



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

<b>PROCEEDINGS OF THE DAY</b>		<b>32</b>
Day and Date	Thursday and 09.02.2023	
Complaint No.	CR/1151/2022 Case titled as MABOOD ARYAMAN Vs PAREENA INFRASTRUCTURES PRIVATE LIMITED	
Complainant	MABOOD ARYAMAN	
Represented through	Shri Pardyot Parvesh Advocate	
Respondent	PAREENA INFRASTRUCTURES PRIVATE LIMITED	
Respondent Represented	Shri Prashant Sheoran Advocate	
Last date of hearing	09.11.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### **Proceedings**

The present complaint has been received on 30.03.2022 and the reply on behalf of respondent was received on 19.10.2022.

Succinct facts of the case as per complaint and annexures are as under:

<b>S.N.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name and location of the project	"Coban Residences", sector-99 <sup>a</sup> , Gurgaon
2.	Nature of the project	Group Housing Project
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.06.2024
5.	RERA Registered/ not registered	<b>Registered</b> Vide no. 35 of 2020 issued on 16.10.2020 valid up to 11.03.2022 + 6 months = 11.09.2024
6.	Unit no.	1104, T-1 (page 18 of complaint)
7.	Unit admeasuring area	2352 sq. ft. of super area
8.	Provisional allotment letter	27.11.2013 (page 18 of complaint)



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नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

9.	Date of builder buyer agreement	21.12.2013 (page 20 of complaint)
10.	Date of start of construction	16.10.2014 (page 66 of complaint)
11.	Possession clause	<i>3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans..... Emphasis supplied....</i>
12.	Due date of possession	16.10.2018
13.	Total sale consideration	1,49,92,185/- (annexure I, page 43 of complaint)
14.	Total amount paid by the complainant	39,95,237/- (as per alleged by the complainant, page 6 of complaint)
15.	Occupation certificate	N/A
16.	Offer of possession	N/A
17.	Email w.r.t refund	09.02.2016, 15.09.2016 18.03.2017, 23.04.2017, 07.06.2017, 12.08.2017 (page 68, 74, 75 of complaint)
19.	Cancellation letter	23.02.2021 (page 138 of reply)

The complainants have sought following relief:

**i. Direct the respondent to refund the entire amount paid by the complainants.**

The complainants booked a flat in the project named as "Coban Residences" and paid Rs. 39,95,237/- on different dates against the total sale consideration of Rs. 1,49,92,185/-. On 21.12.2013 a BBA was executed between the parties. The contention of the complainant is that there has been an inordinate delay in the construction of the project and that the construction is very slow paced. He understood the malafide intention of the extortion of money by respondent. He was left with no option but to stop payment to it and asked for refund by sending an email on various dates 09.02.2016, 15.09.2016 18.03.2017, 23.04.2017, 07.06.2017, 12.08.2017 etc.

The respondent denied all the averments made by the complainant and submitted that the complainant never paid amount on time. The respondent sent various reminder letter for making outstanding dues, but he failed to clear outstanding dues which ultimately leads to cancellation of the allotted unit.

Upon perusal of above-mentioned documents, it is observed by the authority that the due date of possession is calculated as per clause 3.1 of buyers'



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agreement i.e., within 4 years of the start of construction or execution of this Agreement whichever is later. The date of start of construction being later, the due date of handing over of possession is reckoned from the date of start of construction. Therefore, the due date of handing over of possession comes out to be 16.10.2018. The complainant surrendered the allotted unit before the issuance of cancellation of the unit by the respondent.

Thus, the complainant has approached for the cancellation of unit even before the due date of possession which makes it a case of surrender. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"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."*

Keeping in view of aforesaid circumstances, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10% p.a. on the refundable amount, from the date of surrender till the date of realization of payment.

**1. Direct the respondent to pay Rs. 20,00,000/- as compensation.**

The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12,14,18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.



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The complaint stands disposed off. Detailed order will follow. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Vijay Kumar Goyal  
Member  
09.02.2023