

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

**Complaint no. : 3467 of 2021  
Date of order : 24.07.2023**

Suraj Bhan Chillar  
ADDRESS: Ward No. 1, M.C Colony,  
Charkhi Dadri, Dist Bhiwani, Haryana - 122018

**Complainant**

Versus

M/S. Sepset Properties Pvt. Ltd.  
ADDRESS: Paras Twin Towers, Tower B, 11<sup>th</sup> Floor,  
Sector 54, Golf Course Road, Gurugram.

**Respondent**

**APPEARANCE:**

For Complainant:

Mr. Mayank Grover Advocate

For Respondent:

Mr. Akshay Sharma Advocate

**ORDER**

1. This complaint is filed by Suraj Bhan Chillar under section 31 read with section 72 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) against respondent/developer.





2. According to complainant, he purchased residential apartment of unit no. D/1104, 11<sup>th</sup> floor, Tower- D admeasuring 2275 sq. ft. in the project developed by the respondent viz. Paras Dew's situated at sector- 106, Dwarka Expressway, Gurgaon . The said unit was originally booked by Mr. Ajit Singh Kothari in year 2012, which was further transferred in the name of Mrs. Bimla Aggarwal. On 05.04.2013, through an affidavit Mrs. Bimla Aggarwal transferred the said unit in his(complainant) name, on payment of Rs.24,62,562/-.
3. On 24.04.2013, a builder buyer agreement(BBA) was executed between original allottee and respondent. As per said BBA, possession of the unit was to be handed over within 42 months from the day of signing of the BBA or approvals for commencement of construction, whichever is later. The due date of possession as per clause 3.1 of BBA came out to be 24.10.2016. A new BBA was signed between the complainant and respondent on 24.03.2015 for a total consideration of Rs.1,21,27,225/- . According to the new BBA, complainant opted for a construction linked plan. He(complainant) made payments of Rs.37,20,430/- and Rs.52,02,110/-.
4. On 24.01.2019, respondent sent letter to him(complainant) mentioning revision of super area of the said unit from 2275 sq.ft. to 2355 sq. ft. and raised a demand of Rs. 4,43,634/- . He(complainant) received offer of possession on 21.01.2019, whereas, the project was not ready within its complete meaning i.e. common amenities and facilities like club etc. were not ready.
5. Respondent despite receiving approximately 93% of the total sale consideration, failed to handover the possession of the said

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unit within stipulated time period, so, he (complainant) approached Ld. Authority by filing complaint no. 1622/2019. On 23.01.2020, the authority directed the respondent to grant delay possession charges from due date of possession i.e. 06.09.2017 till offer of possession i.e. 24.01.2019.

6. Citing all this, complainant had sought following reliefs:
- a. to award compensation of Rs. 10,00,000/- for causing financial and mental agony and harassment to the complainant.
  - b. to award compensation of Rs. 5,00,000/- towards litigation cost.
  - c. to award compensation of Rs. 2,00,000/- on account of special damages for causing loss of future earning and damages causing huge financial loss by fraudulent behaviour of the respondent.
  - d. to pass such other order as Adjudicating Officer may deem fit and proper, in the facts and circumstances of the present case.

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

7. Complainant has failed to disclose the fact that he himself has voluntarily entered into builder buyer agreement and defaulted in making timely payments as per payment plan.
8. After getting occupation certificate, possession has been offered to complainant on 15.01.2019. According to clause 3.1 of BBA, it is clear that the possession of the apartment was to be given within the period of 51 months from the date of execution of the Apartment Buyers Agreement or from date of obtaining all licences/approvals for commencement of construction, whichever is later. The period of 51 months expired on





- 24.06.2019 whereas offer of possession was given to the complainant on 24.01.2019.
9. As per the statements of account, complainant is defaulter in payment of the installments, as per agreed schedule and despite the order by the Ld. Authority, he(complainant) has failed to pay the outstanding dues to the respondent.
  10. That similar execution has also been filed before the authority bearing no. 3484 of 2021 in which the authority stated that delay possession charges have already been adjusted.

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

11. As mentioned above, according to respondent, BBA was executed between it and complainant on 24.03.2015. As per clause 3.1 of said BBA, respondent was obliged to handover possession within a period of 51 months from the date of execution of said BBA or from the date of obtaining all licences/approvals for commencement of construction, whichever is later. It was further subject to force majeure clause. Period of 51 months expired on 24.06.2019, whereas, it(respondent) sent letter offering possession to complainant on 24.01.2019. In this way, respondent claims to have handed over possession well within time.
12. It is not denied even by the respondent that complainant purchased the subject unit from Mrs. Bimla Aggarwal and same(transfer) has been accepted by the respondent. Mrs. Bimla Aggarwal purchased it from Mr. Ajit Singh Kothari, who was the original allottee. In this way complainant stepped in the shoes of

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original allottee. According to complainant, a BBA was executed between original allottee and respondent on 24.04.2013 and as per clause 3.1 of said agreement, possession was to be handed over within 42 months from the date of agreement. Counting in this way, due date of possession was 24.10.2016.

13. Admittedly, complainant lodged a complaint before the authority viz. complaint no. 1622 of 2019, which has been decided on 23.01.2020. Respondent took same plea before the authority i.e. it (respondent) offered possession well within agreed time but said plea did not find favour of the authority. The authority found that it was not the complete offer of possession as the unit was not complete till then. The authority after taking the date of offer of possession as 24.01.2019, directed respondent to pay delay possession charges till said date from due date of possession, which was determined as 06.09.2017. Said order is stated to have already reached finality, in absence of any appeal etc.
14. It is well proved that respondent failed to hand over possession of subject unit within agreed period, it was delayed for about 1 year and 4.5 months (from 06.09.2017 to 24.01.2019). Even as per order of Authority, referred as above, said order has become final. During said period of 1 year and 4.5 months, the complainant was deprived of the possession of his unit. Same is thus entitled for compensation.
15. Even if complainant has already been granted relief of DPC by the authority, same is entitled for compensation also. Both of these reliefs been independent and based on separate causes of action. Jurisdiction to grant relief of DPC is invested with authority, while this forum (AO) has been empowered to try and



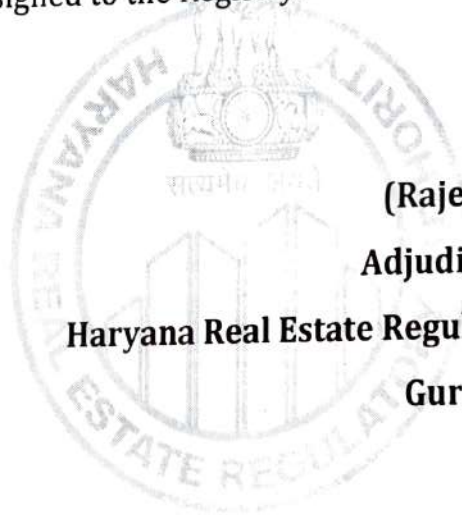


entertain complaint seeking compensation in view of section 12, 14, 18, 19 of the Act of 2016. All this is upheld by the Apex Court of India in the case title as M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others decided on 11.11.2021, Civil Appeal no. 6745-6749 of 2021.

16. So far as quantum of compensation is concerned, as stated earlier, the complainant has sought compensation of Rs.10,00,000/- on account of financial loss, mental agony and harassment. Apparently, the respondent used money paid by the complainant, but did not fulfil its obligation i.e. to complete the construction. Subject unit is stated to be a residential unit admeasuring 2355 sq.ft. situated in a project viz. Paras Dews at sector 106, Dwarka Expressway, Gurgaon. Although, complainant had not adduced any evidence to prove as what may be rent in the said area. Taking into account the location of the project and also the size of subject unit, <sup>compensation of</sup> ~~in my opinion~~, Rs.20,000 p.m. for 1 year and 4.5 months is granted to the complainant. Respondent is directed to pay said amount to complainant as loss of rental income.
17. Apparently, when complainant was deprived of possession of his unit, same suffered mental agony and harassment. A sum of Rs. 50,000/- is awarded to complainant to be paid by respondent on this account.
18. Complainant has prayed for Rs.5,00,000/- as litigation cost. Although no receipt of payment of legal fee etc. has been put on file but apparently, complainant was represented by a counsel during proceedings of this case. Same is allowed a sum of Rs.50,000/- as cost of litigation.

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19. I found no reason to award any compensation to the complainant in the name of special damages or loss of future earnings as claimed by him. There is no evidence on file to verify any such loss to the complainant. Request in this regard is thus declined.
20. Respondent is directed to pay said amounts of compensation to the complainant within one month of this order, otherwise same will be liable to pay the amounts along with interest @ 10.50% p.a., till the date of realisation.
21. Announced in open court today i.e. 24.07.2023.
22. File be consigned to the Registry.



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