

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

Complaint no. : 1529 of 2019
First date of hearing: 29.08.2019
Date of decision : 10.09.2019

Sh. Ved Prakash Sharma
R/o:- H. No. 163, Boulevard Du Lac, The
Beverly Hills, 23 Sam Mum Tsai Road, Tai **Complainant**
Po, Hong Kong

Versus

Sepset Properties Pvt. Ltd.
Regd. Office:- Room no. 205, Welcome
Plaza, S-551, School Block-II, Shakarpur, **Respondent**
Delhi-110092

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Rama Nand Yadav and Sh. Shail Yadav Advocates for the complainant
Sh. Jasdeep Dhillon and Sh. Shubham Narula Advocates for the respondent

ORDER

1. A complaint dated 29.04.2019 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 Sh. Ved



Prakash Sharma, against the promoter M/s Sepset Properties Pvt. Ltd. in respect of unit described below in the project "Paras Dews" on account of non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer agreement dated 06.04.2013 was executed 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 statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	'Paras Dews', Sector-106, Daulatabad, Dwarka Expressway, Gurugram-122001
2.	Nature of real estate project	Residential group housing project
3.	Project Area	13.762 Acres
4.	DTCP license no.	61 of 2012 dated 13.06.2012
5.	Apartment no.	C-1702, 17 th Floor, Tower-C



6.	Area of the Apartment	1760 sq. ft.
7.	RERA registered/unregistered	118 of 2017 dated 28.08.2017
8.	Revised date	31.07.2021
9.	Date of execution of apartment buyer agreement	06.04.2013
10.	Payment Plan Annexure C on pg. 54 of the complaint	Construction linked payment plan
11.	Total consideration amount As per the applicant file dated 21.05.2019 annexed as Annexure R/3 on pg. 32 of the reply	Rs. 1,08,31,200/-
12.	Total amount paid by the complainant till date as per payment schedule on pg 34 of the reply	Rs. 1,03,29,080/-
13.	Offer of possession As per letter annexed as Annexure 2 on pg. 58 of the complaint	24.01.2019 Note :- occupation certificate is received on 15.01.2019
14.	Due date of delivery of possession clause 3.1 - 42 months + 6 months grace period from the date of approval of building plans or signing of the agreement, whichever is later + 90 days grace period for offer of possession.	06.09.2017 (additional 90 days grace period will not be taken) Note:- the due date is calculated from the date of environmental clearance i.e. 06.09.2013
15.	Delay in handing over possession till offer of possession till date of decision	1 year 4 months 18 days

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16.	Penalty clause as per clause 3.3 of agreement	Rs.5 per sq. ft. per month for the delayed period
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4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. An apartment buyer agreement dated 06.04.2013 is available on record for the aforesaid unit. As per clause 3.1 of the said agreement, the possession of the said unit was to be delivered by 06.09.2017. The respondent has offered the possession to the complainant on 24.01.2019 which has been delayed by a period of 1 year 4 months and 18 days, thus the promoter has failed to fulfil its committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 29.08.2019 and 10.09.2019. The respondent has filed reply on 27.05.2019 which has been perused by the authority. The respondent through its counsel appeared on 29.08.2019.

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FACTS OF THE COMPLAINT

6. The complainant submitted that his predecessor in interest applied for booking a 3BHK apartment in the project 'Paras Dews', Sector-106, Daulatabad, Dwarka Expressway, Gurugram-122001, Haryana and was allotted apartment no. 02 on 17th floor, tower-C, in the said project against a part payment of Rs. 18,48,000/-. An apartment buyer agreement thereupon was entered into between the parties on 06.04.2013.
7. The complainant submitted that being interested in purchasing a home for his family, he purchased an apartment from the respondent and despite a committed date of delivery of the project being 06.07.2017 in terms of the apartment buyer agreement dated 06.04.2013, the respondent even after a delay of more than 3.5 years as on today, has failed to deliver the apartment.
8. The complainant submitted that according to the clause 3.1 of the said agreement, the possession was to be delivered within 42 months from the date of execution of agreement or from the date of obtaining all the required sanctioned and



approvals necessary for commencement of construction along with a grace period of 6 months.

9. The complainant submitted that the respondent sent letter dated 24.01.2019 to him regarding offer of possession which was posted on 02.02.2019 by the respondent and received by the complainant on 11.02.2019 without the apartment even been complete in any respect as stipulated in the apartment buyer agreement.
10. The complainant submitted that he has made a payment of Rs. 1,17,11,880/- as and when demanded by the respondent in terms of the payment plan. The respondent by way of offer of possession dated 24.01.2019, issued various demands, without giving any delay penalties in any respect, despite the time period for the penalty and the penalty in terms of interest @10.45% per annum has been settled, and even the respondent has not preferred any appeal against the said orders. Under the pressure and threat of cancellation of the apartment and to avoid unreasonable holding charges @ Rs. 30 per sq. ft. per month to be imposed by the respondent, he has made the final payment as

demanded by the respondent in terms of the demand letter dated 24.01.2019 under protest, so that the respondent cannot act in an illegal and unlawful manner.

ISSUES TO BE DECIDED

11. The following issues were raised by the complainant:
- I. Whether the respondent was liable to deliver the apartment in July 2017 as already decided in the judgements as provided herein?
 - II. Whether the complainant is entitled to the delay penalty as prescribed under this act along with the possession of the apartment?

RELIEFS SOUGHT

12. The complainant is seeking the following reliefs:
- i. Direct the respondent to make payment of delay penalty as prescribed under RERA w.e.f. 6th July 2017 upto the date of actual delivery of possession of the apartment.
 - ii. Direct the respondent to deliver the possession of the apartment complete in all respects.

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REPLY FILED BY THE RESPONDENT

13. The respondent submitted that the complainant herein has been themselves guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates. This same is not permissible in terms of the RERA Act, 2016, and in view of the same the complaint merits outright dismissal.
14. The respondent submitted that the present complaint is not maintainable and premature since the project is a RERA registered project, having registration number 118 of 2017 dated 28.08.2017 and in terms of the registration certificate the due date of completion is 31.07.2021 which has not arisen in the present case, therefore the present complaint merits outright dismissal.
15. The respondent submitted that the present complaint is in fructuous and not maintainable since the construction of the project has already been completed and the occupation certificate has also been received on 15.01.2019.

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16. The respondent submitted that the complainant in the present complaint under reply has also admitted the fact that he has not paid the total consideration of Rs. 1,08,31,200/-.
17. The respondent submitted that the construction of the apartment is complete and the offer of possession has already been issued to the complainant on 24.01.2019 with the demand for the remaining payment. However, the complainant has not only failed to make the payment of the due amount, it has raised the present complaint to harass the respondent. The respondent is willing to handover possession to the complainant subject to payment of the outstanding dues as per the apartment buyer agreement

DETERMINATION OF ISSUES

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are given below:

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18. With respect to the **first issue** raised by the complainant the authority is of the view that, as per clause 3.1 of the apartment buyer agreement the respondent had to deliver the possession of the apartment within 42 months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining all licensed or approvals for commencement of construction, whichever is later. The said agreement has been executed on 06.04.2013 and the promoter has obtained the environmental clearance certificate on 06.09.2013. the relevant clause is reproduced as under-

".....the seller proposes to handover the possession of the apartment to the purchaser within a period of 42 months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later....."

Accordingly, the due date for handing over the possession is calculated from the date of obtaining environmental clearance certificate i.e. 06.09.2013, which comes out to be 06.09.2017. But, as the promoter has offered the possession of the unit on 24.01.2019, it has failed to hand over the possession by the due date. Thus, the authority is of the view



that the promoter has failed to fulfil its obligation under section 11(4)(a) of the Act *ibid*.

19. With respect to the **second issue** raised by the complainant the authority is of the view that, the complainant is liable to get the delayed possession charges for the period of delay i.e. 1 year 4 months and 18 days made by the respondent in handing over the possession calculated from the due date of handing over the possession to the actual date of offer of possession. The complainant is liable to get the charges under section 18(1) proviso of the Act *ibid* to be read with rule 15 of the Rules *ibid* at the prescribed rate of 10.35% p.a.

FINDINGS OF THE AUTHORITY

20. 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.

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21. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.
22. Counsel for the complainant has submitted a copy of occupation certificate dated 15.01.2019 received from the DTCP Haryana. On receipt of occupation certificate, offer of possession letter too has been issued to the complainant on 24.01.2019.
23. As per clause 3.1 of the apartment buyer agreement dated 06.04.2013 for unit no. C-1702, 17th floor, tower-C in project "Paras Dews", Sector-106, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of execution of agreement or grant of approvals i.e. 06.09.2013 + 6 months grace period which comes out to be 06.09.2017. The respondent has failed to deliver the



possession of the unit in time. Complainant has already paid Rs. 1,03,29,080/- to the respondent against a total sale consideration of Rs. 1,08,31,200/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.35% per annum w.e.f. 06.09.2017 to 24.01.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

DECISION AND DIRECTIONS OF THE AUTHORITY

24. After taking into consideration all the material facts as adduced and produced by complainant, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:-

- i. The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.35% per annum w.e.f. 06.09.2017 to 24.01.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

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- ii. The arrears of interest accrued so far shall be reimbursed to the complainant within 90 days from the date of this order.
- iii. The complainant is directed to take over the possession of allotted unit within a period of one month failing which respondent shall be at liberty to impose holding charges.
- iv. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
- v. The promoter shall not charge any amount/charges from the complainant which is not a part of the apartment buyer agreement.
- vi. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.35% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

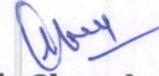
25. Complaint stands disposed off.

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26. The order is pronounced.
27. Case file be consigned to the registry.


(Samir Kumar)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated:10.09.2019

Judgement uploaded on 10.10.2019

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