

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

**Complaint No.:** 526 of 2019  
**Date of first hearing :** 29.08.2019  
**Date of Decision :** 29.08.2019

Mr. Satish Kumar Chawla (HUF)  
R/o. House no. 60, Cedar Drive,  
Malibu Town Sohna Road,  
Gurugram (Haryana)

**Complainant**

Versus

M/s Sepset Properties Pvt. Ltd.  
**Office at:-** 11<sup>th</sup> Floor, Paras Twin  
Towers ( Tower- B), Sector -54,  
Golf Course Road,  
Gurugram - 122002.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Jasdeep

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 06.02.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Satish

Kumar Chawla (HUF), against the respondent, M/s Sepset Properties Pvt. Ltd., on account of violation of 3.1 of the apartment buyer agreement executed on 17.04.2013 for apartment/unit no. 08, 2<sup>nd</sup> floor, tower E having 1385 sq. ft. super area in the project "Paras Dews", located at Sector 106, Dwarka Expressway, Gurugram for not giving possession on the due date which is an obligation of the promoter under section 11 (4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	Paras Dews, Sector 106, Dwarka expressway, Gurugram.
2.	Project area	13.762 acres
3.	Nature of real estate project	Group housing colony
4.	DTCP License no.	61 of 2012 dated 13.06.2012
5.	Apartment /unit no.	08, 2 <sup>nd</sup> floor, Tower E
6.	Unit measuring area	1385 sq. ft.
7.	RERA registered/unregistered	<b>Registered vide no. 118 of 2017</b>
8.	RERA Registration valid upto	<b>31.07.2021</b>
9.	Date of execution of the Builder/Apartment buyer agreement	17.04.2013( <b>Annx P-4</b> )
10.	Payment Plan	Construction linked plan( <b>Pg. 65 of the complaint</b> )
11.	Total consideration amount as per applicant's ledger	Rs.93,84,775/-( <b>Annx P 12 and Pg. 32 of the reply</b> )

12.	Total amount paid by the complainant till date	Rs. 84,35,460/- <b>(Annx P 12)</b>
13.	Percentage of consideration amount	89.88%
14.	Date of issuance of environmental clearance from the concerned authority	06.09.2013
15.	Due date of delivery of possession.	<b>06.09.2017</b> <b>Clause 3.1:</b> 42 months + 6 months grace period from date of execution of agreement or grant of all licenses or approvals for commencement of construction i.e. 06.09.2013, whichever is later <b>(Annx R 4)</b>
16.	Delay of number of months/ years till 29.08.2019	1 year, 11 months and 22 days.
17.	Penalty Clause as per builder/ apartment/ buyer agreement	Clause 3.3 i.e. Rs. 5/- per sq. ft. per month
18.	Status of the project	OC received for tower A to E on 15.01.2019 <b>(Pg. 29 of the reply)</b>

3. As per the details provided above, which have been checked as per record of the case file, an apartment/builder buyer agreement dated 17.04.2013 is available on record for unit no.08, 2<sup>nd</sup> floor, tower E, according to which the possession of the aforesaid unit was to be delivered by 06.09.2017. The promoter has failed to deliver the possession of the said unit to the complainant by the due date nor has

paid any compensation i.e. @ Rs. 5 per sq. ft of the said unit per month for the period of the such delay as per clause 3.3 of the apartment buyer agreement dated 17.04.2013., Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondent through his counsel appeared on 29.08.2019. The case came up for hearing on 29.08.2019. The reply has been filed by the respondent on 14.05.2019 which has been perused by the authority.

**Facts of the complaint: -**

5. Briefly put facts relevant for the disposal of the present complaint are that the local representative of the developer allures the complainants with special characteristics of finishing of flat and assured that physical possession of flat will be handed over within 36 months as construction was already commenced.

6. The complainant submitted that on 27.10.2012, one Ms. Abnash Kaur & Inderjit Singh Oberoi (original allottee) booked a 2 BHK residential apartment in the project Paras Dew's, Sector 106, Gurugram for apartment/unit no. T-E - 0208 and paid application / booking money through four cheque of Rs. 7,50,000/-. Flat was purchased under construction link payment plan for sale consideration of Rs. 93,84,775/-.
7. On 10.01.2013, respondent issued an allotment letter of apartment no. T-E- 0208 on 2<sup>nd</sup> floor in Paras Dew's situated at Sector - 106, Gurugram, Haryana in favour of original allottee.
8. On 17.04.2013, builder buyer agreement for the subject unit was executed between the respondent and the original allottee. As per clause 3.1 of builder buyer agreement the respondent has agreed to handover the possession of the apartment within 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 licensed or approvals for commencement of construction, whichever is later.

Building plans were approved on 26.09.2012 and apartment buyer Agreement was executed on 17.04.2013 therefore due date of possession was 17.04.2017 (42 +6 months after execution of BBA).

9. The complainant submitted that he continues to paying instalment as per demand rose by the respondent and as per construction stages of payment plan. Till date 26.01.2016 complainant has paid Rs. 84,35,460/- i.e. 90% of total cost of flat.

10. Since April, 2017, karta of complainant regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted flats, but all in vain, in spite of several visits by the complainant. The complainant never been able to understand/know the actual status of construction. Though towers seem to be built up but there was no desirable progress observed on finishing and landscaping work. Hence, this complaint.

**Issues to be determined:-**

1. Whether the developer/ respondent has violated the terms and conditions of builder buyer agreement?
2. Whether there is any reasonable justification for delay to give possession of flats?
3. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for delay in giving possession?
4. Whether complainant is entitled for interest for every month of delay from due date of possession till the handing over of the possession under section 18 of RERA Act.?
5. Whether complainant is entitled for refund along with compounding interest at prescribed rate from date of booking to till the date of refund under section 19(4) of RERA Act.?

**Relief sought:-**

- I. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till handing over of possession on the paid amount as per section 18 (1) proviso of the Act.

- II. Direct the respondent to deliver the possession of the subject unit within 6 months from the date of filing of the present complaint.
- III. Restrain order be passed against the respondent for incorporating unfair clauses in the builder buyer agreement.
- IV. Direct the respondent to complete and seek necessary governmental clearance regarding infrastructural and other facilities including road, water, sewerage, etc. before handing over the physical possession of the unit in question.
- V. Direct the respondent to hand over the club house and car parking complete in all respects while handing over of the flats.
- VI. Direct the respondent to provide for third party audit to ascertain/ measure accurate areas of the flats and facilities more particularly, as to the "super area" and "built-up area"

**Respondent's reply: -**

10. It is submitted 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 authority cannot be invoked, since the object of the RERA Act is to protect the interests of the consumers and not the investors. The same is also brought out from the fact that the complainant is a subsequent purchaser and 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.

11. It is submitted that the present complaint is not maintainable since the same is filed by a HUF without the requisite authorisation. This same is not permissible in terms of the RERA Act, 2016, and in view of the same the complaint merits outright dismissal.

12. It is further submitted 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.

13. It is also submitted that the present complaint is infructuous and not maintainable since the construction of Tower E is in the final stages wherein the structure is complete and the final finishing work and interior work is going on and the respondent is willing to offer possession to the complainant on payment of the outstanding dues. It is pertinent to point out that Towers A to D of the project are already complete and the occupation certificate has also been received on 15.01.2019. Thus there is no merit in the present complaint or the contention that there has been any delay on the part of the respondent since it is admittedly the complainant who has defaulted in payment of the instalments as per the agreed payment plan.

14. It is submitted that the complainant in the present complaint under reply have also admitted the fact that they have not paid the total consideration of INR 93,84,775/-.

15. It is further submitted that the present complaint is not maintainable since possession had to be handed over to the complainants in terms of clauses 3.1 and 3.2 of the builder buyer agreement which clearly provide that subject to the complainants complying with all the terms of the builder buyer agreement and making timely payments of the instalments as and when they fall due the respondent proposes to offer the possession of the apartment within a period of 51 months of the date of execution of the builderbuyers agreement or date of obtaining all licences or approvals for commencement of construction, whichever is later, subject to force majeure.

16. Moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014 and infact in

the present case the complainant is a subsequent purchaser and the transfer and the agreement in his name was done on 15.01.2014.

17. It is submitted that in terms of clause 3.1 of the agreement the likely date for completion of the unit would come to 16.04.2018 taking 51 months from 15.01.2014, however the same was subject to the complainant making timely payments which admittedly has not been done in the present case. Therefore , there is no delay on the part of the respondent in completion of the project. Thus it is clear that the complaint has been filed in contravention of the provisions of the builder buyer's agreement dealing with offer of possession and the complaint merits outright dismissal in view of the same. Thus completion and offer of possession was subject to the complainant having complied with all the terms and conditions of the BBA, which has not been done in the

present case since the complainant admittedly has not paid the full consideration and the outstanding dues.

18. The chart detailing the various defaults committed by the purchasers is given below-

INSTALLMENT NAME	DUE DATE FOR PAYMENT	NUMBER OF DAYS DELAY IN MAKING PAYMENT
Within 120 days of booking	28.04.2013	253 days
On completion of Top floor Slab	26.05.2015	3 days
On completion of Brick Work	28.09.2015	93 day
On completion of Electrical Conducting	31.12.2015	1172 days (Complete payment not made till date)

19. It is reiterated that the construction of the flat in question is in the final stages and for the rest of the tower in the project occupation certificate has already been received. The respondent is willing to handover possession to the complainants subject to payment of the outstanding dues as per the builder buyer agreement.

20. It is submitted that the present complaint is not maintainable since not only is the complainant in breach of the builder

buyer agreement but they are also in violation of Real Estate Regulation Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017. Section 19 of RERA, 2016, lays down the rights and duties of the allottees and sub-clause (6) of section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. In the present case it has been admitted by the Complainants that they have failed to make complete payment therefore the complainant is in breach of the Real Estate Regulation Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

21. It is submitted that this commission ought to take note of the fact that it is the respondent herein who has suffered due to the breaches committed by the complainants since the respondent has continued with the construction of the

apartment despite the complainant not paying the complete consideration.

22. Due to the failure of the complainant in paying the complete consideration the respondent has suffered immense monetary hardship. It is most humbly prayed that this authority ensures that the complainants herein comply with the terms of the builder buyer agreement and the provisions of the Real Estate(Regulation and Development) Act, 2016 and the Haryana Real Estate(Regulation and Development) Rules, 2017.

23. The respondent submitted that hon'ble Supreme Court of India in the case *Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors*, decided on 04.07.2011, (2011) 12 SCC 18, in paras 33 and 34, while interpreting similar contracts involving performance of reciprocal promises in respect of immovable properties has interpreted sections 52, 53 and 54 of the Indian Contract Act, 1872, to hold that in case of a

contract wherein payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

24. The said dictum is applicable in the present case as well since not only does the order of performance of reciprocal performances as per the agreement mandate timely payments by the complainants but also since the complainants admitted in the complaint to not having paid the due and payable instalments.

25. Therefore the respondent was not obligated to complete construction and offer possession till the time the complainant perform his obligations under the agreement. Moreover, the complainant also cannot seek interest or damages since they are in default and it is the respondent who has completed the construction and can exercise his right to cancel the



agreement or claim damages from the complainants for the defaults on their part.

26. The respondent submitted that NCDRC in the case of Manas Developers vs Madhur Arjun Bhabal, RP 1563 of 2011, decided on 09.03.2015, has held that in cases where the complainants have failed to pay the amounts in accordance with the agreement and are defaulters then the builder cannot be held liable for delayed possession since the builder is not obligated to give possession without getting the entire payment with interest. It was further held that defaulters should not be rewarded for their own wrongs. The said judgment is squarely applicable to the facts of the present case and the present complaint merits outright dismissal with costs in view of the same.

27. Further, the Hon'ble Supreme Court of India in the case of Supertech vs Rajni Goyal, decided on 23.10.2018, 2018(14)SCALE187, has held that consumers cannot be

allowed to reap the benefits of their own wrong by not taking possession when the same has been offered by the builder and the computation of interest also closes on the said date.

*“Furthermore, the period of Interest should close on April 2016 when the Full Occupancy Certificate was obtained as per the admission of the Respondent-Purchaser herself in Para 4(j) of the Consumer Complaint, wherein she has admitted that the Appellant-Builder had obtained the Completion Certificate as late as April 2016. The Respondent-Purchaser could not have any further grievance after April 2016 with respect to delay in handing over possession. The Respondent-Purchaser ought not to be allowed to reap the benefits of her own delay in taking possession.”*

28. It is also pertinent to point out that in the present complaint under reply the complainants have not been able to point out a single provision of either the Real Estate(Regulation and Development) Act, 2016 or the Haryana Real Estate(Regulation and Development) Rules, 2017 which has been violated by the respondent. Thus this complaint is not entitled to any relief at all.

29. It is submitted that the present complaint is not maintainable since the complainants have not filed the present complaint as per the correct Form of the Haryana Real Estate(Regulation and Development)Rules, 2017.
30. It is further submitted that the complainant does not have any valid or subsisting cause of action to file the present complaint. In view of the aforesaid submissions, the present complaint be dismissed with cost.

**Determination of issues: -**

31. Regarding the **first, second, fourth and fifth issue** raised by the complainant, as per clause 3.1 of the builder/ apartment buyer agreement dated 17.04.2013, the company proposed to hand over the possession of the said unit by 06.09.2017. This fact is fortified from the perusal of clause 3.1 of the builder/apartment buyer agreement dated 17.04.2013. The clause regarding possession of the said unit is reproduced below:

***“3.1 POSSESSION OF FLOOR***

*The seller proposes to handover the possession of the Apartment to the Purchase(s) within a period*

*of 42 moths with an additional grace period of 6 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 Majure. The Purchaser (s) agrees and understands that the Seller shall be entitled take a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession....”*

The environment clearance was received by the respondent from the competent authorities on 06.09.2013 which is later than the date of execution of agreement. Accordingly, the due date of possession on calculation was 06.09.2017. therefore, there is delay of 1 years, 11 months and 22 days in handing over the possession. As far as the penalty clause in case of delay in possession is concerned which is Rs. 5/- sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

*“.....Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”*

Hence, the Authority is of the considered view that the complainant is entitled for delayed possession charges at the prescribed rate of interest of 10.45% p.a. for every month of delay in terms of proviso to section 18(1) of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

ii. Regarding the **third issue** raised by the complainant, the complainant has made a baseless allegation of wilful misrepresentation without substantiating the same. As the burden of proof is not discharged, the said issue cannot be determined.

**Findings of the authority: -**

32. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

33. Project is registered with the Authority. Arguments heard.

**Decision and directions of the Authority:-**

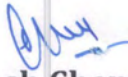
34. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the parties in the interest of justice and fairplay: -

- i. The respondent is duty bound to pay the delayed possession charges in the form of interest at the prevalent prescribed rate i.e. 10.45% p.a. on the amount paid by the complainant for every month of delay from the due date of possession i.e. 06.09.2017 till the offer of possession as per section

- 18 (1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- ii. The interest so accrued from the due date of delivery of possession i.e. 06.09.2017 till the date of order be paid within 90 days from this date and thereafter, monthly interest be paid on or before 10<sup>th</sup> of each subsequent English calendar month.
  - iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.
  - iv. The promoter shall not charge anything from the complainant which is not a part of the apartment buyer agreement.
35. The order is pronounced.

36. Case file be consigned to the registry.

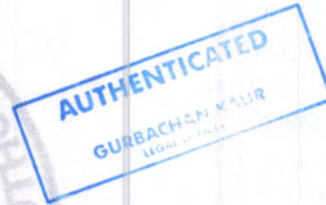
  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram.

Dated: 29.08.2019

Judgement uploaded on 04.09.2019



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GURUGRAM