

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

Complaint no. : 4310 of 2022
First date of hearing : 28.09.2022
Date of decision : 24.01.2023

	Mrs. Harneera Dugal R/O: - 6, Sultanpur Estate, Sultanpur, Chattarpur .	Complainant
Versus		
	M/s Sepset Properties Pvt. Ltd. Regd. Office at: - Room no. 205, Welcome Plaza, S-551 School , Block-II, Shakkarpur, Delhi-110092.	Respondent

CORAM:

Shri Vijay Kumar Goyal **Member**

Shri Ashok Sangwan **Member**

APPEARANCE:

Sh. Gaurav Rawat Advocate for the complainant

Shri C.K Sharma and Dhruv Dutt Sharma Advocates for the respondent

ORDER

- The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation

and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
	Name of the project	'Paras Dews', Sector -106, Gurugram
1.	Unit no.	05, 4 th floor, Tower-E
2.	Unit admeasuring	1385 sq. ft.
3.	Allotment letter	10.01.2013 (Page no. 32 of the complaint)
4.	Date of execution of builder buyer agreement	19.06.2013 (Page no. 34 of complaint)
5.	Possession clause	Clause 3.1: Proposes to handover the possession of apartment to purchaser within a period of 42 months with addition of 6 months from the date execution of BBA or

		obtaining the license whichever is later, subject to force majeure grace period 90 days.
6.	Building plan	29/12/2012
7.	Due date of delivery of possession	19.06.2017 (Calculated from the date of buyer's agreement including grace period)
8.	Total sale consideration	Rs. 92,80,900/- (As per page no. 67 of complaint)
9.	Total amount paid by the complainant	Rs. 84,53,614/- (pleaded by the complainant)
10.	Occupation Certificate	Not obtained
11.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainant booked a flat in the project by paying an amount of Rs. 7,50,000/- on 29.12.2012 and the booking of the said unit bearing no. 0405, 4th Floor, Tower-E, in Sector 106, having super area measuring 1385 sq. ft. was done by the respondent and the same was acknowledged by it.
4. That the respondent sent an allotment letter dated 10.01.2013 to complainant, for a total sale consideration of the unit i.e. Rs. 92,80,900.00, which includes basic price, EDC , IDC, and other

Specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

5. That a buyer's agreement was executed between complainant and respondent on 19.06.2013. 11. As per clause 3.1 of the buyer's agreement the respondent had to deliver the possession within a period of 42 months + 6 months' grace period from the date of execution of agreement or date of obtaining all licenses or approvals for commencement of construction, whichever was later. Therefore, the due date of possession is calculated from the date of agreement i.e., 19.06.2013 and the same comes out to be 19.12.2016.
6. As per the demands raised by the respondent and based on the payment plan, the complainant already paid a total sum of Rs. 84,53,614.00 towards the said unit against the total sale consideration of Rs. 92,80,900/-.
7. The complainant contacted the respondent on several occasions and was regularly in touch with it. But it was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when would they deliver the project and why construction was going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.
8. That complainant requested the respondent to show/inspect the unit before paying any further amount and requesting to provide the car parking space no, but it failed to reply.

9. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of the unit and the provisions allied to it. The modus operandi adopted by the respondent, from its point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or not delivering the project in time.

C. Relief sought by the complainant.

10. The complainant has sought following relief:

- **Direct the respondent to pay the delay possession charges along with the prescribed rate of interest.**

D. Reply by the respondent.

11. It is submitted 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 further 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 respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

12. That the Municipal Corporation of Gurugram vide order dated 14.10.2019 bearing Memo No.MCG/ADMC/2019 imposed a complete ban from 11.10.2019 to 31.12.2019 on the construction activities in Gurugram. Further, Environment Pollution (Prevention and Control) Authority for NCR vide direction dated 01.11.2019 bearing EPCA-R/2019/L-53 imposed a complete ban from 01.11.2019 to 05.11.2019. The Hon'ble Supreme Court vide its order dated 04.11.2019 in the matter bearing W.P (C) No. 13029/1985 also banned the construction activities in Delhi NCR till further orders keeping in mind the damage caused to the environment due to construction and demolition activities. It is pertinent to mention here that the Hon'ble Supreme Court has only on 09.12.2019 partially uplifted the ban on construction activities in Delhi NCR between 6a.m. to 6p.m. Thereafter, despite facing practical issues in arranging manpower, the Respondent had managed to maintain the minimum labour force constantly in the labour camp at the project site to complete the pending work at the earliest. This clearly shows its bonafide intention to complete the project on time. Even in the year 2018, vide Notification No. EPCA-R/2018/L-91 and EPCA-R/2018/100 periodic ban on constructions were imposed. Such bans that have been imposed from time to time in the past years, had enormous adverse impact on the construction of infrastructure projects. The adverse effects of banning the construction activities disrupts the arrangement of plant & machinery, supply of raw material and manpower resources as it takes a long time to reorganize the labour force once the ban is lifted. Another factor to be considered is that most of the labour force in NCR hails from Eastern UP/Bihar so during

such period wherein the ban remains in effect, the labour force usually heads back to their hometowns, as it becomes difficult for them to sustain here without any source of income. It is an admitted fact, that, on an average, the construction ban of 1 day culminates into roughly 10 days of delay in overall construction activity. It is also not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labour was available. Infact all the developers are still facing hardship because of acute shortage of labour. Even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the Force Majeure clause and therefore, there cannot be said to be any delay in delivering the possession by the respondent.

13. It is pertinent to mention here that the respondent has already completed the construction of the tower in which the unit allotted to the complainant is located and has also applied for the occupancy certificate for tower E & F of the project with the competent authority and is awaiting the same. The respondent shall offer the possession of the unit to the complainant immediately after the receipt of occupation certificate and on payment of remaining dues by her.
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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The respondent raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the relief sought by the complainant.

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

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

Delay Possession Charges.

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

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,

—

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

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

"Proposes to handover the possession of apartment to purchaser within a period of 42 months with addition of 6 months from the date execution of BBA or obtaining the license whichever is later, subject to force majeure grace period 90 days.."

18. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that

even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

19. **Admissibility of grace period:** The promoter proposes to hand over the possession of the unit within a period of 42 months with additional 6 months from the date execution of BBA or obtaining the license or approvals for commencement of construction, whichever is later. The authority is of view that the said grace period of 6 months shall be allowed to the respondent being unconditional. Date of building plan approvals is 29.12.2012 and as per documents available on record, date of executing buyer's agreement is 19.06.2013. Thus, as per clause 3.1 of the buyer's agreement, the due date of possession calculated from the date of buyer's agreement i.e. 19.06.2013, being later, which comes out to be 19.06.2017 along with 6 months, Of grace period.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by her. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by

the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

21. 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.
22. 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., 24.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause— the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

24. 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 complainant in case of delayed possession charges

H. Directions of the authority

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- 1) The respondent is directed to pay interest at the prescribed rate of 10.60% p.a. for every month of delay from the due date of possession i.e., 19.06.2017 till valid offer of possession after obtaining occupation certificate plus two months to the complainant(s) as per section 19(10) of the Act.
- 2) The arrears of such interest accrued from 19.06.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.



- 3) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
- 4) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
26. Complaint stands disposed of.
27. File be consigned to registry.

(Ashok Sangwan)
Member

V.I-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2023

HARERA
GURUGRAM