

**Rahul Gossain Vs. M/s Pareena Infrastructure Pvt. Ltd.**  
**Ct. Case. 3502/2021**  
**PS. Maurya Enclave**

**06.09.2022**

**Present:** Sh. R.K Gossain, Ld. Counsel for the complainant.

1. The present application has been filed under section 156(3) of CrPC praying for registration of an FIR u/s 420/406/409/465/467/468/471/477A/109/120B/34 IPC, by the complainant.
2. Briefly stated the factual details as **alleged** by the complainant in his complaint are as follows:
  - a.) The complainant is an allottee of an apartment bearing no. T-3/1001 in a group housing project named “**Coban Residencies**” launched by M/s Pareena Infrastructures Pvt. Ltd. (**‘Pareena’**)/proposed accused no.1. The proposed accused no.1/ Pareena is a company incorporated under Companies Act, 1956, having its registered office at Sector 6, Dwarka and Corporate office at Sohna Road, Sector 49, Gurugram, Haryana and the proposed accused no.2 to 10 are the Directors/CEO and other officials of proposed accused no.1/ Pareena.
  - b.) The proposed Accused no. 11 and 12 are officials/authorized representatives of M/s Prithvee Propmart Pvt. Ltd. (**‘Prithvee’**) who acted as the brokers/agents on behalf of Pareena/proposed accused no.1 in the entire transaction.
  - c.) In or around January, 2013, proposed accused no. 11 and 12 approached the complainant and represented that proposed accused no.1/Pareena is coming up with a new luxury project in Sector 99 A, Dwarka Expressway, Gurugram and they were fully authorized and entitled to represent, negotiate and finalize the bookings, price etc. on behalf of Pareena/proposed accused no.1. On 16.01.2013, prospectus/brochure of the project was sent to the complainant and he was eventually introduced to director/officials of Pareena/proposed accused

no.1. The directors/officials of Pareena/proposed accused no.1 represented that they are coming up with a new luxury project in Sector 99 A, Dwarka Expressway, Gurugram and have obtained all requisite approvals/sanctions from the concerned govt. departments/authorities and have clear title over the project land. It was further represented *interalia* that the construction at the project site will start shortly and the possession will be delivered within a maximum period of 4 years. The complainant was also persuaded to avail the pre-launch/booking discount of about Rs. 200 per sq. ft.

d.) It was further represented that super area of the apartment shall mean covered/carpet area inclusive of proportionate common areas and that the proportionate common areas will be in the range of 25 to 40 % but will not exceed 40 % in any circumstances. It was further assured that the entire payment made by the allottees/buyers will be returned with interest @ 18 % pa in case of the failure of the Pareena/proposed accused no.1 to deliver the possession within the assured time.

e.) On 28.01.2013, the complainant believing the representations/assurances, submitted his application for booking a unit/apartment in the upcoming project. The complainant also gave an amount of Rs. 8.5 lacs through cheque as advance booking amount and a net rate of Rs, 4947/- was endorsed on the application for provisional booking. *Vide* e-mail dated 4.04.2013, proposed accused No. 12 from Prithvee, confirmed that a 3 BHK unit has been booked in project @ 4950/- and that Timely Payment Rebate ('TPR') will be adjustable to the complainant. Upon payment of an amount of 21,07,499, Pareena/proposed accused no.1 issued a Provisional Allotment Letter dated 20.11.2013 allotting '3 BHK + SQ, No. T-3/1001, Size 1997 Sq. ft. in Coban Residencies' in favour of the complainant. Thereafter, on 4.04.2014, an '**Apartment Buyer Agreement**' was entered into and it was assured to the complainant that the rate difference between the basic rate of Rs. 5088 per sq ft, as mentioned in the agreement and Rs. 4950/- per sq. ft. that was offered at the time of booking, will be given by

way of Credit Note along with Credit Note towards TPR @ 110 sq. ft. It is further stated that the receipts for the amount paid by the complainant were issued belatedly by proposed accused no.1/Pareena.

- f.) The complainant has made a payment of Rs. 1,06,89,869 from time to time upon the representation and assurance that the possession will be offered within a period of 4 years. It is the case of the complainant that under Clause 3.1 of the Apartment Buyer Agreement, possession of the unit/apartment was required to be handed over to the complainant within 4 years from the date of start of construction or execution of the agreement. However, the proposed accused no.1/Pareena has failed to hand over the same till 1.10.2018 (the due date) as the excavation started on or before 1.10.2014.
- g.) It is further stated that the complainant had taken a loan of Rs. 92 lakhs from HDFC Ltd, and the bank has expressed a concern over the delay in registration of project under Real Estate (Regulation & Development) Act, 2016 ('**RERA**') to which the proposed accused No.1 had represented that they have already applied for registration and handed over a copy of acknowledgement regarding submission of application for registration of the project on 31.07.2017. The bank concerned had thereafter released the payment of last two installments to proposed accused no.1/Pareena. When the possession was not handed over within the stipulated time, the complainant along with his father, on 7.10.2019, visited the corporate office of proposed accused no.1/Pareena and asked for the copy of the application submitted for obtaining RERA registration, but the directors/officials of the proposed accused no.1/Pareena avoided giving the same. It is further stated that the proposed accused no.1 also admitted that the allotted apartment T-3/1001 was not '*pool and green facing*' and assured that another unit No. T-2/604, which is '*pool and green facing*' will be allotted to him.

- h.) It is further stated that the complainant was informed recently by the officials of proposed accused no.1/Pareena that the project was registered in RERA on 16.10.2020 against the application bearing no. Temp Project id:RERA-GRG-PROJ-575-2020 submitted on 29.01.2020. It is further stated that from the application submitted in RERA, the complainant came to know that the carpet area of the unit is declared as 113.34 Sq. Mtrs. i.e. 1220 Sq. ft. *vis-à-vis* the super area of 1997 Sq. ft., which means that there is a loading of approximately 63.69% on the carpet area, which is contrary to the initial representation that the loading on the carpet area will be 25 to 40% and will not exceed 40 % in any circumstances.
- i.) It is the case of the complainant that the proposed accused persons had dishonest intention from the very beginning and they induced the complainant to make huge payments but did not handover the possession in time, did not issue credit notes towards rate/price difference as agreed by them, fixed basic sale price and total cost on the basis of super area to extract excessive payments from the complainant and also did not allot '*pool and green facing*' apartment to him. It is further the stated that the payments made by the complainant as well as by the other homebuyers have not been deployed by the proposed accused persons towards the construction of project.
- j.) It is further stated that the complainant is a resident of which falls within the jurisdiction of PS Maurya Enclave and all the payments were made to the proposed accused from complainant's residence. It is further stated that the allotment letter, apartment buyer agreement, receipts of payment and various other communications from the proposed accused were received by him at his residence and therefore, PS Maurya Enclave has the jurisdiction in the present matter. It is further stated that the complainant has made the complaints to SHO and DCP concerned, however, no action was taken. Hence, the present application.

3. Status report was called in the matter, which was filed by SI Gajender Singh from PS Maurya Enclave. He has reported:

- a.) There is absolutely no merit in the complaint as well as the allegations made in the present complaint. Enquiry conducted in the matter revealed that at the time of initiation of the project, various brokers were involved in marketing the project in question, however, none of these brokers were ever authorized or directed to make any specific representation with regard to area or discount or incentive etc. All the matters relating to the area of the apartment, discount or incentive were subject to a written contract between the allottee and the company. Therefore, any allegation which has been made against the named persons Salinder Arya and Mohit (proposed accused no. 11 & 12 herein) could not be proved.
- b.) There was no commitment or representation in the agreement that the proportion between carpet area common area will be in the range of 25 to 40% and will not exceed 40% under any circumstances. It is further stated by enquiry officer that these oral allegations have been made by the complainant after considerable lapse of time and therefore cannot be held to be true on its face value.
- c.) As regards to the allegation that the receipts were belatedly issued on 30<sup>th</sup> July, 2013, it has been submitted that the payment were made by the complainant/his brother through cheque and therefore no separate receipt of encashment of cheque was required, however, still at the request of the complainant, the receipt was issued on 30<sup>th</sup> July, 2013. It is stated by the enquiry officer that date of receipt or date of booking cannot impute any *malafide* or falsification of records on the proposed accused.
- d.) It is further reported by the enquiry officer that during enquiry, he visited the site and took photographs which proves that the project is nearing completion

and the allegations of the complainant that no development work has taken place are false and motivated.

e.) As regards to false and fabricated acknowledgement of RERA is concerned, he has reported that the complainant has failed to provide any evidence regarding the same in form of any complaint filed by him with RERA or any report of RERA declaring the same as false and fabricated.

f.) In conclusion, he has stated that as per the own admission of the complainant, the matter is civil in nature which can be settled through mutually or through arbitration as envisaged under Clause 21 of the Apartment Buyer agreement.

4. Ld. Counsel for the complainant has vehemently asserted that the allegations *prima facie* discloses commission of cognizable offences and urged for registration of FIR against the accused persons. He has principally raised the following contentions:

a.) He has contended that a huge amount of Rs. 1,06,89,869 has been extracted by the proposed accused no.1/Pareena by deploying various fraudulent practices. It is submitted that the proposed accused has made false representation and promises that possession with all the amenities and infrastructure will be given within a period of 4 years as per Clause 3.1 of the Buyer Builder Agreement. He has submitted that the construction of the project started on or before 1.10.2014 and the possession was required to be given before 1.10.2018, however, till date possession has not been delivered and the construction work is stopped.

b.) He has further submitted that basic rate of Rs. 4950 per sq ft. was offered at the time of booking, but basic rate of Rs. 5088/- per sq. ft. has been mentioned in the agreement and the payment has also been collected @ Rs. 5088 per sq ft., on the assurance that the differential amount will be given by credit note but no

credit note has been issued in this regard by the proposed accused no.1/Pareena.

- c.) He has further pointed out that it was promised and assured that the super area shall be computed by loading the carpet area to the extent of 25 to 40%, however, the carpet area of the apartment in the RERA application submitted by proposed accused no.1, has been shown to be 1220 sq. ft., thus having a loading of 63.69 % over the carpet area. He has further relied upon the Gazette Notification dated 7.05.2021 issued by the Haryana Government for regulating the sale of apartment/floors on the basis of carpet area, to submit that any agreement for sale on any other basis except on carpet area shall amount to indulgence in unfair trade practice/fraudulent practice.
- d.) He has further asserted that the complainant was offered/allotted a '*pool and green facing*' apartment, however, the apartment allotted to him was not '*pool and green facing*' despite charging Preferential Location Charges ('**PLC**') from him. He has also asserted that proposed accused no.1/Pareena has mortgaged the apartments of the buyers in a fraudulent manner requiring thorough investigation by the police.
- e.) He has next contended that the directors/official of proposed accused no.1/Pareena had handed over a copy of acknowledgment dated 31.07.2017, representing that they had applied for registration under RERA and on the basis of such acknowledgment, HDFC bank has released the payment of installments to it. He has submitted that, it was later discovered by him that the application for registration under RERA was made on 29.01.2020 and the project was registered on 16.10.2020. He has submitted that the proposed accused created false and fabricated RERA acknowledgement dated 31.07.2017, for the purpose of cheating in order to extract the installments from the HDFC bank on behalf of the complainant.

- f.) With reference to the status report filed by the Enquiry Officer ('EO') concerned, he has submitted that the report reads like a Judicial Order wherein, he himself has exonerated the proposed accused of all the allegations levelled in the complaint on the basis of a preliminary enquiry. He has relied upon ***Priya Gupta v. The State (Delhi) (2007) 2 JCC 1330*** to contend that it is not the sweet will of the police officer to assume the role of the trial court and sit over judgment on the merit and substance of the informant/complainant's information. He has submitted that without conducting any investigation, the EO has concluded that the brokers (proposed accused no.11 and 12) were not authorized to make any representations with respect to area or discount etc. on behalf of proposed accused no.1/Pareena, when admittedly the booking of the unit was done by the proposed accused no.1/Pareena through the brokers/agents. He has further pointed out that the EO, without conducting any investigation, has concluded that the allegations of the complainant cannot be taken to be true on the face value and has brushed aside all the allegations of the complainant despite all the correspondences placed on record by him.
- g.) He has next asserted that EO concerned has also brushed aside his allegation of falsification and fabrication of records by way delayed issuance of receipts by proposed accused no.1/Pareena, by stating that no separate receipt was required to be issued. He has submitted that how did the EO come to the conclusion, as to what was the intention of the proposed accused no.1/Pareena in issuance of receipts after a considerable delay, without carrying out any investigation in the matter. Similarly, the EO concerned, without carrying out any investigation, has concluded that the apartment allotted to the complainant is '*pool and green facing*', when admittedly the proposed accused No.1 has admitted in the mails, the same is not.
- h.) He has further pointed out that in the last para of the status report, EO has stated "*As far as the allegations of false and fabricated acknowledgment of RERA are concerned, complainant has failed to provide any evidence*

*regarding the same.*”, ignoring the fact the complainant is not within the possession of all the evidence and therefore, police investigation is required in the present matter. In support of his submissions, he has relied upon ***Lalita Kumari v. Govt. of UP (2014) 2 SCC 1***, and ***Arun Saxena v. Today Homes & Infrastructure P. Ltd. WP (Crl) 1645/2013*** of Hon’ble Delhi High Court, to contend that registration of FIR is mandatory, if the information discloses commission of a cognizable offence and at the time of registration of FIR, it is not to be seen whether the information is false, genuine or credible, which issues are required to be verified during the investigation of the FIR by the Investigating Officer. He has submitted that the ATR/status report filed by the EO shows that he has travelled much beyond his jurisdiction just to embark upon the conclusion that the dispute is civil in nature and the complainant should pursue arbitration, without registering the FIR/conducting any investigation in the present matter, for the reasons best known to him.

- i.) He has next contended that all the payments were made to the proposed accused from complainant’s residence and the allotment letter, apartment buyer agreement, receipts of payment and various other communications from the proposed accused were received by him at his residence and therefore, the cause of action for filing the present application has arisen within the jurisdiction of PS Maurya Enclave. In support of his submissions, he has relied upon ***Trisuns Chemical Industry v. Rajesh Agarwal & Others 1999 CrLJ 4325 (SC)***, ***Rasiklal Dalpatram Thakkar v. State of Gujarat (2010) 1 SCC 1*** and ***Manoj Sharma Manu v. State of NCT of Delhi C.R.L M.C 666/2017*** of Hon’ble Delhi High Court to contend that this court has the territorial jurisdiction to direct registration of FIR, as the cause of action has arisen within the jurisdiction of this court.

5. I have heard the submissions of the Ld. Counsel for the Complainant and perused the material on record including the written submissions filed by him. At the outset, I may note that the Buyer Builder agreement has a settlement mechanism in

the form of arbitration under Clause 21 of the agreement but that is hardly any reason for holding that criminal prosecution cannot be launched when the allegations levelled in the complaint also amount to an offence. The status report filed by the EO advising the complainant to resort to arbitration and exonerating the proposed accused of all the allegations levelled in the complaint by merely stating that the allegations are not proved, without any investigation in the matter and collection of material, amounts to putting the cart before the house and runs counter to the scheme of Chapter-XII of CrPC. Hence, this itself is not a good reason for me to axe down the complaint at the threshold itself.

6. According to the contents of the complaint/application, all the payments were made to the proposed accused from complainant's residence and the allotment letter, apartment buyer agreement, receipts of payment and various other communications from the proposed accused were received by him at his residence in Pitampura. The cause of action to file the present application has, thus, arisen within the territorial jurisdiction of PS Maurya Enclave, and therefore, this court has the jurisdiction in the present matter.
  
7. The complainant alleges commission of offences of cheating, criminal breach of trust, forgery, criminal conspiracy etc. on the premise that proposed accused no.1/Pareena along with other proposed co-accused', lured and wrongfully induced the complainant to purchase an apartment in their project on the basis of false assurances and promises. The first grievance of the complainant is that the proposed accused persons induced the complainant to make huge payments but did not handover the possession in time, did not issue credit notes towards rate/price difference as agreed by them, fixed basic sale price and total cost on the basis of super area without mentioning the basis of computation same and also did not allot '*pool and green facing*' apartment to him. It is his case that the proposed accused had the dishonest intention from the very beginning to cheat him. The allegations in my opinion, *prima facie*, discloses commission of cognizable offences as it is required to be investigated whether the proposed accused did, in fact, made/enter

into genuine representations/agreement, or made knowingly or deliberately false representations to the complainant through itself or its agents, since it is the positive case of the complainant that he was induced to purchase the flat/apartment on the basis of false representation and assurances with regard to the aforesaid issues.

8. The second grievance/allegation of the complainant relates to the acknowledgment dated 31.07.2017, whereby the proposed accused No.1/Pareena had applied for RERA registration and submitted the same for getting the payment of installments released from HDFC bank. The complainant alleges that the same was a false and fabricated document as it was later on, discovered that proposed accused no.1/Pareena, had made the application for RERA registration on 29.01.2020 and the project was registered on 16.10.2020. Pertinently, this also, *prima facie*, discloses commission of cognizable offence and the matter demands investigation by the police authorities as the complainant is neither privy nor in possession to the registration applications/documents filed by the proposed accused no.1/Pareena before the RERA authority. He is neither in a position to investigate on his own nor has the withal, capacity or expertise to collect the evidence on such aspect.
  
9. The third grievance/allegation of the complainant is that the officers/directors of proposed accused No.1/Pareena have diverted and siphoned off the funds/payments made by him and various flat purchasers, and have mortgaged the apartments of the home buyers to obtain finance facility. Again, in my view, *prima facie*, the allegations discloses commission of cognizable offence and the matter requires investigation for trailing/tracking the money, for unearthing the conspiracy/fraud and also for verifying the veracity of the allegations of the complainant. The allegations are, *prima facie*, serious in nature and it may be possible that the proposed accused may have cheated other innocent buyers of their hard earned life savings, which also requires investigation. At this stage it is also relevant to refer to the judgment of Hon'ble Supreme Court in *XYZ v. State of*

*Madhya Pradesh & Ors. Cri. Appeal No. 1184 of 2022, decided on 05.08.2022,*  
wherein, the court held:

*“24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the Accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the Code of Criminal Procedure, the matter ought to be sent to the police for investigation.”*

**10.** Thus, from the foregoing discussion and considering the facts and circumstances, I deem it appropriate to allow the application under Section 156(3) CrPC and direct the SHO concerned to investigate the present matter after registering an FIR under appropriate sections of law. Needless to say, that the investigation be conducted in a fair, impartial manner and expeditious manner. A copy of this order be sent to the SHO and DCP concerned with a direction to submit the compliance report of this order within a period of 7 days. Be listed for compliance report on **12.09.2022**.

**(Ayush Sharma)**  
**MM-02/North-West/Rohini**  
**Delhi/06.09.2022**