clause 13 of the agreement, the complainant is entitled to get compensation from the respondent @9% p.a as a period of 09 years 06 month has elapsed since 31.03.2014 depositing the booking amount.
- XII. That the complainant has already sent cancellation of booking and requested to withdraw from the project and have also send a legal notice dated 11.09.2023 to the respondent by regd. post and it is surprised to note that even on receipts of the legal notice it has not replied. Hence this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to refund the paid-up amount alongwith interest.
 - Cost of litigation.
5. 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(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
- That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "MICASA" at Sector 68, Gurugram.
 - That the construction of the said project is at an advance stage and the construction of various towers has already been completed and the

- respondent has already applied for occupation certificate of the tower in which the unit in question is situated and soon the same will be granted to the respondent.
- iii. That the respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of installments by various allottees.
- iv. That as per the apartment buyer's agreement, the date of delivery of possession was not absolute and was subject to the terms and conditions of agreement itself.
- v. That the construction of the said project was hampered due to non-payment of instalments by the allottees on time and also due to the events and conditions which were beyond the control of the respondent, which have materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:
- a) Delay in construction due to various orders/restrictions passed by National Green Tribunal, Delhi and other competent authorities for protecting the environment of the country.
 - b) Ban on construction due to various court orders as well as government guidelines.
 - c) The major outbreak of Covid-19
- vi. That the complainant is a habitual defaulter and despite receipt of demand letters dated 24.06.2020 and 04.03.2022, the complainant did not come forward to clear his outstanding dues. Accordingly, a pre-cancellation letter dated 26.03.2022 was issued to the complainant before finally cancelling the allotment vide cancellation letter dated 30.04.2022.

7. Copies of all the relevant documents have been filed and placed on the 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.

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 allottee 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;

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.

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 objections raised by the respondent.

F. I Objection regarding force majeure conditions.

12. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, ban on construction construction due to various court orders as well as government guidelines and are covered under clause 13 of the buyer's agreement dated 24.11.2015. As per clause 13 of the agreement, the possession of the apartment was to be handed over within 4 years from the date of start of construction or execution of buyer's agreement, whichever is later. Therefore, the due date of possession is being calculated from the date of start of excavation i.e. 26.04.2014, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession was 26.10.2020. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings regarding relief sought by the complainant

G.I Direct the respondent to refund the paid-up amount alongwith interest.

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

“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,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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.”

(Emphasis supplied)

14. Clause 13 of the apartment buyer's agreement (in short, the agreement) dated 24.11.2015, provides for handing over possession and the same is reproduced below:

13. COMPLETION OF PROJECT

“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....”

15. The respondent/promoter has proposed to handover possession of the subject apartment within a period of 4 years from the date of start of construction or execution of buyer's agreement, whichever is later. Therefore, the due date of possession is being calculated from the date of start of excavation i.e. 26.04.2014, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020

dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 26.10.2020.

16. The complainant was allotted an apartment bearing no. 1002, Tower-5, 10th floor, admeasuring 1245 sq.ft. (super area) in project of the respondent named 'Micasa' situated at Sector 68, Gurgaon vide apartment buyer's agreement dated 24.11.2015 for a total sale consideration of Rs.83,32,455/- against which the complainant has paid a sum of Rs.17,16,952/- in all. The complainant has submitted the respondent failed to timely construct and develop the project. The complainant has further submitted that he has many times requested the respondent to handover possession of the above said apartment, but the respondent always delayed the matter on one pretext or the other. Accordingly, the complainant vide email dated 21.09.2022, requested the respondent to cancel his booking and to refund the paid-up amount alongwith interest as per the terms of the agreement. The respondent has submitted that numerous demand letter/reminders were sent to the complainant to pay the outstanding dues as per the payment plan. However, the complainant defaulted in making payments and the respondent was to issue pre-cancellation letter dated 26.03.2022 giving last and final opportunity to the complainant to comply with his obligation before finally cancelling the allotment of the unit vide cancellation letter dated 30.04.2022. Copies of the same alongwith dispatch proof have been placed on record and are not in dispute. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 30.04.2022 is valid or not.
17. 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.17,16,952/- against the total sale consideration of Rs.83,32,455/- and no payment was made by the

complainant after December 2019. The respondent/builder has sent several reminders as per the payment plan agreed between the parties, before issuing a pre-cancellation letter dated 26.03.2022 giving last and final opportunity to the complainant to comply with his 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 30.04.2022. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 24.11.2015 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 farmed 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."

18. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.17,16,952/- after deducting 10% of the sale consideration of Rs.83,32,455/- being earnest money along with an interest @11.10% 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., 30.04.2022 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. II Cost of litigation.

19. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating

officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the authority: -

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.17,16,952/- after deducting 10% of the sale consideration of Rs.83,32,455/- being earnest money along with an interest @11.10% 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., 30.04.2022 till its realization.
- ii. 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.

21. Complaint stands disposed of.

22. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.08.2024