

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

Complaint no. : 587 of 2019
First date of hearing: 03.09.2019
Order reserved on: 15.02.2023

Ranvir Singh, S/o Kapoor Singh,
R/o: - Ranvir Hospital, Meham Road,
Meham Gate, Bhiwani,
Haryana- 127021.

Complainant

Versus

1. M/s Sepset Properties Private Limited.
Regd. Office at: - 11th Floor, Paras Twin Towers,
Tower-B, Sec-54, Golf Course Road,
Gurugram, Haryana.
Also At: - Room no. 205, Welcome Plaza,
S-551 School, Block-II, Shakkarpur,
Delhi-110092.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Ms. Abhilasha (Advocate)
Sh. Akshay Sharma (Advocate)

Complainant
Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 05.03.2019 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 thereunder 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:

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
5.	Unit no.	Apartment no. 05, 12 th floor, Tower B [As per BBA on page no. 21 of CRA complaint]
6.	Unit measuring	1760 sq. ft. [As per BBA on page no. 21 of CRA complaint]



7.	Date of execution of Apartment agreement	11.04.2013 (Page no. 18 of CRA complaint)
8.	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 of date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure.
9.	Due date of possession	06.09.2017 (calculated from the date of approval of Environmental clearance) (grace period is allowed being unqualified)
10.	Environmental clearance	06.09.2013 (page no. 34 of reply)

11.	Total Sale Consideration	Rs. 1,12,71,200/- [as per payment plan on page no. 51 of CRA complaint]
12.	Total amount paid by the complainant	Rs. 1,07,48,526/- (as per Annexure R-3 on page no 31 of reply)
13.	Occupation certificate dated	15.01.2019 (page no. 26 of reply)
14.	Offer of possession	24.01.2019 (page no. 48 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant was in search of a property of his own for a long time and was allured by the tall/big claims of respondent regarding their upcoming real estate project named "PARAS DEW'S" in Sector-106, Dwarka Expressway, Gurgaon, Haryana. Thereafter, upon much persuasion from representatives of the respondent, complainant has booked a flat in the said project at an agreed total sale consideration of Rs.96,80,000/- by paying a booking amount of Rs.7,50,000/-. After receipt of booking amount, the respondent was allotted a unit bearing no. TB/1205 in the said project vide allotment letter dated 10.01.2013 and buyer's agreement was also executed between the parties on 11.04.2013 regarding the said unit.



- II. That out of the total sale consideration of the said unit i.e. Rs.96,80,000/-, the complainant has paid an amount of Rs.1,07,48,526/- to the respondent till date. The payment plan was construction linked and the complainant has paid installments as per the demand raised by the respondent despite absence of construction at the site. The complainant has deposited even the last installment scheduled by the respondent and a total sum of Rs. 1,07,48,526/- has already been deposited with the respondent.
- III. That the respondent had to handover the physical possession of the unit to the complainant within a period of 42 months from the date of execution of buyer's agreement dated 11.04.2013 with a further grace period of 6 months i.e. on or before 10.10.2016 but not later than 10.10.2016. However, the respondent failed to hand over physical possession of the said unit as per the commitment made even after the expiry of aforesaid maximum period.
- IV. That at the site, there is no development as per assurances made and the project is far away from completion due to which complainant is suffering and thereby violating the provisions of various sections of the Act of 2016.
- V. That the respondent has committed violation of Section 18 of the Act of 2016 for delay in handing over possession of the said unit



and not refunding the amount paid by the complainant along with interest and under Section 14(1) by not adhering to the sanctioned plans and by not completing the project in terms as agreed between the parties.

- VI. That the respondent has failed to develop the project and is misusing unilateral and one-sided terms of the buyer's agreement to cause wrongful harm to the complainant.
- VII. That the respondent got itself registered with RERA authority only on 28.08.2017 whereas the respondent was obligated to handover possession to the complainant before or on 10.10.2016 hence, the respondent comes under the ambit of RERA.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. To refund the entire amount of Rs.1,07,48,526/- (Rupees One Crore Seven Lakh Forty-Eight Thousand Five Hundred and Twenty-Six only) along with prescribed rate of interest.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent/builder.

6. The respondent contested the complaint by filing reply dated 13.01.2020 on the following grounds: -



- (i) 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.
- (ii) That the complainant herein is not a genuine flat purchaser or consumer and has purchased the said flat for commercial and investment purposes for which the jurisdiction of this Hon'ble Authority cannot be invoked, since the object of the RERA Act is to protect the interests of the consumers and not the investors.
- (iii) That since the complainant has not been successful in selling the flat at a premium, he filed this frivolous complaint just to avoid/making the remaining payments in terms of the agreed payment plan.
- (iv) That complainant herein has been himself guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates which is not permissible in terms of the Act of 2016, and in view of the same the complaint merits outright dismissal.
- (v) That the present complaint is infructuous and not maintainable since the construction of Tower B has already been completed and the OC has also been received on 15.01.2019.



- (vi) That possession of the said unit had to be handed over to the complainant in terms of clauses 3.1 and 3.2 of the buyer's agreement i.e. subject to payment of the remaining amount, but the complainant failed to make the same which is in violation of the provisions of Act of 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
- (vii) That due to failure of the complainant in paying the complete consideration, the respondent has suffered immense monetary hardship.
- (viii) That the present complaint is not maintainable since the complainant has not filed the present complaint as per the correct Form of the Haryana Real Estate (Regulation and Development) Rules, 2017.
7. 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 respondents have raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

E.II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 complainant at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C), 357*** and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating

officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

F.I Objection regarding premature filing of complaint.

13. Another contention of the respondent is that the complaint filed by the complainant is 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. However, going through possession clause 3.1 of the buyer's agreement as mentioned in the table, due date comes out to be 06.09.2017, whereas the present complaint has been received on 05.03.2019. Thus, the objection regarding premature filing of the complaint stands rejected.

F.II Objection regarding the complainant being investor.

14. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the



real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and has paid total price of Rs. 1,07,48,526/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And Anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the



contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F. III Objection regarding the delay in payment

16. The objection raised by the respondent regarding delay in payment by allottee is totally invalid because the allottee has already paid the amount of Rs.1,07,48,526/- against the total sale consideration of Rs. 1,12,71,200/- to the respondent. The complainant has already paid more than 95% of the total sale consideration and the balance amount is payable on application of occupation certificate or the receipt of the occupation certificate. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainant in the instant case. Hence, the plea advanced by the respondent is rejected.

G. Findings on the relief sought by the complainant.

G.I To refund the entire amount of Rs.1,07,48,526/- paid by the complainant with prescribed rate of interest.

17. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession the allottee wishes to withdraw from the project and demand return of the amount



received by the promoter in respect of the unit with interest at the prescribed rate. The due date of possession as per buyer's agreement as mentioned in the table above is 06.09.2017 and there is delay of 1 years, 5 months, 27 days in filing of the complaint. The allottee in this case has filed this application/complaint on 05.03.2019, after possession of the unit was offered to him after obtaining occupation certificate by the promoter. The OC was received on 15.01.2019 whereas, offer of possession was made on 24.01.2019 and thus, becomes a case to grant delay possession charges. The authority has observed that interest of every month of delay at the prescribed rate of interest be granted to the allottee. But now the peculiar situation is that the complainant wants to surrender the unit and wants refund of the amount paid. During the course of proceeding, the counsel for the complainant requested that they still want to withdraw from the project and do not intend to continue with the same. In case allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if promoter fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The same was upheld by 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*



Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022; that: -

"The unqualified right of the allottees 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 allottees, 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 allottees/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 allottees 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".

18. Keeping in view of the aforesaid circumstances and judgment 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** it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under: -

"5. AMOUNT OF EARNEST MONEY

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder***



in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

19. Further, Clause 12.6 of the buyer's agreement also talks about the deduction of 10% of the basic sale price of the dwelling unit in case of withdrawal of the allotment. Clause 12.6 of the said buyer's agreement reiterated as under: -

12.6 "The Purchasers has fully understood and agreed that in case the Purchaser(s) withdraws or surrender his allotment, for any reason whatsoever at any point of time, then the Seller at its sole discretion may cancel/ terminate the booking/ allotment Agreement and shall forfeit the amounts paid deposited up-to the Earnest Money, along with other dues of non-refundable nature. No separate notice shall be given in this regard."

20. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and respondent/builder is directed to refund the paid-up amount after deducting 10% of the basic sale consideration, being earnest money along with an interest @ 10.70% p.a. on the refundable amount, from the date of filing of this complaint i.e., 05.03.2019 till its realization.

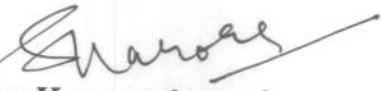
H. Directions of the authority

21. 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/builder is directed to refund the paid-up amount of Rs.1,07,48,526/- after deducting 10% of the basic sale consideration of Rs.96,80,000/- being earnest money along with an interest @ 10.70% p.a. on the refundable amount, from the date of filing of this complaint i.e., 05.03.2019 till its realization.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
22. Complaint stands disposed of.
23. File be consigned to the registry.

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(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.02.2023