

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

Complaint no. : 1753 of 2019
First date of hearing: 29.08.2019
Date of decision : 29.08.2019

1. Mr. Akash Jerath
2. Mrs. Ritu Arora

Both R/o: BG-10-C, DDA Flats, Munirka,
New Delhi-110067

Complainants

Versus

M/s Sepset Properties Private Limited
(through its managing director)

Office- 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 K.P. Pandey
Shri Jasdeep

Advocate for complainants
Advocate for the respondent

ORDER

1. A complaint dated 02.05.2019 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. Akash Jerath and Mrs. Ritu Arora, against the promoter M/s Sepset

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Properties Pvt. Ltd., on account of violation of the clause 3.1 of apartment buyer agreement dated 21.05.2013 in respect of apartment no. 07, 8th floor, tower-B, admeasuring 1665 sq. ft' in the project 'Paras dew' located at Sector 106, Gurugram for not handing over possession of the subject apartment by the due date i.e. 06.09.2017 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer agreement dated 21.05.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	'Paras Dew's', sector-106, Gurugram
2.	Flat/Unit no.	0807, 8 th floor, tower-B-
3.	Nature of real estate project	Residential group housing colony



4.	DTCP license no.	61 of 2012 dated 13.06.2012
5.	Admeasuring super area of the allotted unit	1665 sq. ft'
6.	RERA registered/unregistered	118 of 2017 dated 28.08.2017 valid till 31.07.2021
7.	Revised date of RERA registration	31.07.2021
8.	Date of execution of apartment buyer agreement	21.05.2013
9.	Payment Plan	Construction linked payment plan
10.	Offer of possession	24.01.2019 pg. 108 of the complaint
11.	Total consideration amount as per statement of account dated 24.01.2019 page 49 of reply (R15)	Rs. 10,61,0674/- (annexure-R15 pg. 49)
12.	Total amount paid by the complainant as per statement of account dated 24.01.2019 page 49 of reply (R15)	Rs. 93,71,558/- (as per annexure R15 page 49)
13.	Environment clearance certificate	06.09.2013 (annexure-R-4 page 34) of reply
14.	Date of grant of occupation certificate	15.01.2019 (Annexure R-2) pg. 25 of the reply
15.	Due date of delivery of possession clause 3.1 – 42 months with an additional grace period of 6 months from the date of execution of agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later	06.09.2017 (from date of approval of environment clearance i.e. 06.09.2013)

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16.	Delay in handing over possession till date of offer of possession i.e. 24.01.2019	1 year 4 months and 18 days
17.	Penalty clause as per apartment buyer's agreement dated 21.05.2013	Clause 3.3 - Rs.5 per sq. ft' per month

4. The details provided above have been checked as per record available in the case file which has been provided by the complainants and the respondent. An apartment buyer agreement dated 21.05.2013 is available on record for the aforesaid unit no.07, 8th floor, tower-B according to which the possession of the same was to be delivered by 06.09.2017. The respondent has delivered the possession of subject apartment/unit on 24.01.2019. Therefore, the promoter has not fulfilled his obligation as per section 11(4)(a) of the Act *ibid*.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Reply has been filled by respondent on 27.05.2019 and same has been perused by the authority. The case came up for hearing on 29.08.2019. The respondent through its counsel appeared on 29.08.2019.

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FACTS OF THE COMPLAINT:

6. The complainants submitted that the respondent herein is the developer company who is engaged in development and construction of building and group housing society. The respondent acquired ownership rights of the land measuring 13.762 acres falling at Sector 106 in Village Daultabad, Tehsil and District Gurugram, Haryana and undertaken to construct group housing society in the name and style of 'Paras Dews', Sector 106, Gurugram.
7. The complainants submitted that they were looking for a suitable accommodation for themselves and their family. The representatives of the respondent represented and explained them about the project. Subsequently, they booked an apartment bearing unit no. T-B/0807 on 8th floor admeasuring super area of 1665 sq. ft. Initially this apartment was allotted to one Mr. Vikas Abrol and Mrs. Manila Abrol. Thereafter, the same was allotted to them and necessary documents like transfer deed, affidavit-cum-undertaking, receipt cum NOC, affidavit etc. were executed by the initial allottee in favour of them. Thereafter, all necessary



documents were endorsed in favour of the complainants on same terms and conditions. The respondent also issued letter dated 13.03.2013 under subject transfer of flat no. T-B/0807 in Paras Dew's confirming the allotment of apartment in favour of them.

8. The complainants submitted that the agreed sale consideration of the above apartment is Rs.99,32,225/- out of which they have already paid an amount of Rs.94,06,863/- which are duly received and acknowledged by the respondent against receipts and the same are also figures in statement of account issued by the respondent.
9. The complainants submitted that an apartment buyer's agreement was executed between the complainants and the respondent on 21.05.2013. The terms of the agreement are self-explanatory. In the apartment buyer's agreement dated 21.05.2013, the respondent admitted and agreed that they shall complete the project and hand over possession of the apartment to the complainants in 42 months + grace period of 90 days from the date of execution of above agreement . The respondent was supposed to deliver possession of the



apartment to the complainants within 45 months (including grace period) but the respondent wilfully, deliberately and intentionally failed to deliver possession of booked apartment to the complainants till date. Till date there are 28 months delay in handing over possession of the apartment.

10. The complainants submitted that they approached the respondent on various occasions through personal visits and mails and requested to hand over possession of apartment to them as per promise, but respondent deliberately and intentionally failed to do so.

11. The complainants submitted that vide letter dated 07.02.2019, the respondent informed them that they are in process of giving possession of the apartment and asked to remit the remaining dues. It is respectfully submitted before this hon'ble authority that in the aforementioned intimation of possession, the respondent has not provided copy of occupancy certificate and completion certificate obtained from the competent authority. The respondent also did not disclose that they have completed the project as per agreement. The respondent also did not appropriately

compensate them for delay in delivery of possession in accordance with the provisions of Haryana RERA.

12. The complainants submitted that after receiving the above letter, they visited to the office of the respondent and requested to show the apartment on which the officials of the respondent rudely denied to show the apartment saying that the complainants would be entitled to see the apartment only when they remit the entire sale consideration as per demand raised in the aforesaid letter. The complainants further enquired about the demand raised at serial no. 8, 9 & 11 in part A and demand 1 & 2 in part B as the same are not part of the agreement on which the officials of the respondent insisted that the complainants will have to pay the same without any if and thereafter, the complainants requested the officials of the respondent to pay delay penalty as per provisions of RERA but this requests of the complainants was also declined by the officials of the respondent on pretext that they shall discuss the issue of delay penalty with higher management and let the complainants know but till date the

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complainants have not receive any communication from the respondent.

13. The complainants submitted that they wrote various mails and representation with respect to the above issues, but the respondent did not bother to answer the queries raised by the complainants rather insisting the complainants to pay the remaining balance amount without settling the account.
14. The complainants submitted that again vide letter dated 12.04.2019, the respondent asked them to pay the remaining dues else they shall impose holding charges. They replied the said letter once again through mail dated 15.04.2019 stating therein specifically that they are ready to take possession and pay the remaining balance amount subject to settling the dues and pay delay charges as per provisions of RERA but they did not get any reply from the respondent till date.
15. The complainants submitted that they are willing and ready to pay the remaining dues to the respondent subject to the completion of project and handover proper possession of the apartment after completion of project and facilities as promised at the time of booking.

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16. The complainants submitted that they have booked premium apartment with hope that they will able to give a proper and suitable place for living to themselves and their family. But seeing the present site condition of the apartment, all expectations and hope of the complainants destroyed.
17. The complainants submitted that they are willing and ready to take the possession of the apartment but surely not in present condition because the respondent has not developed the project in accordance with the agreement. No facilities developed in the project, construction work is still going on due to which there are so many dust and dirt all over the premises and the apartment is not fit for human rehabilitation. They will surely do not put health of their family in danger by shifting in incomplete, unhealthy and insecure apartment. It is also necessary to submit that club and associated facilities, are part of the home specifications. Direction need to be passed against the respondent directing the respondent to complete all pending work and hand over possession of the said apartment immediately and for delay, the respondent be directed to pay delay charges as per

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provisions of Haryana RERA. Direction needs to be passed against respondent to comply its part of agreement without any further delay.

ISSUES TO BE DECIDED:

18. On the basis of the facts given by the complainants, the complainants suggest the following issues for adjudication of the present complaint by this hon'ble authority: -

1. Whether the complainants are entitled for immediate possession of their booked apartment no. 7-B/0807 on 8th floor in Paras Dew's situated in Sector 106, Gurugram, Haryana ?
2. Whether the complainants are entitled for interest on the deposited amount as per provisions of section 18 of Real Estate (Regulation and Development) Act, 2016 for delay period on pro rate basis ?
3. Whether the respondent has violated the terms of apartment buyer's agreement dated 21.05.2013 and as such, the complainants are entitled to relief as per provisions of RERA ?

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4. Whether the complainants are entitled for entire facilities as promised by the respondent at the time of booking of the apartment?
5. Whether the respondent is entitled for holding charges on the face of fact that inspite of repeated request, the respondent did not hand over possession of the apartment ?

RELIEFS SOUGHT-

19. The complainants are seeking the following reliefs:
 1. Direct the respondent to give immediate possession of apartment no. T-B/0807 on 8th floor in Paras Dew's situated in Sector 106, Gurugram, Haryana to the complainants immediately, in the interest of justice.
 2. Direct the respondent to pay interest @ 18% per annum to the complainants for the delay period on the deposited amount, in the interest of justice.
 3. Direct the respondent to complete all pending work and provide all amenities and facilities as per promise made in the builder buyer agreement.

4. Direct the respondent not to impose holding charges.
5. Pass stay order on demand letter dated 28.08.2018 restraining the respondent from claiming any holding charges on the basis of above demand letter till respondent obtain completing certificate and occupancy certificate from competent authority.

REPLY ON BEHALF OF RESPONDENT:

20. The respondent submitted 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.
21. The respondent submitted that the present complaint is infructuous 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. Thus, there is no merit in the present complaint or the contention that

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there has been any delay on the part of the respondent since it is admittedly the complainants who have defaulted in payment of the instalments as per the agreed payment plan.

22. It is further submitted that the complainants in the present complaint under reply have also admitted the fact that they have not paid the total consideration of Rs. 90,95,780/-.

23. The respondent 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 apartment buyer agreement which clearly provide that subject to the complainants complying with all the terms of the apartment 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 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 construction work were received towards



the end of 2013 and construction work commenced in January 2014.

24. The respondent submitted that the construction of the apartment is complete, and the offer of possession has already been issued to the complainants on January 24, 2019 with the demand for the remaining payment. However, the complainants have 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 apartment buyer agreement.
25. The respondent submitted that due to the failure of the complainants in paying the complete consideration, the respondent has suffered immense monetary hardship.
26. The respondent submitted that the present complaint being made by the complainants 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:

27. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under.
28. In respect of **first, second and third** issues raised by the complainant, As per clause 3.1 of the builder buyer agreement dated 21.05.2013 for unit n. 0807, tower-B, 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 obtaining licences or approval for commencement of construction 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. 93,71,558/- to the respondent.

The clause regarding possession of the said unit is reproduced below:

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3.1 POSSESSION OF FLOOR

The seller proposes to handover the possession of the Apartment to the Purchase(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. The Purchaser (s) agrees and understands that the Seller shall be entitled take a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession....”

Hence, the authority is of the considered view that the complainant is entitled for delayed possession charges in the form of prescribed rate of interest i.e. 10.45% as per proviso to section 18(1) of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 till the date of offer of possession i.e. 24.01.2019.

29. In respect of **fifth** issue raised by the complainant, As per clause 3.1 of the builder buyer agreement dated 21.05.2013 for unit n. 07, tower-B, 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 obtaining licences or approval for commencement of construction i.e. 06.09.2013 plus 6 months grace period which comes out to be 06.09.2017. The respondent has

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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. 93,71,558/- to the respondent. 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 after its completion.

FINDINGS OF THE AUTHORITY: -

30. 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 Department of Town and Country Planning, 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

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planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

31. Arguments heard. As per clause 3.1 of the builder buyer agreement dated 21.05.2013 for unit n. 0807, tower-B, 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 obtaining licences or approval for commencement of construction 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. 93,71,558/- to the respondent.

DECISION AND DIRECTIONS OF THE AUTHORITY: -


➤ After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and

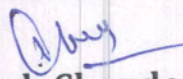
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Development) Act, 2016 hereby issues the following directions:

- i. The respondent is directed to pay interest at the prescribed rate of 10.45% per annum on the amount deposited by the complainant with the promoter from the due date of possession i.e.06.09.2017 up to the date of offer of possession i.e. 24.01.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.
- ii. The arrears of interest accrued so far shall be paid to the complainant 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 shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not a part of BBA.

- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as being granted to the complainant in case of delayed possession.
- 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.
32. The order is pronounced.
33. Case file be consigned to the registry.
34. Copy of this order be endorsed to the registration branch.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.08.2019

Judgement uploaded on 05.11.2019

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