

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 5680of 2022
Date of decision : 27.10.2023

Ved Prakash Sharma and
Sunita Sharma

ADDRESS: H.no. 163, Boulevard Du Lac, The
Beverly Hills 23, Sam Mum, Tsai Road, Tai Po,
Hong Kong.

Complainants

Versus

Sepset Properties Private Limited
ADDRESS: Room no. 205, Welcome Plaza,
S-551, School Block II, Shakarpur, Delhi-
110092.

Respondent

APPEARANCE:

For Complainants: Mr. Manish Yadav Advocate

For Respondent: Ms. Priyanka Aggarwal Adv.

ORDER

1. This is a complaint filed by Mr. Ved Prakash Sharma and Ms. Sunita Sharma under section 31,35,36,37 and 38 of The Real Estate (Regulation and Development) Act, 2016 against Sepset Properties Private Limited.

*Adv.
A.O.*



2. As per complainants, on 06.04.2013, they booked 3BHK apartment ad-measuring 1760 Sq. Ft. Super Area approximately for total sale consideration of Rs.1,08,31,200/- with respondent in their project "Paras Dews", sector-106, Daultabad, Dwarka Expressway, Gurugram 122001. Builder Buyer Agreement(BBA)was executed on 06.04.2013 for unit no.1702 / Apartment no. 02 , 17th Floor Tower C, in the said project, against a part payment of Rs 18,48,000/-.
3. As per clause 3.1 of BBA, possession of unit was to be delivered within 42 months from the date of execution of agreement (BBA) or from the date of obtaining all required sanctions and approvals, necessary for commencement of construction along with a grace period of 6 months.
4. They(complainants) kept on reminding and communicating with respondent through emails and letters seeking possession of unit but respondent did not pay heed to any of it, rather they(complainants) made payment as and when demanded by the respondent. Total amount paid by them is Rs.1,17,03,260/- as per statement of accounts dated 22.02.2019.
5. When possession was not handed over within time, they(complainants) were constrained to file a complaint no. 1529/2019 in the Authority, wherein Authority awarded DPC with interest @10.35% p.a. from 06.09.2017 till 24.01.2019,

Handwritten signature
A.O.



vide order dated 10.09.2019 in their favour. While deciding said complaint, the Authority took due date of possession as 06.09.2017, calculated from the date of environmental clearance i.e. 06.09.2013.

6. They (complainants) filed execution petition no 397/2020 for payment of decretal amount and handing over the actual physical possession of the unit. On 18.03.2021, Authority appointed Local Commissioner and a report was submitted by him on 03.08.2021 stating that some fixtures are still pending.
7. Respondent finally handed over possession of subject unit to them (complainants) in February 2022, only when the Honable Authority threatened to take coercive action against the directors of the respondent, but still no DPC is paid by respondent.

Citing all this, complainants have sought following reliefs:

- i. Direction to respondent to compensate for delay in handing over the actual physical possession from 24.01.2019 till 22nd February 2022 when the actual physical possession was handed over at prevalent market rate of rent plus prescribed interest@18%, till actual payment is refunded to them (complainants).
- ii. Compensation for not installing 4 Air Conditions at the apartment and despite specific demand on behalf of the

Handwritten signature
A.O.



complainants, the amount credited to the account of the respondent has not been refunded.

- iii. Compensation for various defects in the apartment like defective flooring, blockage in the bathroom, gap between the door frame and wall not filled properly, defective electrical switches etc. despite demanding for there correction from the respondent.
- iv. Compensation for wrongly charging VAT at the rate of 5% and not refunding it to the complainant despite clear cut guidelines of the RERA Authority that the VAT can only be charged at 1.05% and for a specific period only.
- v. Direction to respondent to pay a sum of Rs 1,00,000/- towards the cost of litigation.
- vi. Direction to respondent to pay a cost of Rs10,00,000/- for the harassment and mental agony suffered by the complainants.

Respondent contested the complaint by filling written reply. It is averred by the respondent :-

8. That the original allottee, Bashar Saif approached respondent for booking of the unit in it's project, "Paras Dew's" coming up at Sector-106, Gurugram in 2012. On the request of the original allottee, the unit was transferred in the name of Ved Prakash Sharma in 2014. Total cost of unit was agreed as Rs.1,19,16,055 and same was paid by complainants in instalments. The construction of said unit was completed by

Sub
A.O.

respondent as per terms of BBA and respondent received OC from DTCP on 15.01.2019.

9. That the provisions of the Act of 2016 are not retrospective in nature, provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. Merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively.
10. Due date of possession of subject unit was 06/09/2017. Project has been delayed for 15 months only. After receiving Occupancy Certificate on 15.01.2019, it(respondent) offered possession to allottees/complainants on 24.01.2019. Complainants alleged that the subject unit offered for possession was not habitable but in the report submitted by LC which was appointed by Authority, it was clearly mentioned that unit was habitable and is only without four AC's. On 10.09.2019, Hon'ble Authority awarded DPC along with interest in favour of complainants for 15 months and complainants were directed to take possession within one month, otherwise it(respondent) was allowed to charge holding charges. Complainants took possession on 27.11.2019. After possession which was taken by complainants in 2019 (4 year ago) still they allege that unit was not complete.
11. Complainants are in material breach of the term^{of} final settlement which was executed between both of parties, while taking possession, ^{on 27.11.2019} ~~dated~~ 27.11.2019, it was clearly mentioned

Ind
A.O.

by both of parties that they will not raise any issues regarding allotted unit in future.

12. The complainants entered into agreement(BBA) with respondent with open eyes and are bound by the same. The provisions of the Act relied upon by the Complainants for seeking interest cannot be called into their aid in derogation and ignorance of the provisions of the Buyer's Agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the Buyer's Agreement.
13. It is further pleaded by respondent, that the interest for the alleged delay demanded by the Complainants is beyond the scope of the Buyer's Agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the BBA. Moreover, the complainants cannot demand any amount for the period during which no association subsisted between complainants and the respondent. Complainant is in violation of the '*Doctrine of Approbate & Reprobate*'.
14. Respondent requested for dismissal of complaint.

I heard learned counsels representing both of the parties and went through record on file.

15. The Authority while deciding complaint lodged by present complainants i.e. complaint no. 1529/2019, took due date of possession as 06.09.2017, calculated from the date of environmental clearance i.e. 06.09.2013 and found that there was a delay of 15 months in handing over the possession i.e.

1/6
A.O.



from 06.09.2017 to 24.01.2019. The complainants had already paid more than sale consideration amount i.e. Rs.1,17,03,260/- and hence entitled for compensation in this regard. Although complainants have not adduced any evidence to prove as what is the rental value in the area, where the subject unit is situated. This is a 3BHK residential unit, ad-measuring 1760 sq.ft. (super area) in "Paras Dews" at sector 106, Daultabad, Dwarka Expressway, Gurugram. Considering the size of the unit and locality of the area where it is situated, this forum takes rental value of it as Rs.22,000 p.m. ^{for rental of 15 months, amount comes to Rs.3,30,000.} ^{of compensation} All this is awarded in favour of complainants.

16. It is proved on the record that JD/respondent was duty bound to install four ACs but same have not been installed. Taking tentative price of one AC as Rs.40,000/-, respondent is directed to repay Rs.1,60,000/- to complainants for not installing 4 ACs.

17. In the absence of any evidence, complainants failed to prove that ~~still~~ ^{now} there are any defects in fixtures in the subject unit and hence no compensation can be granted in this regard.

18. Respondent has charged VAT @ 5%, contrary to guidelines of Real Estate Regulatory Authority, Gurugram, given in case Naresh Gupta and others Vs Emaar MGF Land Ltd vide order dated 12.08.2021 in complaint no. 4031/2019. According to same, VAT can only be charged @ 1.05% and for a specific period only. This fact is not refuted on behalf of respondent. Considering same, it is clarified that respondent could not have charged VAT more than as decided by the Authority. Same is

Sub A.O.

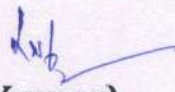


HARERA
GURUGRAM

directed to refund the excess amount to the complainants,
which is charged more than as was allowed by the Authority.

19. Complainants have claimed Rs.1,00,000/- towards cost of litigation. Although complainants have not filed any receipt / certificate about fees paid by them to their counsel, apparently, they were represented by an advocate during proceedings of this case. Same are awarded a sum of Rs.50,000/- as cost of litigation to be paid by respondent.
20. Complainants also claimed, a sum of Rs.10,00,000/- on account of mental agony, torture and harassment. It appears to be excessive. Keeping in view facts and circumstances of the case, complainants are awarded a compensation of Rs.1,00,000/- for mental agony, torture and harassment to be paid by the respondent.
21. Announced in open court today.
22. File be consigned to records.

HARERA
GURUGRAM


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram