

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

Complaint no. : 892 of 2021  
First date of hearing : 08.04.2021  
Date of decision : 17.01.2023

Devinder Dhadwal R/O: - 73, New Officers Colony, Stadium Road, Patiala .	<b>Complainant</b>
Versus	
1. M/s Sepset Properties Pvt. Ltd. 2. M/s Paras Buildtech India Pvt. Ltd. <b>Both regd. Office at: - 11<sup>th</sup> floor, Paras Twin Towers, Sector-54, Gurgaon.</b>	<b>Respondents</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Deepak Gautam	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.

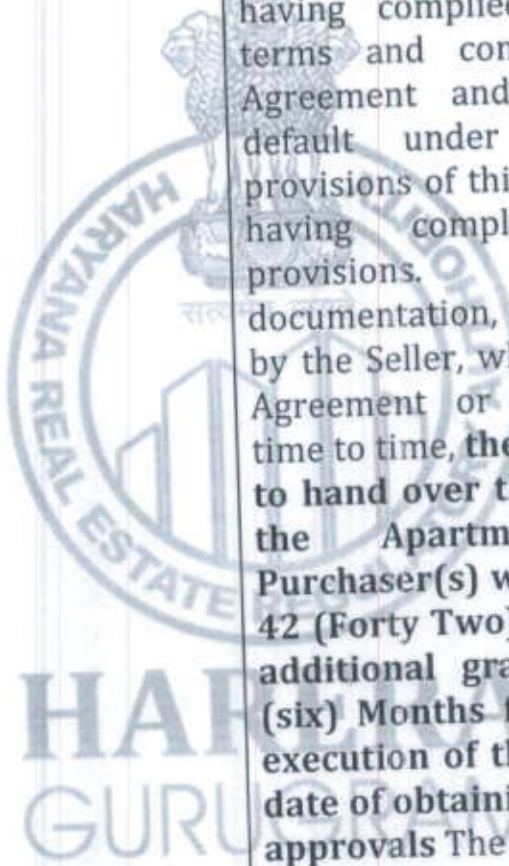
**A. Unit and project related details**

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 Dewas", Sector- 106, Gurugram
2.	Nature of project	Group Housing Colony
3.	<b>RERA registered/not registered</b>	Registered 118 of 2017 dated 28.08.2017
4.	<b>DTPC License no.</b>	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. 207, 2 <sup>nd</sup> floor, Tower F [As per page no. 40 of complaint]
6.	Unit measuring	1385 sq. ft. [As per page no. 40 of complaint]
7.	Date of execution of	22.05.2014



	Floor agreement	buyer's (Page no. 37 of complaint)
8.	Possession clause	<p><b>3. Possession</b></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, <b>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</b> 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</p>





certificate in respect of the Project shall be filed in the due 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.

9.	Due date of possession	22.05.2018 (Calculated from the execution of
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		BBA) (Grace period is allowed)
10	Total sale consideration	Rs. 97,62,880/- (As per page no. 20 of reply)
11.	Total amount paid by the complainant	Rs. 88,19,596/- (As alleged by the complainant)
12.	Occupation certificate dated	-
13.	Offer of possession	-

### B. Facts of the complaint

3. That the complainant booked a unit T-F/207, second floor in the project of the respondents namely, "PARAS DEWS" admeasuring super area of 1385 sq. ft. for an agreed total sale consideration of Rs.97,62,880/-. It is submitted that he made a payment of Rs.7,50,000/- towards the booking of the flat and subsequently acknowledged by the respondents vide receipt no. 1341 dated 29.12.2012. The complainant opted for construction link payment plan. It is worthwhile to mention here that till date the complainant has made a payment of Rs. 88,19,596/-.
4. That the allotment letter was issued by the respondents on 10.01.2013. After a gap of approx. 3 months, the respondents sent 2 copies of the buyer's agreement for signature of the complainant. He was asked to return the signed copies of agreement to the office of the respondents within a period of 10 days. As per clause 3.1 of the agreement, the possession was to be handed over to the complainant within 42 months along with additional grace period

grace of 6 months and another grace period of 90 days from the date of signing of the apartment buyer's agreement.

5. That the respondents are delaying the construction of project and possession of the apartment to the complainant deliberately or for reasons best known to them. Such uncalled act is leaving complainant in a lurch where he has left with no option but to pay rent as well huge EMIs to the banks. It is pertinent to mention here that the complainant has availed loan facility of about Rs. 40,00,000/- from HDFC Bank and the fraudulent act of the respondents by not handing over the possession of the property is causing mental harassment and financial hardship to him.
6. That the respondents were liable to handover the unit to the complainant on or before 21.08.2018 as per clause 3.1 of the agreement, however, due to dishonest / mischievous /malicious intention and unfair /deceptive methods and practices adopted by the respondents, they failed to hand over the possession. The complainant believing the respondents had paid Rs. 88,19,596/- towards the total sale consideration as per the demands raised. It is pertinent to note that the progress of construction was slow, and complainants kept on following up with respondents for refund of the amounts paid along with interest as the respondents had made false claims about the project.
7. That it is submitted that the complainant did not get any form of response on the part of respondents in regard to refund of the money along with interest, after making repetitive requests by visiting to their office and also over telephonic conversation. Thereby, on 21.12.2020, the complainant sent a legal, asking the respondents to refund the amount paid by the complainant along

with interest. But unfortunately, the respondents did not pay any heed to it.

8. It is submitted that the project was not completed even after the lapse of more than 2 years of the due date of possession and the complainant was consistently demanding refund along with interest. However, no heed was paid by the respondents. The inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the respondents and the complainant has rightly claimed to withdraw from the project and claim total refund of amount along with other interest and compensations as per section 18 of Real Estate (Regulation and Development) Act, 2016

**C. Relief sought by the complainant.**

9. The complainant has sought following relief:

- **Direct the respondents to refund the total amount paid by the complainant along with the prescribed rate of interest.**

**D. Reply by the respondents.**

10. 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 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, so in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

11. The complainant defaulted in payment of the instalments as per the agreed payment plan.
12. It is also submitted that the complaint is infructuous and not maintainable since the construction of Tower E to Tower F has already been applied and the occupation certificate has been received of on 15.01.2019 for Tower A to Tower-D. It is admittedly the complainant who has defaulted in payment of the instalments as per the agreed payment plan.
13. It is submitted that the delay was due to force majeure reasons outside the control of the respondents.
14. All other averments made in the complaint were denied in toto.
15. 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 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:

- Direct the respondents to refund the total amount paid by the complainant along with the 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 22.05.2018 and there is delay of 2 years 08 months 20 days on the date of filing of the complaint.

17. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration.
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. 2021-2022(1) RCR© 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. It was 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. 88,19,596/- with interest at the rate of 10.60% (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 complainant is seeking refund amount at the prescribed rate of

interest on the amount already paid by him. However, allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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., 17.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
24. The definition of term 'interest' as defined under section 2(z) 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., 10.60% 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. 88,19,596/- paid by the complainant along with prescribed rate of interest @ 10.60% 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.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.01.2023



**HARERA**  
**GURUGRAM**