



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

Complaint no. : 4255 of 2019
First date of hearing: 06.11.2019
Order pronounced on: 03.03.2023

1. Naval Paul Singh Bhatia,
2. Neeta Bhatia, W/o Naval Paul Singh Bhatia,
both R/o: - E-28, First Floor,
Rajouri Garden, New Delhi.

Complainants

Versus

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

Respondents

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Manish Kaushik (Advocate)
Sh. Akshay Sharma (Advocate)

Complainants
Respondents

ORDER

1. The present complaint dated 17.09.2019 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	'Paras Dews', Sector -106, Gurugram
2.	Unit no.	T-B/0004, Tower-B, Ground Floor
3.	Unit admeasuring	1760 sq. ft.
4.	Allotment letter	30.07.2016 (page no. 94 of the complaint)
5.	Date of execution of builder buyer's agreement	Not executed (Copy of BBA annexed with complaint but not duly signed)
6.	Possession clause	Clause 3.1: <i>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.</i>
7.	Building plan	29/12/2012 (page no. 43 of reply)



8.	Date of environmental clearance	06.09.2013
9.	Due date for delivery of possession	06.09.2017 (calculated from the date of environmental clearance as date of execution of BBA is not mentioned) (grace period of 6 months allowed being unqualified)
10.	Total sale consideration	Rs.1,07,30,880/- (as per allotment letter on page no. 94 of complaint)
11.	Total amount paid by the complainants	Rs.1,02,43,564/- (as per receipts annexed on page no's 59-72 of complaint)
12.	Occupation Certificate	15.01.2019 (page no. 30 of reply)
13.	Offer of possession	24.01.2019 (page no. 64 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. A project by the name of 'PARAS DEWS' situated in Sector-106, Gurgaon, was being developed by the respondents. The complainants coming to know about the same, booked a unit bearing no. T-B/0004, measuring 1760 sq. ft. in it for a total sale consideration of Rs.1,07,30,880/-. An allotment letter dated 30.07.2016 along with copy of buyer's agreement was sent to complainants for signatures, but the same was not executed by the respondent-builder itself.
- II. That in pursuant to buyer's agreement between the parties, the complainants started making various payments against the allotted unit and paid a sum of Rs.1,02,43,564/- in all. The due date for completion of project and of offer of possession of the allotted unit was



- fixed as 06.09.2017, however offer of possession was made on 24.01.2019.
- III. That in pursuance of making the payment, a tripartite agreement was executed between the complainants, respondent-builder and bank on 30.09.2016 for the said unit. The respondents vide email dated 01.10.2016 assured that it would pay Pre-EMI (interest) till offer of possession. The complainants sent a mail to respondent on 07.11.2016 and all the points mentioned in it were duly acknowledged it on 07.11.2016, after which a cheque of Rs.57,03,013/- was handed over to the representative of respondent on 08.11.2016.
- IV. That a few days after handing over the cheque, the complainants sent an email to the respondents on 24.11.2016 requesting the issue of PDC's for payment of interest accrued on loan as agreed, and the respondent sent cheques for interest accrued up till 2017.
- V. That on 11.12.2017, the complainants wrote a letter to the respondents requesting to issue the PDC's for the year of 2018. But in response to the same, the representative of respondents denied to disburse any further amount in lieu of the payment and stated that "no further cheque will be issued". The complainants were entitled to the interest cheques as assured by the respondents and any charges pending if any were liable to be adjusted against the interest cheques and interest accrued upon them due to delayed payment as he is still paying an amount of Rs.51061/- per month against interest to the bank.
- VI. That the respondent-builder committed fraud on the complainants as the offered unit is facing a generator set and its smoke pipe is running right in frontage of the main balcony and bedroom of the unit, while



they have been charged a Preferred Location Charge (PLC) of Rs.3,52,000/-. The project is situated next to a crematorium which was concealed in the site plan contained in the brochure. The respondent-builder has not constructed a nursery school as assured in the brochure rather a EWS Block has been made at its place. The project is neither fully constructed nor the assured amenities have been provided as per the brochure till date. Furthermore, the complainants are being asked to pay maintenance charges for the same.

- VII. The respondents have fraudulently made a demand for payment of club membership charges, maintenance charges and club usage charges as the club house is not ready and has not been fully constructed yet. Hence, demands for payments under wrongful heads are liable to be withdrawn including the demand for labour cess, maintenance charges, and club charges.
- VIII. That the respondents have utterly failed in fulfilling the obligation of delivery/completion of the unit as per the agreement as the said unit is still not in a habitable condition and the possession offered is fraudulent an eye wash only to extract further illegal sums of money. Hence, the complainants are seeking refund of the amount paid to the respondent/promoters due to failure to give possession in accordance with the terms and conditions of the buyer's agreement under provisions of the Act of 2016.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- I. To refund the entire amount of Rs. 1,02,43,564/- (Rupees One Crore Two Lakh Forty Three Thousand Five Hundred and Sixty-Four 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 respondents.

6. The respondents have contested the complaint by filing reply dated 14.01.2021 on the following grounds: -

- i. That the complainants are not a genuine flat purchaser or consumers and purchased the said flat for commercial and investment purposes for which the jurisdiction of this Hon'ble Authority cannot be invoked, as the object of RERA Act is to protect the interests of the consumers and not the investors.
- ii. That the complaint is not maintainable as the possession has to be handed over to the complainants in terms of clause 3.1 and 3.2 of the buyer's agreement and they have been themselves guilty of not adhering to the payment schedule and have made most of the payment after passing of the respective due dates. The same is not permissible in terms of RERA Act, 2016 and in view of the same, the complaint merits outright dismissal.
- iii. That the complaint is not maintainable and is premature as the project is a RERA registered project, having registration no. 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 complaint merits outright dismissal.



- iv. That the complaint is infructuous and not maintainable as the construction of Tower-B has already been completed and the Occupation Certificate has also been received on 15.01.2019. The offer of possession has already been issued to the complainants on 24.01.2019 with a demand for the remaining payment. However, the complainants have not only failed to make the payment of the due amount but filed the present complaint to harass the respondents.
- v. That due to the failure of the complainants in paying the complete consideration, the respondents suffered immense monetary hardships. Hence, it is prayed that this Authority ensures that the complainants to comply with the terms of the buyer's agreement and the provisions of RERA Act, 2016 and Haryana Real Estate (Regulations and Development) Rules, 2017.
- vi. That the complaint is not maintainable as the complainants have not filed the present complaint as per the correct form of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- vii. It is further submitted that the Authority does not have the jurisdiction to entertain the present complaint.
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 submissions 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 respondents 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. The application for refund was filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement titled as ***M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors. (supra)***, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case the allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. It has been deliberated in the proceedings dated 10.5.2022 in CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP and observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.
13. 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 respondents.

F.I Objection regarding the complainants being investor.

14. The respondents have taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents 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 respondents are 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 the 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 the promoter 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 complainants are buyer and paid total price of Rs.1,02,43,564/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, and 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 complainants are allottees as the subject unit was allotted to them 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 allottees being investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding premature filing of complaint.

16. Another contention of the respondents is that the complaint filed by the complainants 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 and whereas the present complaint has been received on



17.09.2019. Thus, the objection regarding premature filing of the complaint stands rejected.

F. III Objection regarding the delay in payments.

17. The objection raised by the respondents regarding delay in payment by allottees is totally invalid because they have already paid the amount of Rs.1,02,43,564/- against the total sale consideration of Rs.1,07,30,880/- to them i.e., 95% of the total amount 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 who defaulted in making payments. But upon perusal of documents on record, it is observed that no default has been made by the complainants in the instant case. Hence, the plea advanced by the respondents is rejected.

G. Findings on the relief sought by the complainants.

G.I To refund the entire amount of Rs.1,02,43,564/- paid by the complainants with prescribed rate of interest.

18. The complainants were allotted unit no. B-0004 on ground floor, in the project "Paras Dews", Sector 106, Gurugram, Haryana by the respondent/builder for a total consideration of Rs.1,07,30,880/-. An allotment letter was issued to the complainants on 30.07.2016. The possession of the unit was to be offered within 42 months plus (6) months grace period from the date of the execution of buyer's agreement or obtaining licences or approvals for commencement of



construction of the unit and whichever was later. Therefore, the due date of possession comes out to be 06.09.2017. It has come on record that against the total sale consideration of Rs.1,07,30,880/-, the complainants have paid a sum of Rs.1,02,43,564/-to the respondents. However, the complainants contended that despite paying about 95% of the total sale consideration, the unit offered for possession is still not in a habitable condition. Accordingly, the Authority appointed a local commissioner vide order dated 31.08.2022 to visit the site and submit its report regarding the same. The L.C vide its report dated 31.11.2022 submitted that the unit was not in a habitable condition and is not complete as per BBA. Further, the respondents during proceedings dated 03.03.2023 also admitted that there were few deficiencies in the said unit which were finally got removed in February,2023. But the complainants requested that they still want to withdraw from the project and do not intend to continue with the same. Hence, in case allottees 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 it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. This view was taken by the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case



of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) (supra) and wherein it was observed as under: -

"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".

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 allottees as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is 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 promoter is liable to the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by respondents/promoter in respect of the unit with interest at such rate as may be prescribed.
20. It is contended on behalf of respondents that after completing the project, they obtained occupation certificate of the same on



15.01.2019 and offered possession of the allotted unit to the complainants vide letter dated 24.01.2019. Neither during this period nor after that the allottees raised any objection with regard to delay in completion of the project and expressed any intention to withdraw from the project as per the mandate of law contained in Sec 18(1) (a) of the Act of 2016. So, now the allottees should not be allowed to withdraw from the project and seek refund of the paid-up amount on the ground of certain deficiencies in the project as well as the allotted unit. But the plea advanced in this regard is devoid of merit. No doubt, after receipt of occupation certificate of the project on 15.09.2019, the allottees were offered possession of the allotted unit, but the same was not constructed as per the terms and conditions embodied in the sample buyer agreement. The complainants while filing the complaint pointed out to those deficiencies to the promoter and who failed to rectify the same. Even that fact is confirmed from the report of local commission dated 30.11.2022. Thus in such situation, the complainants can not be compelled to take possession of the inhabitable unit and are entitled to seek refund of the paid up amount. In case of M/s M3M India Developers Ltd. Vs Rajan Handa & Anr., Civil appeal no. 7777 of 2021, decided on 06.05.2022, a similar situation arose as in the present case an wherein, the Hon'ble Apex court of the land affirmed the view taken by National Consumer Disputes Redressal Commission, New Delhi allowing refund of the paid-up



amount with interest when it is proved that the construction of the amenities was not complete and not in a habitable condition, the issuance of notice for possession was not proper. So, in view of the facts and circumstances detailed above and the photographs (annexure 21 on pages 276-320 of the complaint), it is proved that the respondents offered possession of an incomplete unit to the complainants and so they were right in declining that offer and seeking refund of the paid-up amount with interest.

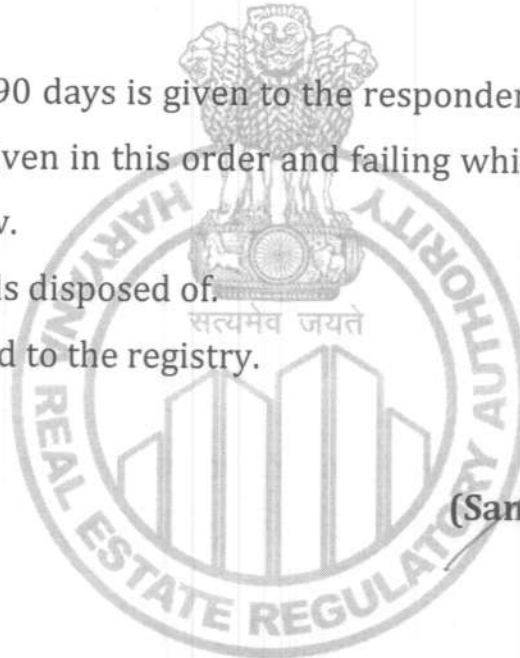
21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 8.70% p.a. (the 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*.

H. Directions of the authority

22. 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/promoters are directed to refund the amount received by them i.e., Rs.1,02,43,564/- from the complainants along with interest at the rate of 10.70% p.a. 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 deposited amount, after adjusting the amount paid by respondent under subvention scheme from the above refundable amount.
- ii. 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.
23. Complaint stands disposed of.
24. File be consigned to the registry.



(Signature)
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2023

HARERA
GURUGRAM