



**HARERA  
GURUGRAM**

Complaint No. 4636 of 2022

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

Complaint no. : 4636 of 2022  
First date of hearing : 28.09.2022  
Date of decision : 24.01.2023

<p>Mrs. Harmandeep Singh Sahni <b>R/O:</b> - F-58A, Gadaipur Bandh Road, Radhey Mohan Drive, Jona Pur, South Delhi- 110047 .</p>	<p><b>Complainant</b></p>
<p><b>Versus</b></p>	
<p>M/s Sepset Properties Pvt. Ltd. <b>Regd. Office at:</b> - Room no. 205, Welcome Plaza, S-551 School , Block-II, Shakkarpur, Delhi-110092.</p>	<p><b>Respondent</b></p>

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Vaibhav Sharma

Advocate for the complainant

Shri C.K Sharma and Dhruv Dutt  
Sharma

Advocates for the respondent

**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:

Sr. No.	Particulars	Details
	Name of the project	'Paras Dews', Sector -106, Gurugram
1	Unit no.	06, 7 <sup>th</sup> floor, Tower-E
2	Unit admeasuring	1385 sq. ft.
3	Allotment letter	10.01.2013 (Page no. 21 of the complaint)
4	Date of execution of builder buyer agreement	28.05.2015 (Page no. 23 of complaint)
5	Possession clause	<b>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 or</b>



		<b>approvals for commencement of construction whichever is later, subject to force majeure grace period 90 days.</b>
6	Building plan	29/12/2012
7	Due date of delivery of possession	28.05.2019 (Calculated from the date of buyer's agreement including grace period)
8	Total sale consideration	Rs. 1,00,14,950/- (As per page no. 56 of complaint)
9	Total amount paid by the complainant	Rs. 90,54,118/- (Alleged by the complainant)
10	Occupation Certificate	Not obtained
11	Offer of possession	Not offered

### B. Facts of the complaint

- That relying on the representations, warranties and assurances of the respondent about the timely delivery of possession, the allottee namely, Sh. Harmandeep Singh Sahni booked an apartment no. T-E/0706 on 7 floor, Tower E. admeasuring 1385 sq. ft. super area (Unit") in the project known under the name and style of "Paras Dews" at Sector 106. Dwarka Expressway, Daulatabad, Gurugram-122001 ("Project"), vide an application on 29.12.2012 by paying a sum of Rs. 7,50,000/-

4. That the complainant bought the unit from the authorized representative of the respondent. The authorized representative, for and on behalf of the respondent, made tall claims in regard to the project and the respondent. lured the complainant into booking the said unit in its project. It is submitted that the respondent made false representations with respect to the timely delivery of the said project to the complainant and the overall conduct of the respondent, has been malafide, from the very beginning.
5. That firstly, the complainant was made to sign on the one-sided arbitrary agreement, the terms and conditions of which were fixed and could not have been altered. Thereafter, the respondent delayed in executing the agreement. The booking of the Unit was made on 29.12.2012 and consequently, the allotment was made on 10.01.2013 when the construction of the project had already begun. The respondent was obligated to execute the buyer's agreement after the same. However, owing to the sheer unlawful and malafide activities on part of the respondent, it miserably failed to do so. The complainant had timely signed the agreement and delivered back to the respondent. But, the respondent executed the agreement after a delay of 2.5 years, on 28.05.2015.
6. That it is a matter of fact that the application for getting the occupancy certificate has not been moved till date and the benefit of the grace period of 6 months should not be given to the respondent. These are mere tactics on part of the respondent to increase the due date of delivery of possession.
7. That as noted above, the construction of the Tower E is incomplete and the said Tower is only 60% completed, whereas, on the other hand. the complainant has made a total payment of Rs. 90,54,118 till date towards the Unit, as is evident from the customer



statement as on 06.06.2022, out of the Total Cost of the property as per the Agreement of Rs. 1,00,14,950. It is submitted that the complainant has paid almost 91% of the total cost of the property as and when demanded by the respondent and, rest of the payment has not been demanded by the respondent.

8. That, furthermore, the respondent failed in complying with all the obligations, not only with respect to the agreement with the complainant but also with respect to the concerned laws, rules and regulations thereunder, due to which she faced innumerable hardships. Moreover, the respondent made false statements about the progress of the project as and when inquired by the complainant.
9. That the present case is a clear exploitation of innocence and beliefs of the complainant and an act of the respondent to retain her hard-earned money illegally. Tired from the unlawful conduct of the respondent and getting no correct response through personal visits and emails, the complainant sent a legal notice dated 15.11.2021 to it, which again, was not responded. The respondent is engaged in such unlawful conduct and delaying tactics to harass the allottees like the complainant and which should be duly noted by the Hon'ble Authority.
10. 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 units 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.**

11. The complainant has sought following relief:

- **Direct the respondent to pay the delay possession charges along with the prescribed rate of interest.**
- **Direct the respondent not to raise demands for charges not mentioned in the agreement.**

**D. Reply by the respondent.**

12. 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.
13. That it has been categorically agreed between the parties that the possession of the unit was to be handed over in terms of clause 3.1 and 3.2 of the apartment buyer agreement. It is submitted that the respondent has proposed to offer the possession within a period of 48 months from the date of execution of the buyers agreement or



date of obtaining all licences or approvals for commencement of construction, whichever is later, however, the same was subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation, etc. It had also been agreed that the respondent would also be entitled to a further grace period of 90 days after expiry of 48 months.

14. It is also submitted that the present complaint is infructuous and not maintainable as the occupation certificate of Tower E to Tower F has already been applied and the same has been received of on 15.01.2019 for Tower A to Tower-D. Admittedly, it is the complainant who defaulted in payment of the instalments as per the agreed payment plan.
15. That the Municipal Corporation of Gurugram vide direction 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.

16. 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 the complainant.
17. It is submitted that the delay was due to force majeure reasons outside the control of the respondent.
18. All other averments made in the complaint were denied in toto.
19. 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 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.

## **F: Finding on pleadings of respondent**

20. The respondent-promoter raised the contention that the Municipal Corporation of Gurugram vide direction 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 flat buyer's agreement was executed between the parties on 28.05.2015 and the events taking place such as banned the construction do not have any impact on

the project being developed by the respondent. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong

#### **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 Charge:**

21. 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."*

22. 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 or approvals for commencement for construction whichever is later, subject to force majeure grace period 90 days."*



23. At the inception, it is relevant to comment on the pre-set possession clause of the floor 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.
24. **Admissibility of grace period:** The promoter proposed to hand over the possession of the unit within a period of 42 months with addition of 6 months from the date execution of BBA or obtaining the license or approvals for commencement of construction whichever is later, the buyer's agreement was executed on 28.05.2015. So, the due date is calculated from the date of execution of buyer's agreement i.e., 28.05.2019 being later. Further, it was provided in the buyer's agreement that promoter would be entitled to a grace period of 6 months for making offer of possession of the said unit. The grace period of 6 months is allowed being unqualified.
25. **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 promoters, 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.*

26. 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.
27. 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%.
28. 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;"*

29. 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 her in case of delayed possession charges

**Direct the respondent not to raise demands for charges not mentioned in the agreement.**

30. The respondent is directed not to charge anything which is not part of buyer's agreement.

**H. Directions of the authority**

31. 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., 28.05.2019 till the offer of possession after

obtaining occupation certificate plus two months to the complainant as per section 19(10) of the Act.

- 2) The arrears of such interest accrued from 28.05.2019 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 10<sup>th</sup> 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 the 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.
32. Complaint stands disposed of.
33. File be consigned to registry.

  
(Ashok Sangwan)  
Member  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2023