

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

Complaint no. : 714 of 2022
First date of hearing : 22.03.2022
Date of decision : 25.01.2023

Mr. Jatinder Singh R/O: - 7/12, Second Floor, Tilak Nagar, New Delhi, India-110018.	Complainant
Versus	
M/s Sepset Properties Pvt. Ltd. Regd. Office at: - Room no. 205, Welcome Plaza, S-551 School , Block-II, Shakkarpur, Delhi-110092.	Respondent

CORAM:

Shri Vijay Kumar Goyal **Member**

Shri Sanjeev Kumar Arora **Member**

APPEARANCE:

Shri Jagdeep Kumar Advocate for the complainant

Shri Harshit Batra Advocates for the respondent

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:

Sr. No.	Particulars	Details
	Name of the project	'Paras Dews', Sector -106, Gurugram
1.	Unit no.	08, 5 th floor, Tower-F
2.	Unit admeasuring	1385 Sq. ft.
3.	Allotment letter	10.01.2013 (Page no. 18 of the complaint)
4.	Date of execution of builder buyer agreement	18.04.2013 (Page no. 21 of complaint)
5.	Possession clause	Clause 3.1: Proposes to handover the possession of apartment to purchaser within a period of 42 months with addition of 6 months from the date execution of BBA or obtaining the license or

		approvals for commencement of construction whichever is later, subject to force majeure grace period 90 days.
6.	Environment clearance	06.09.2013
7.	Due date of delivery of possession	06.09.2017 (Calculated from the date of environment clearance)
8.	Total sale consideration	Rs. 1,01,66,198/- (As per page no. 40 of complaint)
9.	Total amount paid by the complainant	Rs. 89,64,863/- (Alleged by the complainant)
10.	Occupation Certificate	Applied but not yet obtained as confirmed by AR during the proceedings
11.	Offer of possession	Not offered

B. Facts of the complaint

- That the complainant booked a residential flat bearing no. 0508 on 5th Floor in tower – F, measuring approximately super area of 1385 Sq. ft. (128.67 Sq. meter) in the township to be developed by respondent. Accordingly, he paid Rs. 7,50,000/- through cheque bearing No 348911 dt 03/01/2013 as booking amount on 29/12/2012.

4. That in the said application form, the price of the said flat was agreed at the rate of Rs. 6063/- per Sq. ft.. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by it in the said application form or agreed otherwise and approximately after one week on 10/01/2013, the respondent issued a provisional allotment letter
5. That on 18/04/2013 the respondent signed buyer's agreement with complainant, which consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, as every clause of agreement was drafted in a one-sided way and a single breach of unilateral terms of buyer's agreement by complainant, would cost him forfeiting of 10% of total consideration value of unit. The respondent exceptionally increased the net consideration value of flat by adding EDC and IDC. When the complainant opposed the unfair trade practice of respondent, it was informed that EDC and IDC are just the government levies and are as per the standard rules of government and are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorated basis. About the delay payment charges @ 18% p.a., as interest, it said this is standard rule of company and would also compensate at the rate of Rs 5 per sq. ft per month in case of delay in possession of flat. The respondent also made a unilateral provision of holding charges at the rate of Rs 30 per sq ft per month in one sided buyer's agreement. The complainant opposed those illegal, arbitrary, unilateral and discriminatory terms of

provisional allotment letter. But as there was no other option left with complainant as if he stopped the further payment of instalments, then in that case respondent would have forfeit 10% of total consideration value from the total amount paid by him.

6. That from the date of booking 3rd January 2013 and till 27th April 2016, the respondent had raised various demands for the payment of instalments on complainant towards the sale consideration of said flat and he had duly paid and satisfied all those demands as per the flat buyer's agreement without any default or delay on his part and also fulfilled the part of obligations as agreed in the flat buyer's agreement. As per annexure-C (payment plan & payment made) of buyer's agreement the sales consideration for said flat was Rs. 98,94,455/- (which includes the charges towards Basic Price – Rs 83,97,255/-, EDC- Rs 4,99,985/- & IDC) – 47090/-, club membership – Rs. 2,00,000/-, IFMS – Rs 1,73,125/- and car park – Rs 3,00,000/-) exclusive of service tax and GST.
7. That the complainant has paid 90% of sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 08.11.2021, issued by the respondent, he already paid Rs. 86,49,992/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time.
8. That the GST Tax which has come into force on 01.07.2017, is a fresh tax. The possession of the apartment was supposed to be delivered to complainant on 18th Oct 2016. So, the tax which came into existence after the due date of possession (18th Oct 2016) of flat, that extra cost should not be levied on complainant.

9. That the respondent has committed grave deficiency in service by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice being immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines of the aforesaid housing project.

C. Relief sought by the complainant.

10. The complainant has sought following relief:
- Pass an order to direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs. 89,64,863/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
 - Restrain the respondent from charging any amount as GST Tax from complainant.
 - Direct the Respondent to update on construction status of project and immediately provide possession of said flat without taking affidavit-cum-undertaking
 - Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation

D. Reply by the respondent.

11. That the complainant being interested in the real estate development of the respondent under the name and style "PARAS

DEWS" situated at Sector-106, Gurugram, Haryana ("Project") tentatively booked a unit in the project of the respondent on 29.12.2012 and was consequently allotted unit no. 0607 in Tower F, having an area admeasuring 1385 sq. ft. vide the allotment letter dated 10.01.2013. The Project is duly registered with the Haryana RERA with Registration no. 118 OF 2017 dated 28.08.2017.

12. That thereafter, the buyer's agreement (the "agreement") was executed on 18.04.2013 between the parties. According to clause 3.1 of the buyer's agreement, the delivery of possession of the Unit was proposed to be within 42 months with an additional grace period of 6 (six) months from the date of execution of the agreement or the date of obtaining all the licenses and approvals for the commencement of the construction, whichever is later, subject to force majeure. It is a matter of fact and record that the respondent obtained the environment clearance approvals on 06.09.2013 and therefore, the time period of 42 months including the grace period of 6 months as stipulated in the agreement has to be calculated from the 06.09.2013, subject to the provisions of the agreement. Moreover, clause 3.1 gave an additional 90 days for the delivery of possession of the unit, after the expiry of the grace period. Accordingly, calculating the due date from the environment clearance approval, the subjective due date for delivery of possession of the unit comes out to be 06.12.2017, which is further subjected to force majeure conditions
13. That it is pertinent to note that the complainant has defaulted in timely remittance of instalments against the unit. The total consideration including tax amounts to Rs. 1,01,66,198 and the amount paid by the complainant is Rs. 89,64,863. On account of

non-payment by the allottee, interest of Rs. 91,246 was charged. However, in utmost bonafide, the respondent waived off the interest amounting to Rs. 76,373. Accordingly, the outstanding amount to be paid by the complainant is Rs. 12,09,953/-.

14. That the conduct of the respondent has always been bonafide and all the demands have been rightly raised. It is a matter of fact, that the GST came into force on 01.07.2017, i.e., before the due date of the delivery of possession, and accordingly, all the demands against the same need to be rightly paid. Additionally, it is submitted that the amount of GST and other charges taken by the respondent are not for its own use or benefit but are government-imposed taxes that goes to the government.
15. That the instant complaint has been preferred on absolutely baseless, unfounded, and legally and factually unsustainable surmises which can never inspire the confidence of the Hon. Authority. The accusations levelled up by the complainant are completely void and baseless and devoid of merit. Thus, the instant complaint needs/deserves to be dismissed.
16. All other averments made in the complaint were denied in toto.
17. 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

The respondent 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.

G. Findings on the relief sought by the complainant.

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

- Pass an order to direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on rs. rs. 89,64,863/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.
- Restrain the respondent from charging any amount as GST Tax from complainant.
- Direct the Respondent to update on construction status of project and immediately provide possession of said flat without taking affidavit-cum-undertaking
- Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.

Delay Possession Charge

18. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"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,

—
.....

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."

19. Clause 3.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Proposes to handover the possession of apartment to purchaser within a period of 42 months with addition

of 6 months from the date execution of BBA or obtaining the license or approvals for commencement of construction whichever is later, subject to force majeure grace period 90 days..”

20. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
21. **Admissibility of grace period:** The promoter proposed to hand over the possession of the unit within a period of 42 months with addition of 6 months from the date execution of BBA or obtaining the license or approvals for commencement of construction whichever is later. The authority is of view that the said grace period of 180 days shall be allowed to the respondent being unconditional. Therefore, as per clause 3.1 of the buyer's agreement dated 18.04.2013, the due date of possession is calculated from the date of environment clearance i.e., 06.09.2013

being later. So, the due date of possession comes out to be 06.09.2017.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

23. 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.
24. 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., 25.01.2023 is 8.60%. Accordingly, the prescribed

rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

25. 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;"

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same as is being granted to him in case of delayed possession charges

GST

27. The complainant argued that the tax came into force in the year 2017 and so it is a fresh tax. The possession of the apartment was supposed to be delivered in March 2016. Therefore, the tax which has come into existence after due date of delivery should not be levied being unjustified as the same would not have fallen on the allottees had the same been delivered within the time stipulated in

the builder buyer's agreement. On the other hand, the respondent argued that complainant is liable to pay statutory levies, new taxes including HVAT. It is wrong and denied that the respondent has illegally demanded the same from the complainant. It is submitted that in accordance with the buyer's agreement, the complainant is liable for the payment of all municipal taxes, property tax, infrastructure development tax, VAT, service tax, any fresh incidence of tax and any other statutory charges etc. to be levied by any Authority, including any enhancement of such taxes by the State Government or the Authority. Thus, it is absolutely wrong and emphatically denied that GST, HVAT etc applicable on the unit in question is not liable to be paid by the complainant. The HVAT demand has been raised in accordance with the assessment made under the Amnesty Scheme proposed by the State Government. It is pertinent to mention herein that all statutory dues, fees, charges, taxes et cetera are paid by the respondent to the competent authorities/State Government and the said amounts are not retained by the respondent. Thus, there is no illegality whatsoever on the part of the respondent.

28. Before proceeding further, the relevant clause from the agreement is reproduced as under:

"8(1) Statutory taxes, maintenance charges and other dues:

The Purchaser(s) shall, from the date of execution of this Agreement, always be responsible and liable for the payment of all municipal taxes, property tax, infrastructure development tax, VAT, service tax, any fresh incidence of tax and any other statutory charges etc. to be levied by any Authority, including any enhancement of such taxes by the State Government or the Authority. even if they are retrospective in effect (hereinafter referred to as the "Statutory Dues") as may

he levied on the Project or the Project Land in the share proportionate to the Super Area of the Apartment. In case any Statutory Dues are levied after the execution of the Conveyance Deed, the same shall be payable by the Purchaser(s) on Super Area basis. All such amounts shall be payable on demand, as the case may be, either to the Seller or Maintenance Service Provider, responsible to provide maintenance administration services in the said Project upon completion, as mentioned in this Agreement."

29. As per the buyer's agreement, taxes shall be payable as per the government rules as applicable from time to time. The taxes are levied as per government norms and rules and in respect of real estate projects as per the government policies from time to time. Therefore, there is no substance in the plea of the complainant in regard to the illegality of the levying of the said taxes.
30. In the instant case, VAT has been charged up to 30.06.2017, Service Tax has been charged up to 30.06.2017 and GST has also been charged thereafter i.e., with effect from 01.07.2017. The respondent counsel argued that the taxes are levied by the state government and have to be deposited with the state on demand and hence are justified. With respect to GST, the respondent counsel stated that this tax came into force in the year of 2017, therefore it is fresh tax and has been charged justifiably.
31. In this context, attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

32. Therefore, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017.
33. The authority is of the view that admittedly, the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST, but builder has to pass the benefit of input tax credit to the buyer as per applicable policy and in case of grievances, the allottee shall be at liberty to approach the concerned taxation appellate authority.

Litigation Cost.

34. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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.

H. Directions of the authority

35. 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 is directed to pay interest at the prescribed rate of 10.60% p.a. for every month of delay from the due date of possession i.e., 06.09.2017 till the offer of possession after obtaining occupation certificate plus two months to the complainant as per section 19(10) of the Act.
- 2) The arrears of such interest accrued from 06.09.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- 3) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondents
- 4) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- 5) **GST:** The due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the statutory benefits of that input tax credit to the allottee.

36. Complaint stands disposed of.
37. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.01.2023



HARERA
GURUGRAM