

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

Complaint no. : 980 of 2018
First date of hearing : 24.01.2019
Date of decision : 22.08.2022

	<p>Mr. Dinesh Goel R/O: - B3, Block 2, Appaswamy Springs Apartment, Rajaji Nagar, Main Road, Thiruvanmiyur, Chennai .</p>	<p>Complainant</p>
<p>Versus</p>		
<p>1.</p>	<p>M/s Sepset Properties Pvt. Ltd. Regd. Office at:- Room no. 205, Welcome Plaza, S-551 School , Block-II, Shakkarpur, Delhi-110092.</p>	<p>Respondents</p>
<p>2.</p>	<p>M/s Paras Buildtech India Pvt. Ltd. Regd. Office at: - 11th floor, Paras Twin Towers, Sector-54, Gurgaon.</p>	

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Mukul kumar Sanwariya	Advocate for the complainant
Ms. Stuti Sharma	Advocate for the respondents

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 there under 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 of the project	"Paras Dews", Sector- 106, Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered 118 of 2017 dated 28.08.2017
4.	DTPC License no.	61 of 2012 dated 13.06.2012
	Validity status	12.06.2020
	Name of licensee	Sepset Properties
	Licensed area	13.76 acre
7.	Unit no.	Apartment no. 04, 19 th floor, Tower B [As per page no. 24 of complaint]
8.	Unit measuring	1760 sq. ft. [As per page no. 60 of complaint]
9.	Date of execution of Floor buyer's	29.04.2013



	agreement	(Page no. 21 of complaint)
11.	Possession clause	<p>3. Possession</p> <p>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints restrictions from any courts/ authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions. formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement of date of obtaining all licenses or approvals The commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due</p>



course. The Seller shall give Notice of Offer of Possession in writing to the Purchaser(s) with regard to the handing over of possession, where after, within 30 (thirty) days, the Purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the Apartment. In case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle the Purchaser(s) for an extension of the time for taking over possession of the Apartment. In the event the Purchaser(s) fails to make all payments and accept and take the possession of the Apartment within 30 (thirty) days of the Notice of Offer of Possession, the Purchaser(s) shall be deemed to be custodian of the Apartment from such due date indicated in the Notice of Offer of Possession and the Apartment shall be held by the Seller solely at the risks and costs of the Purchaser(s), including but not limited to applicability of the appropriate Holding Charges as defined in Clause 3,3 below and interest. The obligation of the Seller to offer possession to the Purchaser under this Clause shall be subject to Force Majeure.

12.	Due date of possession	29.10.2016 (calculated from the execution of BBA) (grace period is not allowed)
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13.	Basic sale Price	Rs. 1,12,62,400/- [page no. 60 of reply]
14.	Total amount paid by the complainant	Rs. 88,38,521/- (as alleged by the complainant)
15.	Occupation certificate dated	15.01.2019 (page no. 28 of reply)
16.	Offer of possession	24.01.2019 (page no. 58 of reply)

B. Facts of the complaint

3. That the complainant booked a unit in the project of the respondents namely, "PARAS DEWS" located at Sector 106, Gurgaon, Haryana. The respondent no.1 vide its letter dated 10 Jan,2013 (the "Allotment Letter"). provisionally allotted the said apartment No. T-B /1904 to the complainant in the said Project (the "Apartment").
4. That allotment of aforementioned apartment has been further confirmed by the respondents by virtue of execution of apartment buyers agreement dated 29th April, 2013. The total consideration of the said apartment was 88,70,400/- towards the sale price for purchase of the said apartment excluding EDC, IDC, IFMS, PLC, CMC, car parking, club charges, maintenance charges etc. or any other statutory charges.
5. The respondents also issued a payment schedule plan, which mentioned the time and payment to be remitted to them by the complainant. It is pertinent to mention that payment plan issued by the respondents was construction linked plan i.e. the complainant

was supposed to pay as per the construction and development work to be carried on by the respondents, of the allotted apartment.

6. That on 24th April, 2015, the complainant and respondents entered into an addendum to the original builder buyer agreement. It is pertinent to mention that such an addendum was executed on the instance of the respondents, wherein, they offered subvention scheme to the complainant. It is specifically submitted that, through such addendum, the complainant's cost to the flat allotted increased by INR six lakh and thirty five thousand (approx.). The complainant was further burdened by such additional cost due to subvention scheme, which the complainant availed on the asking of the respondents. After the execution of addendum, the new payment plan was issued by the respondents.
7. That the complainant has paid to respondents Rs.88, 38,521/- till Feb., 2017 as per the payment plan. As per the timelines given in the allotment letter and apartment buyer's agreement, the possession of the project was committed in the month of April, 2017 but in month of June, 2018 i.e. even after lapse of grace period, nearly 80% project was completed thus delaying the possession of apartment deliberately or for reasons known best to them. Such uncalled act is leaving the complainant in a lurch where he is left with no option but to wait endlessly for possession of his flat. Delay in giving possession to the instant complainant is in express violations of the provisions of the RERA Act and Rules, 2017.

C. Relief sought by the complainant.

8. The complainant has sought following relief:

- (i) Direct the respondents to refund a sum of Rs. 88,38,521/- paid by him along with prescribed rate of interest..

D. Reply by the respondents.

9. It is submitted that the complainant has approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.
- That the complainant falsely stated that the timely payments were made by him as and when demanded by respondents. However, as detailed in the reply to list of dates, it is submitted that the complainant made several defaults in making timely payment as a result thereof, respondents had to issue reminder letters for payment of the outstanding amounts.
10. It is also submitted that the present complaint is infructuous and not maintainable since the construction of Tower D has already been completed and the occupation certificate has also been received on 15.01.2019 and the offer of possession has already been issued to the complainant on 24.01.2019 with the demand for

the remaining payment. Thus, there is no merit in the present complaint or the contention that there has been any delay on the part of the respondents. It is admittedly the complainant who has defaulted in payment of the instalments as per the agreed payment plan.

11. It is reiterated that the construction of the flat 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. The same has been admitted by the complainant in the complaint. It is submitted that the respondent is willing to handover the possession to the complainants subject to payment of the outstanding dues as per the builder buyers agreement.
12. It is submitted that the present complaint is bad for mis-joinder of respondent no.2 in the array of parties since admittedly the builder buyer agreement has been entered between the complainant and respondent no.1 and there is no privity of contract between the complainant and respondent no.2.
13. It is further submitted that having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainant is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate". In this regard, the respondents reserve their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.
14. Copies of all the relevant do 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

The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objection raised by the respondent no.1.

15. The counsel for the respondent submitted that the complaint is bad for mis-joinder of respondent no.2 in the array of parties since admittedly the builder buyer agreement has been entered between the complainant and respondent no.1 and there is no privity of contract between the complainant and respondent no.2. The authority observes that the present complaint is bad for impleading respondent no. 2 i.e., Paras Buildteh Pvt. Ltd. as a party/ respondent as it lacks merit. It was admitted by the respondent no. 1 that builder buyer agreement was executed between him and the complainant. So far as the question of impleading of respondent no. 2 is concerned, the buyer agreement was executed between complainant and respondent builder i.e., Sepset Properties Pvt. Ltd. to which respondent no. 2 is not a party. Also there is no privity of contract between complainant and respondent no. 2.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief:

- (i) Direct the respondents to refund a sum of Rs. 88,38,521/- paid by him along with prescribed rate of interest.

16. The allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is 29.10.2016 and there is delay of 2 years 11 months 3 days on the date of filing of the complaint.
17. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoters on their failure to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoters as they failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoters are liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.
18. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP

(Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under:

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoters are liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

20. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 88,38,521/- with interest at the rate of 10% (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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
21. **Admissibility of refund at prescribed rate of interest:** The complainants are seeking refund amount at the prescribed rate of interest on the amount already paid by him. However, allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*
- Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause— the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges

H. Directions of the authority

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

- 1) The respondent/promoters are directed to refund the entire amount of Rs. 88,38,521/- paid by the complainant along with prescribed rate of interest @ 10% p.a. from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
 - 2) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
27. Complaint stands disposed of.
 28. File be consigned to registry.

V.K.
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.08.2022

HARERA
GURUGRAM