

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

Complaint no. : 694 of 2022
First date of hearing: 22.03.2022
Date of decision : 11.04.2023

1. Vivek Kumar Kesarwani,
S/o Harish Chandra Kesarwani,
2. Mrs. Jyothi Kesarwani,
W/o Vivek Kumar Kesarwani,
both R/o F-0705, Raheja Atharva,
Dwarka Expressway, Sector 109,
Gurgaon (Haryana).

Complainants

M/s Sepset Properties Pvt. Ltd.
Regd. Office at: Room No. 205,
Welcome Plaza, S551, School Block-II,
Delhi-110092.

Versus

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. K.K. Kohli (Advocate)
Sh. Harshit Batra (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 25.02.2022 has been filed by the complainant/allottees 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 provisions of the Act or the Rules and regulations made there under or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| Sr.No. | Particulars | Details |
|--------|--|--|
| 1. | Name of the project | 'Paras Dews', Sector -106, Gurugram |
| 2. | Unit no. | 1005, 10 th floor, Tower-C |
| 3. | Unit admeasuring | 1760 Sq. ft. |
| 4. | Allotment letter | 10.01.2013 (Page 85 of the complaint) |
| 5. | Date of execution of builder buyer agreement | 23.04.2013 (Page 53 of complaint) |
| 6. | Possession clause | 3. Possession 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 or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure. |
| 7. | Environment clearance | 06.09.2013 |
| 8. | Due date of delivery of possession | 06.09.2017 (Calculated from the date of environment clearance) (grace period is allowed being unqualified) |
| 9. | Total sale consideration | Rs.1,18,20,135/- (as per SOA on page 83 of reply) |
| 10. | Total amount paid by the complainant | Rs.1,18,45,124/- (as per SOA on page 86 of reply) |
| 11. | Occupation Certificate | 15.01.2019 (Page 74 of reply) |
| 12. | Offer of possession | 24.01.2019 (Page 104 of complaint) |
| 13. | Possession certificate | 18.10.2020 (Page 77 of reply) |

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - I. That the respondent issued an advertisement announcing a residential group housing project named "Paras Dew's" in Sector 106, Dwarka Expressway, Gurugram (Haryana) and thereby invited applications from the prospective buyers for the purchase of floors in the said



project. The complainants coming to know about it, booked a unit in the said project.

- II. That a unit bearing no. T-C/1005, 10th Floor, Tower C, measuring 1,760sq.ft. was allotted to them vide allotment letter dated 10.01.2013 and a buyer's agreement against the same was also executed between the parties on 23.04.2013.
- III. That the total sale consideration of said unit was Rs.1,18,20,135/- and against which they have paid a sum of Rs.1,18,45,124/- as evident from the statement of account dated 17.05.2022.
- IV. That after obtaining occupation certificate from the competent authority on 15.01.2019, offer of possession of the said unit was made on 24.01.2019 along with several demands which were duly paid by them. Thereafter, physical possession of the said unit was handed over to them vide possession certificate dated 18.10.2020 after paying stamp duty charges.
- V. That after visiting office of the respondent-builder, the complainants were instructed to make the balance payment of Rs.1,92,867/- towards the VAT liability and other taxes which they are not liable to pay.
- VI. That the respondent even after receiving more than 100% of the total sale consideration along with stamp duty and registration charges failed to execute a conveyance deed in favour of the complainants till date. Aggrieved by the unfair trade practices of the respondent the complainants have been constrained to file this compliant.

C. Relief sought by the complainants:

4. The complainants sought following relief(s).



- I. Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.
- II. Direct the respondent to execute the conveyance deed in their favour.
- III. Direct the respondent to not to charge anything towards GST and HVAT.
- IV. Direct the respondent to not to charge anything which is not part of the buyer's agreement.

D. Reply by the respondent.

5. The respondent vide reply dated 25.05.2022 contested the complaint on the following grounds: -
 - i. That the complainants booked a unit in the project named "PARAS DEWS" at Sector-106, Gurugram, Haryana on 29.12.2012 and were allotted unit bearing no. 1005 in Tower C, admeasuring 1760 sq.ft. vide allotment letter dated 10.01.2013.
 - ii. That thereafter, the buyer's agreement was executed on 23.04.2014 between the parties. As per clause 3.1 of the buyer's agreement the delivery of possession of the unit was proposed to be handed over till 06.12.2017 and which was further subject to force majeure conditions.
 - iii. That the project of the respondent has been gravely hit by the various force majeure conditions directly consequential to the timely completion of the construction of the project.
 - iv. That the complainants always remained negligent and never fulfilled part of their contract nor paid the instalment as per the agreed payment plan. It is the complainant who are at fault who and have not

paid the instalments in time due to which the construction of the project was delayed.

- v. That the conduct of the respondent has always been bonafide and all the demands have been rightly raised. The GST came into force on 01.07.2017, i.e., before the subjective due date of offer of possession (06.12.2017), and accordingly, all the demands against the same needs to be rightly paid.
- vi. That the charges collected in name of the service tax, GST, VAT, etc. are government imposed one and has to be paid to it and are not for the use and benefit of the respondent. Additionally, the complainants as per clause 8.1 of the agreement agreed to pay all the municipal, property, infrastructure development, VAT, service taxes, any fresh incidence of tax, and any other statutory charges, to be levied by an authority, including any enhancement of such taxes by the State Government or the Authority. Hence, the Complainants are liable to pay the GST, VAT and other statutory dues and cannot refuse to pay the same.
- vii. That the respondent received OC on 15.01.2019 itself and offered possession of the said unit to the complainants on 24.01.2019. Thereafter, possession of the said unit was handed over to them on 18.10.2020. Moreover, the respondent gave compensation amounting to Rs.96,800/- to the complainants for delay caused beyond its control as evident from the statement of account dated 17.05.2022. Furthermore, the complainants were liable to pay interest of Rs.1,15,247/-. The respondent in its utmost bonafide, waived off interest for an excess amount of Rs.1,32,602/- and accordingly, gave an additional benefit of Rs.17,355/- to the complainants. Hence, any

amount of delay possession charges should rightly adjust the compensation.

- viii. That the conveyance deed of the said unit has not been executed due to unforeseeable and adverse effects of the pandemic in 2020, as the registry process was put on hold and the same was also communicated to the complainants via email dated 17.08.2020.
- ix. That the complainants have acted in utmost malafide and failed to adhere to their obligation of payment of complete stamp duty and the deficient stamp duty of Rs.1,98,200/- needs to be paid by them. Thereafter, the conveyance deed can be executed, as per clause 6.1 of the agreement.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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) The promoter shall-

(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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

F. I Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.

11. In the present complaint, the complainants intend to continue with the project and are 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."



12. Clause 3.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

3. Possession

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 or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure."

13. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

14. 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.

15. 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., 11.04.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
16. The definition of term 'interest' as defined under section 2(z a) 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. सत्यमेव जयते

Explanation. —For the purpose of this clause—

- (i) *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;*
- (ii) *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;"*

17. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.
18. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on



23.04.2013, the possession of the subject apartment was to be delivered within 42 months from the date of its execution or date of obtaining all licenses or approvals for commencement of construction and whichever is later. Therefore, the due date of handing over possession was 06.09.2017 after allowing grace period of 6 months as mentioned in table above, but the same has been offered on 24.01.2019. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 23.04.2013 executed between the parties.

19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 06.09.2017 till the date of offer of possession plus 2 months i.e., 24.03.2019 at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II Direct the respondent to execute and register conveyance deed of the flat in favour of complainant.

20. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. The possession of the



subject unit has already been offered after obtaining occupation certificate 24.01.2019 and the same was taken by the complainants. So, the respondent is directed to get the conveyance deed executed within a period of two months after payment of stamp duty and registration charges by the complainants besides charging Rs.15000/- as administrative charges for facilitating the registration of the deed.

21. F.III Direct the respondent to not to charge anything towards GST.

For the projects where the due date of possession was/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(s) within a reasonable period.

F.IV Direct the respondent to not to charge anything towards HVAT.

22. The promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the respondent only. But if composition scheme is not availed, VAT may be charged on proportionate basis subject to furnishing of proof of having its actual payment to the concerned taxation Authority.

F. Directions of the authority


23. 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):


- i. The respondent is directed to pay interest to the complainants on the paid-up amount after adjusting the amount already credited at the



prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 06.09.2017 till offer of possession plus two months i.e., 24.03.2019 at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
 - iii. The respondent is directed to execute the conveyance deed of the unit in favour of complainants within two months after payment of stamp duty charges and registration charges by them. However, it can charge Rs.15000/- as administrative charges from the allottees for facilitating the registration of the deed.
24. Complaint stands disposed of.
25. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

V.I - 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.04.2023