

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

Complaint no. : 1740 of 2019
First date of hearing : 29.08.2019
Date of decision : 29.08.2019

1. Mr. Satya Prakash Nanda
2. Mr. Anshuman Nanda
3. Mr. Anupam Nanda

All R/o: HIG 1/37, Kapila Prasad, BDA
Colony, Bhubaneswar, Odisha - 751002

Complainants

Versus

M/s Sepset Properties Pvt. Ltd.

Office at: Room no. 205, Welcome Plaza, S-
551, School Block – II, Shakarpur, Delhi -
110092

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sumit Singh
Shri Jasdeep

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 25.04.2019 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 complainants Mr. Satya Prakash Nanda, Mr. Anshuman Nanda and Mr. Anupam

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Nanda, against the promoter M/s Sepset Properties Pvt. Ltd., on account of violation of the clause 3.1 of the apartment buyer's agreement executed on 11.04.2013 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The agreement was executed between the Mrs. Kamalini Tripathy and the respondent, but due to sudden death of Mrs. Kamalini Tripathy, by request cum undertakings by Mr. Satya Prakash Nanda, Mr. Anshuman Nanda and Mr. Anupam Nanda, the promoter has deleted the name of Mrs. Kamalini Tripathy. It is further stated that w.e.f. 17.04.2014 Mr. Satya Prakash Nanda, Mr. Anshuman Nanda and Mr. Anupam Nanda are the applicants of unit mentioned in the subject vide letter dated 17.07.2014.
3. Since, the apartment buyer's agreement has been executed on 11.04.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of



statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under:

1.	Name and location of the project	"Paras Dews", Sector-106, Gurugram.
2.	Nature of the project	Residential group housing colony
3.	Project area	13.762 acres
4.	DTCP license no.	61 of 2012 dated 13.06.2012
5.	Environmental clearance	06.09.2013 (page 34 of reply)
6.	Registered/ not registered	Registered
7.	HRERA registration no.	118 of 2017 dated 28.08.2017
8.	HRERA registration certificate valid up to	31.07.2021
9.	Occupation certificate received on	15.01.2019 (page 26 of reply)
10.	Unit no.	01, 1 st floor, tower A
11.	Unit measuring	1900 sq. ft.
12.	Date of execution of apartment buyer's agreement	11.04.2013
13.	Payment plan	Construction linked plan [Page 74 of complaint]
14.	Total cost of the unit as per payment plan pg. 74	Rs.1,23,18,000/-

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15.	Total amount paid by the complainant as per statement of account dated 24.01.2019	Rs.1,18,00,256/- [Page 107 of complaint]
16.	Due date of delivery of possession as per clause 3.1 of apartment buyer's agreement i.e. within a period of 42 months with an additional grace period of 6 months from the date of execution of this agreement (11.04.2013) or date of obtaining all licenses or approval for commencement of construction (EC granted on 06.09.2013) , whichever is later.	06.09.2017 Note: due date of possession is calculated from the date of grant of EC i.e. 06.09.2013
17.	Offer of possession	24.01.2019 [Page 42 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 24.01.2019	1 year 4 months 18 days
19.	Penalty clause as per clause 3.3 of apartment buyer's agreement dated 11.04.2013	The company shall pay compensation calculated @ Rs.5/- per sq. ft. per month for the delayed period of offer to hand over the possession of the apartment provided that the purchaser has paid the entire amount to the seller strictly on time or as demanded by the seller.

5. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 11.04.2013 is available on record

for the aforesaid unit according to which the possession of the said unit was to be delivered by 06.09.2017 and the possession was offered by the respondent on 24.01.2019. The respondent has not paid any interest for the period it delayed in offer of possession. Therefore, the promoter has not fulfilled its committed liability as on date.

6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 29.08.2019. The reply filed on behalf of the respondent and same has been perused by the authority.

Facts of the complaint

7. The complainants submitted that they have booked a residential apartment with the respondent company on 27.08.2012 and paid the booking amount vide cheque no. 014330 dated 7,50,000/- drawn on State Bank of India in the name of "PARAS".
8. The complainants submitted that upon receipt of the said cheque for a sum of Rs.7,50,000/-, the company booked an apartment in its project known as 'Paras Dew's', Sector -106,

Dwarka Expressway, Gurugram, Haryana on 10.09.2012 in the name of Mrs. Kamalini Tripathi wife of Mr. Satya Prakash Nanda. The respondent company issued a receipt of the said booking amount vide its receipt no. 517 dated 29.12.2012.

9. The complainants submitted that the respondent company vide its allotment letter dated 10.01.2013 allotted a residential apartment no.T-A/0101, 1st floor in Paras Dew's, Sector-106, Dwarka Expressway, Gurugram, Haryana having super area 1900 sq. ft. in the name of Mrs. Kamalini Tripathi on a basic sale price of Rs.5500/- per sq. ft. which exclude PLC if applicable, car parking, EDC, IDC, Club Membership and IFMS etc. under "construction linked payment plan".
10. The complainants submitted that Mrs. Kamalini Tripathi made the payment to the respondent company within time as and when demanded by the respondent company. Upon receipt of a sum of Rs.20,90,000/- from the said Mrs. Kamalini Tripathi, the respondent company has executed an apartment buyer's agreement dated 11.04.2013 with her in respect of the said apartment and the relevant terms of the said agreement are as under.

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11. The complainants submitted that the respondent company obtained a licence bearing no.61/2012 dated 13.06.2012 for setting up a residential group housing project on the land measuring 13.76 acres at sector 106 at village Dulatabad, Gurugram Haryana.
12. The respondent company has obtained the sanctioned building plan from the DTCP vide memo No. ZB-839/JD(BS)/2012/27185 dated 29.12.2012 for development of a residential group housing colony named as "PARAS DEWS".
13. The complainants submitted that as per clause 2.17, the purchaser has opted for a construction linked payment plan as mentioned in the said agreement.
14. As per clause 2.18, in the event, if the purchaser fails to make the payment within the stipulated period, he shall be liable to pay an interest on such delayed payment @18% per annum from the date of instalment due till the date of actual payment received by the seller.

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15. As per clause 3.1, the seller was to handover the possession of the apartment to the purchaser within a period of 42 months from the date of execution of the said agreement or date of obtaining licence / approval for commencement of construction whichever is later.
16. As per clause 3.3, if the seller failed to handover the possession of the said apartment within the stipulated period as mentioned in clause 3.1 the seller shall pay the compensation calculated @Rs.5/- per sq.ft. per month to the purchaser for the delayed period of offer to handover the possession.
17. As per the clause 3.4, if the purchaser fails to take the possession of the apartment within 30 days from the date of offer of possession letter, the purchaser shall be liable to pay holding charges @Rs.30/- per sq. ft. per month and the apartment shall remain in the custody of the seller at the sole risk and cost of the Purchaser.
18. The complainants submitted that Smt. Kamilini Tripathy wife of Shri Satya Prakash Nanda expired on 10.11.2013 and upon her death, on an application filed by the complainants namely



Mr. Satya Prakash Nanda, Mr. Anshuman Nanda, and Mr. Anupam Nanda with the respondent company on 3.06.2014 for substitution of their names in place of the name of Smt. Kamilini Tripathy, the names of complainants have been substituted in the records of respondent company vide its letter dated 17.04.2014. The respondent company endorsed the agreement, allotment letter, demand letters and payment receipts in the name of the complainants in its records.

19. The complainants submitted that they have paid a sum of Rs.1,18,00,256/- (i.e. 95% of the basic sale price along with car-parking charges, EDC/IDC charges, PLC) upto 22.12.2016 in respect of the said apartment to the respondent company within the stipulated period as and when demanded by the respondent company in the following manner:
20. That despite repeated visits of the complainants to the office of the respondent company and also the site of the project, the respondent did not give any clear picture with regard to the impending delay and non-completion of the project to the complainants. The vital information in this regard remained a closely guarded secret with the respondent company.

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However, the respondent company did not shirk from continuing to raise further demands on the complainants with the result that even in a project wherein the amount paid by the purchaser is construction linked, the project continued to remain incomplete despite the complainants having paid 95% of the basic sale price along with other charges as demanded by the respondent company on or before 1.12.2016.

21. It is submitted that the respondent company had been raising demands only after confirming that the requisite works in the construction stagewise, had been completed. As per demand letter dated 1.12.2016 the respondent company had confirmed that the flooring of the project had since been completed only then the demand letter was issued. It is surprising that despite the complainants having made the payment of 95% of the basic sale price and other charges on demand as early as on or before 22.12.2016, the respondent company has taken a period of full three years to issue the letter of offer of possession dated 24.01.2019 for the said apartment to the complainants.

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22. Having received the said letter dated 24.01.2019 containing offer of possession, the complainants visited the site of the project and were shocked and surprised to see that far from being ready for possession as claimed by the respondent company, the construction work in respect of the tower wherein the said apartment is located was still in progress and raw material was strewn on all sides giving an apprehension that the said project was nowhere in sight of being completed at an early date. The complainants raised various objections in respect of the said offer letter and sent the same to respondent company vide their email dated 14.01.2019 and 8.03.2019.

23. Since the respondent company has been confronted with its total failure and default to comply with its obligation under the apartment buyers agreement to which no proper explanation has ever been made to the complainants, the complainants are aggrieved at being misled and in the process subjected to extreme harassment and mental torture at the hands of the respondent company despite having made the near full payment of the basic sale price for the said

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apartment. The complainants therefore, are entitled to penal interest for the entire period of delay on the part of the respondent company at the rate of 18% per annum i.e. at the rate of interest which has been applied by the respondent company against the complainants in the cases of delay in payment on the part of the complainants.

24. That during the said period for delay in handing over possession of the said Apartment, the Real Estate (Regulation & Development) Act, 2016 which has been made applicable with effect from 01.05.2016 and as per the Section 2 (za) of the said Act, the interest means the rate of interest payable by the promoter or the allottee as the case may be i.e. 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 provisions of the said Act have been made fully applicable on the ongoing projects w.e.f. 1.05.2017.

25. The complainants neither file any complaint before any court/ forum /tribunal/ authority in respect of the said apartment nor any complaint is pending.

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26. The complainants submitted that they have paid the filing charges of Rs.1000/- and Rs.400/- @Rs.10/- per annexure vide demand draft bearing no.365087 dated 12.04.2019 drawn on Central Bank of India.

Issue to be decided

No issues has been raised by the complainant, but as per complaint version the following issue has been raised to be decided by the Authority: -

- i. Whether the respondent has failed to hand over the possession in stipulated time and/or failed to fulfil their obligation under section 18 of the Act?

Reliefs sought

27. The complainant is seeking the following reliefs:

- i. Direct the respondent company to pay interest @18% per annum on the amount of Rs.1,18,00,256/- to the complainants towards delay in handing over the possession of the said apartment i.e. from 10.10.2016 till the date of handing over the possession as per the Section 2 (za) of the Real Estate (Regulation and Development) Act, 2016.

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- ii. Direct the respondent company to withdraw the additional demand raised by it in its letter dated 24.01.2019 for offer of possession.
- iii. Direct the respondent company to complete said apartment in terms of the apartment buyer agreement dated 11.04.2013 and handover the possession of the said apartment to the complainants.

Respondent's reply

28. The respondent submitted that complainant herein has been themselves guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates. This same is not permissible in terms of the RERA Act, 2016, and in view of the same the complaint merits outright dismissal.
29. The respondent submitted that 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

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arisen in the present case, therefore the present complaint merits outright dismissal.

30. The respondent submitted that the present complaint is in fructuous and not maintainable since the construction of the project has already been completed and the occupation certificate has also been received on 15.01.2019. (Tower A to D).
31. The respondent submitted that the complainant in the present complaint under reply have also admitted the fact that they have not paid the total sale consideration (excluding taxes and maintenance charges) of INR 1,23,18,000/-.
32. 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

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period of 42 months with an additional grace period of 6 months of the date of execution of the apartment buyers agreement or date of obtaining all licences or approvals for commencement of construction, whichever is later, subject to force majeure. Moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014.

33. The respondent submitted that the construction of the apartment is complete, and the offer of possession has already been issued to the complainant on January 24, 2019 with the demand for the remaining payment. However, the complainant has not only failed to make the payment of the due amount, it has raised the present complaint to harass the respondent. It is submitted that the respondent is willing to handover possession to the complainant's subject to payment of the outstanding dues as per the builder buyer agreement.

34. The respondent submitted that due to the failure of the complainant in paying the complete consideration the

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respondent has suffered immense monetary hardship. It is most humbly prayed that this hon'ble 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.

35. The respondent submitted that the present complaint being made by the complainant after the respondent having issued the letter of offer of possession is an afterthought and is being made to harass the respondent and make unlawful gains at its expense.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

36. With respect to the **sole issue** raised by the complainant, as per clause 3.1 of the apartment buyer's agreement, the possession of the unit was to be handed over within a period of 42 months 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. The agreement was executed on 11.04.2013 and the environmental clearance was granted by the concerned authority on 06.09.2013. The relevant clause regarding the possession of the said unit is reproduced below:

"3 Possession of the said apartment

3.1 ...the seller proposes to hand over the possession of the apartment to the purchaser (s) within a period of 42 months 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 majeure."

37. Accordingly, the due date of handing over possession is to be calculated from the date of environment clearance i.e. 06.09.2013. The due date of possession comes out to be 06.09.2017. However, the possession was offered by the respondent on 24.01.2019 and the possession has been delayed by 01 year 04 months and 18 days till the date of offer of possession. Thus, respondent has failed in handing over the possession of the subject unit as per the terms and conditions of the apartment buyer's agreement and its obligation as envisaged under section 11(4)(a) of the Act *ibid*. As the

promoter has failed to fulfil its obligation as per section 11 of the Act *ibid*, the promoter is liable under section 18(1) proviso read with rule 15 of the Rules *ibid*, to pay interest to the complainant, at the prescribed rate i.e. 10.45% per annum from due date of possession i.e. 06.09.2017 till offer of possession i.e. 29.01.2019.

Findings of the authority

38. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

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39. Arguments heard. As per clause 3.1 of the builder buyer agreement dated 11.04.2013 for unit no. 01, tower-A, in project "Paras Dews" Sector 106, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of commencement of construction/environment clearance i.e. 06.09.2013 plus 6 months grace period which comes out to be 06.09.2017. The respondent has received occupation certificate on 15.01.2019 and offered the possession of the unit to the complainant on 24.01.2019. Complainant has already paid Rs. 1,18,00,256/- to the respondent against a total consideration of Rs. 1,23,18,000/-.

Decision and directions of the authority

40. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it 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 fair play:

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- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum w.e.f. due date of possession i.e. 06.09.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession i.e. 24.01.2019.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order. The complainant is directed to take over the possession of the offered unit within a period of one month from the date of issuance of this order failing which he shall be liable to pay holding charges.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not part of the flat buyer's agreement.
- v. The respondent is directed to justify their demand w.r.t carpet area and super area in the final demand notice to be sent to the complainant.

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vi. Respondent is directed not to charge any holding charges and advance maintenance charges from the complainant and to complete the pending works of the unit in question. Charges w.r.t club facilities shall only be charged till its completion.

41. Complaint is disposed of.
42. The order is pronounced.
43. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.08.2019

(Subhash Chander Kush)

Member

MEMBER

Judgement uploaded on 05.09.2019

HARERA
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