

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

Complaint no.	8077 of 2022
Date of complaint	10.01.2023
First date of hearing	31.05.2023
Date of decision	03.01.2024

Veena Jain <b>Registered address:</b> C-9/2, DLF City, Phase I, Gurugram, Haryana-122002	<b>Complainant</b>
<b>Versus</b>	
M/s Sepset properties Pvt. Ltd. <b>Registered address at:</b> 11 <sup>th</sup> Floor, Paras Twin Towers, Tower B, Golf Course Road, Sector 544, Gurugram, Haryana-122002	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Kapil Kher Advocate	<b>Complainant</b>
Shri Himanshu Singh Advocate	<b>Respondent</b>

**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 provision of the

Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project-related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Paras Dews
2.	Nature of the project	Residential complex
3.	Project area	13.762 acres
4.	DTCP license no.	61 of 2012 dated 13.06.2012
5.	Name of licensee	Sepset properties
6.	RERA Registered/ not registered	Registered 118 of 2017 dated 28.08.2017
7.	Unit no.	3, 5 <sup>th</sup> Floor, Tower F. (Page no. 24 of complaint)
8.	Unit area admeasuring (carpet area)	1385 Sq ft (Page no. 24 of complaint)
9.	Date of execution of builder buyer agreement.	28.06.2013 (Page no. 21 of complaint)



10.	Possession clause	<p><b>Possession 3.1</b></p> <p><i>Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/ authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, 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. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course.</i></p>
11.	Due date of possession	28.06.2017

		(Grace period of 6 months is allowed, same being unconditional) (Calculated from the date of execution of BBA)
12.	Total sale consideration	Rs. 94,42,945/- (As per page no. 54 of complaint)
13.	Amount paid by the complainant	Rs. 84,96,635/- (Page 50 of reply)
14.	Tripartite agreement	30 <sup>th</sup> October 2014 (Page no. 124 of Reply)
15.	Legal notice by complainant regarding refund.	29.07.2021 (Page no. 57 of complaint)
16.	Occupation certificate	26.04.2023 (Page no. 55 of reply)
17.	Offer of possession	28.04.2023 (Page 48 of reply)

**B. Facts of the complaint:**

3. The respondent through its representatives introduced its project "PARAS DEW'S", situated at Sector 106, Dwarka expressway, Gurugram, Haryana, to the complainant, thereby representing that the construction in the said project had already commenced and the

possession shall be offered to the allottees within a period of 42 months, with a grace period of 6 months, from the date of execution of the apartment buyers' agreement. The representatives of the respondent company further allured the complainant by showcasing lucrative and world class amenities in the said project.

4. That it was the reputation behind the respondent's name and the representations, assurances, and promises made by the respondent's representatives that the said project shall be completed within the committed time period, because of which the complainant agreed to get a unit allotted in her favour in the said project and accordingly submitted an application dated 29.12.2012 for the allotment of a unit in the said project. The respondent accepted the said application, and issued an allotment letter dated 10.01.2013 whereby the respondent allotted the unit no. 0503, Tower T-F in its project known as "PARAS DEW'S"
5. The said allotment letter was followed by a printed and pre drafted apartment buyer agreement, which the complainant was required to execute. Following the respondent's instructions, and on the promise that the respondent shall complete the project and handover the unit to the complainant within the committed period, and further, since the complainant had already paid a substantial amount which the respondent threatened to forfeit in case the complainant did not sign the said agreement, the complainant was left with no option but to sign the said agreement, which the complainant executed with the respondent on 28.06.2013.
6. In terms of Clause 3.1 of the said apartment buyer agreement dated 28.06.2013, the possession of the aforesaid allotted unit was to be

given by the respondent to the complainant by June, 2017, however, contrary to the terms of the said agreement, and the representations and assurances made by the respondent to the complainant, the project was delayed for more than four years.

7. The Complainant had time and again visited the Respondent's office to enquire about the status of the project, and on every occasion, the complainant was assured that the project shall soon be completed, and the unit shall be offered for possession to the complainant in the coming few months. On every such occasion the complainant believed the said assurances, and righteously paid the amounts as were demanded by the respondent.
8. There having been inordinate delay in completion of the project by the respondent and the constant false assurances and promises of the respondent, which the respondent never fulfilled, the complainant was constrained to terminate the agreement dated 28.06.2013 vide its notice dated 29.07.2021. Further, vide the said notice, the complainant through her counsel called upon the respondent to refund the amounts paid by the complainant to the respondents towards consideration of the said unit till date i.e. Rs.84,96,635/- along with interest and compensation. The said notice was duly served upon the respondent, however, the respondent neither responded to the said legal notice nor complied with the same.
9. The respondent misappropriated the funds and siphoned off the monies paid by the complainant and other allottees in the project, which delayed the project. The respondent never intended to honour its obligations under the agreement, and as such deliberately and intentionally defaulted under the terms of the agreement.

**C. Relief sought by the complainant:**

10. The complainant has sought the following relief(s):

- i. Direct the respondent to refund the entire amount of Rs.84,96,635/- to the complainant along with interest @ 18% per annum, with effect from the date when the said amount was paid by the complainant to the respondent.

**D. Reply by respondent:**

11. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainant. Rather, the agreement dated 28.06.2013 that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the apartment buyer agreement, executed much prior to coming into force of 2016 Act.
12. That it has been categorically agreed between the parties that the possession of the unit was to be handed over in terms of clause 3.1 and 3.2 of the apartment buyer agreement. The respondent has proposed to offer the possession within a period of 48 months from the date of execution of the buyers agreement or date of obtaining all licences or approvals for commencement of construction, whichever is later, however, the same was subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation, etc. It had also been agreed that the respondent would also be entitled to a further grace period of 90 days after expiry of 48 months.

13. That the Municipal corporation of gurugram vide direction dated 14.10.2019 bearing Memo No. MCG/ADMC/2019 imposed a complete ban from 11.10.2019 to 31.12.2019 on the construction activities in Gurugram. Further, Environment Pollution (Prevention and Control) Authority for NCR vide direction dated 01.11.2019 bearing EPCA-R/2019/1-53 imposed a complete ban from 01.11.2019 to 05.11.2019. Further, Hon'ble Supreme Court vide its order dated 04.11.2019 in the matter bearing W.P (C) No. 13029/1985 also banned the construction activities in Delhi NCR till further orders keeping in mind the damage caused to the environment due to construction and demolition activities. The Hon'ble Supreme Court has only on 09.12.2019 partially uplifted the ban on construction activities in Delhi NCR between 6a.m. to 6p.m. Thereafter, despite facing practical issues in arranging manpower, the respondent had managed to maintain the minimum labour force constantly in the labour camp at the project site to complete the pending work at the earliest. This clearly shows bonafide intention of the respondent to complete the project on time. Even in the year 2018, vide Notification No. EPCA- R/2018/1-91 and EPCA-R/2018/100 periodic ban on constructions were imposed. Such bans that have been imposed from time to time in the past years, had enormous adverse impact on the construction of infrastructure projects. The adverse effects of banning the construction activity disrupts the arrangement of plant & machinery, supply of raw material and manpower resources as it takes a long time to reorganize the labour force once the ban is lifted. Another factor to be considered is that most of the labour force in NCR hails from Eastern UP/Bihar so during such period wherein the ban remains in effect, the labour force



usually heads back to their hometowns, since it becomes difficult for them to sustain here without any source of income. It is also not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labourers were available. In fact all the developers are still facing hardship because of acute shortage of labourers and even the IIRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the Force Majeure clause and therefore there cannot be said to be any delay in delivering the possession by the respondent.

14. That due to the ban imposed by the above said authorities there was no progress at site consequent to which respondent's manpower, plant and machinery and other resources which stood fully mobilized at site were rendered idle thereby casting upon the respondent heavy financial losses due to the stagnancy of resources. It is also pertinent to mention herein that such bans majorly affect the projects which are near completion like the project in question. Hence, even after putting days and nights in completing the project, the delay occurred due to such circumstances which were beyond the control of the respondent company.
15. That a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. A builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. That one particular buyer who makes payment in time can also not be segregated if the payment from other prospective buyer does not reach in time. The problems and hurdles faced by the developer or

builder have to be considered while adjudicating complaints of the prospective buyers.

16. The respondent-builder had helped the complainant in arranging finances for the unit by bringing on-board the bank for raising loan of Rs. 40,50,000/- by signing the tripartite agreement dated 30.10.2014. Further, as per the said tripartite agreement, the bank shall have first lien over the unit.

**E. Jurisdiction of the authority:**

17. The plea of the respondents regarding lack of jurisdiction of Authority is 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**

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 the entire Gurugram District for all purposes 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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

So, given 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.

**F. Findings on the objections raised by the respondents:**

**F.I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed before coming into force of the Act.**

18. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the parties before the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

19. The authority is of the view that the provisions of the Act are quasi-retroactive to some extent in operation and would apply to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous

agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 and which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

20. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

21. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

#### **F.II Objections regarding force Majeure**

22. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders passed by the Hon'ble Supreme Court, Environment Pollution Control Authority, Municipal Corporation Gurugram, etc. The plea of the respondent regarding various orders of



the SC, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by several authorities banning construction in the NCR region were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter-respondent cannot be given any leniency on the basis of aforesaid reasons, and it is a well-settled principle that a person cannot take benefit of his own wrong. Furthermore, the respondent-promoter contended that the Covid 19 had an adverse impact on its project. It is the view of this Authority that the pandemic of covid 19 came way later than the agreed due date of possession, and that the project was already delayed, and therefore this argument of the respondent is devoid of merit.

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the amount deposited by the complainant along with interest at the prescribed rate.**

23. The complainant-allottee was allotted the apartment no. 03, 5<sup>th</sup> Floor, Tower F, in the respondent's project "Paras Dew's" in Sector 106, Gurugram, Haryana vide an agreement to sale dated 28.06.2013 executed between the complainant and the respondent. The total sale consideration of the said unit was Rs. 94,42,945/-, out of the said total sale consideration, the complainant paid Rs. 84,96,635/-. As per clause 3.1 of the agreement to sale dated 28.06.2013, the possession of the unit was to be offered within 42 months with an additional grace period of 6 months from the date of the execution of the buyer's agreement. Hence, the due date of possession comes out to be 28.06.2017. However, the unit was not offered to the complainant by



the said date. The occupation certificate for the said tower in which the apartment was located was obtained only on 26.04.2023, and after that possession was offered on 28.04.2023. It is brought before this Authority that the complainant had vide legal notice dated 29.07.2021 surrendered the unit and requested refund of the amount paid by her to the respondent-promoter. Hence, the complainant is well within its rights to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale. This view was taken by the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited vs. State of U.P. and Ors. (supra)*** reiterated in the case of ***M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)*** wherein it was observed as under: -

*"The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed".*

24. **Admissibility of grace period:** the promoter in clause 3.1 of the agreement between the parties has stated that an additional grace period of 90 days shall be available to it for applying and obtaining the occupation certificate in respect of the group housing complex. The respondent-promoter contended that it shall be provided a grace period of 90 days. However, the Authority is of the view that the grace period shall not be available to it as there has been an inordinate delay in the completion of the project and the said period was not utilized in obtaining the completion certificate.
25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016 or the rules and regulations made thereunder or to the allottees as per the agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter/respondent is liable to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
26. It is contended on behalf of the respondent that after completing the project, it has obtained the occupation certificate from the competent authority on 26.04.2023. But the complainant had already surrendered the unit vide legal notice dated 29.07.2021, therefore the complainant cannot be forced to continue with the project. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainant cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.



27. Furthermore, it is brought to the notice of this Authority that a tripartite agreement dated 30.10.2014 was executed with the complainant, respondent, and the bank. The bank had disbursed an amount of Rs. 40,05,000/-. As per term 1 of the tripartite agreement dated 30.10.2014, the bank shall have the first lien over the said flat for the due repayment of the loan which SBI has granted to the borrower. The said clause is reproduced below:

*"Term 1. The SBI has and shall have the first lien over the said flat for the due repayment of the loan which SBI has granted to the borrower. The builder shall note in its records the charge and lien of SBI over the said flat. The builder shall not transfer the said flat to any other person without the written request of the SBI"*

Therefore, in view of the aforementioned clause, it is the view of this Authority that while refunding the amount, the respondent shall first return the amount disbursed by the bank to it, and thereafter the remaining amount shall be returned back to the complainant.

28. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding a return of the amount received by the promoter in respect of the unit with interest on the failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to a refund of the entire amount paid by it at the prescribed rate of interest i.e., @ 8.85% p.a. (the State Bank of India highest marginal cost of



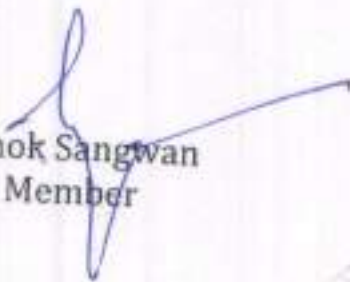
lending rate (MCLR) applicable as of date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.


**H. Directions of the Authority:**

30. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 84,96,635/- received by it from the complainant/allottee along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii. Out of the amount so assessed, the amount paid by the bank shall be refunded to it and the balance amount if any, shall be refunded to the complainant.
- iii. The respondent-promoter shall obtain a copy of no objection certificate from the bank i.e. respondent no. 2 at the time of refunding the amount paid by the complainant.
- iv. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.

31. Complaint stands disposed of.
32. File be consigned to the registry.

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Date: 03.01.2024**

  
**HARERA**  
**GURUGRAM**