



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

Complaint no. :	506 of 2019
Date of complaint :	01.02.2019
Order pronounced on:	16.08.2023

Anjana Radhu,
R/o: - 12-B, Oak Drive,
DLF Chattarpur Farms,
New Delhi-110074.

Complainant

Versus

M/s Sepset Properties Private Limited.
Regd. Office at: - Room no. 205,
Welcome Plaza, S-551 School, Block-II,
Shakkarpur, Delhi-110092.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sanjeev Sharma (Advocate)
Shri Akshay Sharma (Advocate)

Complainant
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 provisions of the Act or the

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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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Paras Dews", Sector- 106, Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered 118 of 2017 dated 28.08.2017
4.	DTPC License no.	61 of 2012 dated 13.06.2012
	Validity status	12.06.2025
	Name of licensee	Sepset Properties
	Licensed area	13.76 acre
5.	Unit no.	Apartment no. 04, 8 th floor, Tower A [as per BBA on page 50 of complaint]
6.	Unit measuring	1900 sq. ft. [as per page no. 34 of complaint]
7.	Date of execution of builder buyer's agreement	29.04.2013 (page 95 of reply)
8.	Possession clause	3. Possession <i>3.1 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>
9.	Environmental clearance	06.09.2013

10.	Due date of possession	06.09.2017 (Calculated from the date of obtaining environmental clearance i.e., 06.09.2013) (Grace period of 6 months is allowed being unqualified)
11.	Basic sale Price	Rs.99,75,000/- [As per SOA on page 34 of reply]
12.	Total sale consideration	Rs.1,14,63,000/- (as per SOA on page 34 of reply)
13.	Total amount paid by the complainant	Rs.88,11,731/- (as per SOA on page 36 of reply)
14.	Withdrawal request by complainant	26.05.2017 (annexure C/5 on page 83 of complaint)
15.	Show cause notice for cancellation of booking	09.01.2018 (annexure C/6 on page 84 of complaint)
16.	Occupation certificate dated	15.01.2019 (annexure R/2 on page 31 of reply)
17.	Offer of possession	24.01.2019 (annexure R/5 on page 53 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant on advertisements and representations made by representatives of respondent regarding its project named "Paras Dew's at Sector 106, Gurgaon (Haryana) booked a unit in it and was allotted a unit bearing no. 04, 8th floor, tower-A having a super area of 1900 sq.ft. vide allotment letter dated 10.01.2013. Thereafter, in April 2017 a builder buyer agreement was executed between the parties for a total sale consideration of Rs.1,14,63,000/- and she has paid a sum of Rs.88,11,731/- in all as and when demanded by the respondent.
- II. That the complainant noticed that there was almost no major development at the project site and the respondent has been unlawfully

and illegally extracting money from her by raising illegal and false demand letters. Hence, the complainant wrote a letter to the respondent on 28.06.2013 seeking status update of the said project but it didn't bother to reply and address the queries of her.

- III. That as per clause 3.1 of the said agreement, the possession of the unit was to be handed over within 42 months + 6 months grace period from the date of execution of buyer's agreement or date of obtaining all licences or approvals for commencement of construction, whichever is later, subject to force majeure. However, even after the constant follow-ups and reminders, the respondent did not bother to even update the exact status of the said project and did not provide any valid reason for such a long delay in the said project.
- IV. That being frustrated and cheated by the acts and conduct of the respondent, the complainant vide letter dated 26.05.2017 requested it to cancel the allotment and refund the entire paid-up amount along with interest @18% p.a., but the respondent neither bothered to reply nor refunded the paid-up amount.
- V. That the respondent instead of refunding the amounts paid by the complainant, unilaterally sent a show-cause notice for cancellation of booking dated 09.01.2018 seeking payment of an outstanding amount of Rs.21,22,634/- which was illegal and unlawful as the complainant has already made a cancellation request on 26.05.2017.
- VI. That further, on 30.10.2018, the complainant also got issued a legal notice through her advocate calling upon the respondent to cancel the booking of the said apartment and simultaneously refund the entire amount of Rs.88,11,731/- paid by the complainant along with interest @18% p.a. from the date of payment, but the respondent did not bother

to comply or reply to the said legal notice. Therefore, the complainant was left with no other option except to approach this authority by filing this complaint.

VII. That the complainant further reserves her right to seek compensation from the promoter for which she shall make a separate application to the adjudicating officer, if required.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

I. To refund the entire paid-up amount of Rs.88,11,731/- (Rupees Eighty-Eight Lac Eleven Thousand Seven Hundred and Thirty-One only) along with prescribed rate of interest.

II. To pay compensation and cost of litigation.

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 respondent/builder.

6. The respondent has contested the complaint by filing reply dated 14.05.2019 on the following grounds: -

- i. That the complainant has been herself guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates which is not permissible in terms of the Act of 2016.
- ii. 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.
- iii. That this complaint is infructuous and not maintainable since the construction of Tower-A has already been completed and the occupation certificate has also been received on 15.01.2019.
 - iv. That this complaint is not maintainable as possession had to be handed over to the complainant in terms of clauses 3.1 and 3.2 of the buyer's agreement which provides that 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 this case as the complainant admittedly has not paid the full consideration and the outstanding dues. Therefore, the respondent was not obligated to complete construction and offer possession till the time the complainants perform her obligations under the agreement.
 - v. That the construction of the flat is complete and the offer of possession has already been issued to the complainant on 24.01.2019 with the demand for the remaining payment. However, the complainant has not only failed to make the payment of the due amount but has filed this complaint to harass the respondent. In view of the aforesaid submissions, this complaint be dismissed with costs.
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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The



objection of the respondent 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 allottees 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*** and 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. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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F. Findings on the objections raised by the respondent.

F.I Objection regarding premature filing of complaint.

13. Another contention of the respondent is that the complaint filed is premature, as the project is a RERA registered 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, after going through possession clause 3.1 of the buyer's agreement as mentioned in the table, the due date comes out to be 06.09.2017 and whereas the present complaint has been received on 01.02.2019. Thus, the objection regarding premature filing of the complaint stands rejected.

F. II Objection regarding the delay in payments.

14. The objection raised by the respondent regarding delay in payments by the allottee is totally invalid as she has already paid an amount of Rs.88,11,731/- against the total sale consideration of Rs.1,14,63,000/- to it as evident from the statement of account annexed with the reply. 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 her in the instant case. Hence, the plea advanced by the respondent is rejected.

G. Findings on the relief sought by the complainant.

G.I To refund the entire amount deposited i.e., Rs.88,11,731/- by the complainant along with prescribed rate of interest.

15. The complainant was allotted a unit bearing no. 04, on the 8th floor, admeasuring a super area of 1900 sq.ft. for a total sale consideration of Rs.1,14,63,000/- and she has paid a sum of Rs.88,11,731/- against the same. Thereafter, buyer's agreement was executed on 29.04.2013.



16. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. The due date of possession as per buyer's agreement as mentioned in the table above is 06.09.2017 and there is delay of 1 year, 4 months, 27 days in filing of the complaint. The allottee in this case filed this complaint on 01.02.2019, after possession of the unit was offered to him after obtaining occupation certificate by the promoter. The OC was received on 15.01.2019 whereas the offer of possession was made on 24.01.2019. It is observed that the complainant requested the respondent even before filing of the complaint for withdrawal from the project. The complainant vide notice dated 26.05.2017 requested the respondent to cancel the booking and refund of the paid-up amount as construction of the project was not completed as per the terms of buyer's agreement. But on failure of respondent to refund the same, she has filed this complaint seeking refund. So, in this case, the complainant withdrew from the project even prior to the due date. Hence, the paid-up amount shall be refunded only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e.



apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

17. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainant against the allotted unit and is directed to refund the paid-up amount of Rs.88,11,731/- after deducting 10% of the basic sale consideration of Rs.99,75,000/- being earnest money along with an interest @10.75% 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 on the refundable amount, from the date of surrender i.e., 26.05.2017 till date of actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid
18. Further, the counsel for complainant on proceedings dated 23.02.2023 submits that the Hon'ble Delhi High Court vide order dated 24.11.2022 in CM(M) no. 1284/2022 titled as Nitin Raj Marwah and Anr. V/s M/s Paramaah Syndicate Pvt. Ltd. and Ors. has directed the respondent to retain an amount Rs.33,50,000/- out of the amount which is due to be paid by it to complainant, if any, till next date of hearing i.e., 11.04.2023. Further, on 02.03.2023, M/s Experion Developers Pvt. Ltd. was directed to retain the amount of Rs.33,75,000/- from the refundable amount which was to be refunded to the complainant as per the directions of this authority vide order dated 14.07.2022 in case bearing no. CR/507/2019. Thereafter, on 11.04.2023, the parties requested before the Hon'ble Delhi High Court that the parties may be

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sent to mediation for settlement talks and hence the matter was fixed for consideration of the mediation report, if any, on 04.09.2023 with an interim direction that the interim order shall continue. So, in view of the interim order dated 24.11.2022, the respondent may retain an amount of Rs.33,50,000/- from the refundable amount against the unit in question subject to final decision of Hon'ble Delhi High Court in case bearing no. CM(M) no. 1284/2022.

G.II To pay compensation and cost of litigation.

19. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (supra)*, has held that an allottee is entitled to claim compensation under sections 12, 14/18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer seeking the reliefs of compensation as well as cost of litigation.

H. Directions of the authority

20. 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):
- The respondent/builder is directed to refund the paid-up amount of Rs.88,11,731/- after deducting 10% of the basic sale consideration of Rs.99,75,000/- being earnest money.



- ii. The respondent is further directed to pay an interest @10.75% p.a. on the refundable amount, from the date of surrender i.e., 26.05.2017 till date of actual refund.
 - iii. The respondent may retain an amount of Rs.33,50,000/- from the refundable amount against the unit in question subject to final decision of Hon'ble Delhi High Court in case bearing no. CM(M) no. 1284/2022.
 - iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
21. Complaint stands disposed of.
 22. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023

HARERA
GURUGRAM