

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

Complaint no.: 2206 of 2023
Date of complaint: 16.05.2023
Date of order: 05.09.2024

Vivek Kumar Suhasaria

R/o: - 804, Woodburry Tower Charmwood,
Village Faridabad-121009

Complainant

Versus

M/s Sepset Properties Pvt. Ltd. (Through its
Managing Director and other Directors)

Regd. Office: Room no. 205, Welcome Plaza,
S-551, School Block II, Shakarpur, Delhi-
110092

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)

Shri Himanshu Singh (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



provision of the Act or the Rules and regulations made thereunder or to the allottee 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.No.	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	12.06.2020
	Name of licensee	Sepset Properties
	Licensed area	13.76 acre
5.	Allotment Letter	10.01.2013 (page 29 of complaint)
6.	Unit no.	06, 16 th floor, tower-B (Page 35 of complaint)
7.	Unit measuring	1665 sq. ft. (Page no. 35 of complaint)
8.	Date of execution of Floor buyer's agreement	18.04.2013 (Page no. 32 of complaint)
9.	Possession clause	3. Possession <i>3.1 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</i>



		<i>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.</i>
10.	Environment clearance	06.09.2013 (page 21 of reply)
11.	Due date of possession	06.09.2017 (Calculated from the date of environment clearance i.e. 06.09.2013 being later including grace period of six month being unqualified and unconditional)
12.	Demand Letters	13.01.2014, 03.04.2014, 05.03.2014, 16.04.2014, 09.05.2014, 04.07.2014, 18.07.2014, 29.08.2014, 13.09.2014, 21.01.2015, 14.02.2015, 18.03.2015, 04.04.2015, 16.04.2015, 24.07.2015, 28.08.2015, 12.09.2015, 12.10.2015, 15.10.2015, 07.01.2016, 09.04.2016, 25.04.2016, 19.05.2016, 20.06.2016, 04.08.2016, 03.10.2016, 04.01.2017, 07.02.2017 and 16.12.2017 (page 73-107 of reply)
13.	Total sale consideration	Rs.1,01,07,050/- (page no. 65 of reply)
14.	Total amount paid by the complainant	Rs.27,03,406/- (page no.96 of reply)
15.	Occupation certificate	15.01.2019 (page 67 of reply)
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

1. That the respondent advertised its new project, "Paras Dews," in 2014, presenting an appealing picture of the residential group housing project in Sector 106, Gurugram, Haryana. The advertisement highlighted a total area of approximately 13.762 acres under license no. 61 of 2012 issued by DTCP, Haryana. The respondent invited applications from prospective buyers and



- confirmed that the project had received building plan approval from the authorities.
- II. That while searching for a unit, the complainant was drawn in by these advertisements and calls from the respondent's brokers who emphasized the company's reputed standing and made grand presentations about the project. A brochure handed to the complainant depicted the project in an idealized manner, encouraging immediate payments.
- III. Further, relying on the respondent's representations, the complainant booked a unit no. 06, 16th floor, Tower-B on 29.12.2012 and paid Rs.7,50,000/-, which was acknowledged by the respondent. Subsequently, the respondent sent an allotment letter on 10.01.2013, confirming the booking and reiterating the company's moonshine reputation and the project's location. This letter outlined the total sale consideration of Rs.1,01,07,050/- which includes basic price, Plus EDC and IDC, and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- IV. Thereafter, a buyer's agreement was executed on 18.04.2013, specifying that possession would be delivered within 42 months plus 6-month grace period from the agreement date or from obtaining all necessary licenses for construction. Therefore, the due date for possession comes out to be 18.10.2016. As per the demands raised by the respondent, based on the payment plan, the complainants already paid a total sum of Rs.27,03,406/- towards the subject unit.
- V. That despite multiple visits to the respondent's office, the complainants were consistently denied access to the site. They encountered inadequate access roads and received vague excuses about construction delays, such as labour shortages. The complainants requested to inspect the unit before

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making further payments and inquired about parking but received no responses.

- VI. That the respondent not only failed to adhere to the booking terms but also extracted money through false promises. The respondent has not handed over possession even after many years of delay. By falsely assuring timely delivery and providing incorrect timelines, the opposite parties have engaged in unethical trade practices, causing significant mental stress and anguish for the complainant.
- VII. That the payment plan is designed to extract maximum payments from buyers without ensuring project completion. The complainants raised concerns about the project's status, but the respondent failed to provide satisfactory answers. Such arbitrary practices highlight a lack of transparency, where demands were raised without sufficient justification, resulting in the extraction of payments without delivering promised amenities.
- VIII. That the respondent's actions reveal a pattern of unfair trade practices and deficient services, leading to immense mental stress for the complainants. Despite making multiple representations, the respondent has chosen not to fulfil their promises, ignoring grievances raised by the affected buyers.
- IX. That the complainants have invested their life savings in this project, hoping for timely possession of their unit. Instead, they have been deprived of both possession and potential returns had they invested elsewhere. The respondent's fraudulent actions have led to a significant loss, and the complainants seek a full refund of the amounts paid along with interest, as well as any other relief deemed appropriate by the Authority.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

- I. Direct the respondent to refund the entire amount paid by the Complainant to the respondent along with interest till the date of its realization.
- II. Restrain the respondent from raising any fresh demand with respect to the project.
- III. Direct the respondent not to create any third-party rights in the said unit till final realization of the total amount paid along-with interest.
- IV. To initiate penal proceedings against the builder on account of violation of various Section/provisions of the Act,2016 and rules frames thereafter.

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.

6. The respondent has contested the complaint on the following grounds: -

- i. That the complainant herein is not a genuine flat purchaser or consumer and has purchased the said flat for commercial and investment purposes for which the jurisdiction of this Hon'ble Authority cannot be invoked, since the object of the RERA Act is to protect the interests of the consumers and not the investors. The complainant has not been successful in selling the flat at a premium, he filed this frivolous complaint just to avoid making the remaining payments in terms of the agreed payment plan. The complainant has filed the present complaint for seeking refund the entire paid amount, when the respondent has already obtained the occupation certificate in the year 2019 from the competent Authority. Further the complainant has paid only 26% of the total sale consideration.
- ii. Further, the complainant herein has been himself guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates. The same is not permissible in terms of RERA Act, 2016 and in view of the same, the complaint merits ought right dismissal.

- iii. Moreover, the complaint is also not maintainable and is 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 and further 6 months grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020 which has not arisen in the present case.
- iv. That the unit of the complainant falls in the Tower-B of the project and the Occupancy Certificate (OC) of Towers A to D of the project was obtained from the Competent Authority on 15.01.2019. Thus, there is no merit in the present complaint or the contention that there has been any delay on the part of the respondent since it is admittedly the complainant who has defaulted in payment of the instalments as per the agreed payment plan.
- v. That the complainant was allotted a unit by the allotment letter as well as the builder buyer's agreement dated 18.04.2013, executed between the parties. The complainant was allotted a unit bearing no. 06, 16th floor, in tower B, admeasuring super area 1665 sq. ft. for the sale consideration of Rs.1,01,07,050/-. The complainant opted for construction linked payment plan.
- vi. That the present complaint is also not maintainable since possession had to be handed over to the complainant in terms of Clauses 3.1 and 3.2 of the builder buyer agreement dated 18.04.2013 which clearly provide that subject to the complainants complying with all the terms of the builder buyer agreement and making timely payments of the instalments as and when they fall due. The respondent proposes to offer the possession of the unit within a period of 51 months (42 month + grace period of 6 month plus 90 days) of the date of execution of the buyer's agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later,

subject to force majeure. Moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014.

- vii. That the complainant has failed to make timely payment of her dues as agreed at the time of execution of buyer's agreement and has filed the present complaint simply to harass respondent.
- viii. That the buyers agreement states that the obligation to make timely payments of every instalment of the total consideration in accordance with the payment plan along with the payment of other charges such as applicable stamp duty, registration fee, IFMS, and other charges, deposits, as stipulated under this Agreement or that may otherwise be payable on or before the due date or as and when demanded by the respondent, as the case may be, and to discharge all other obligations under this agreement shall be the essence of this agreement.
- ix. That the present complaint is also not maintainable since not only is the complainant in breach of the builder buyer's agreement, and also in violation of Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
- x. That the complainant who has made the huge delay in making the payment, therefore the complainant is in breach of the Real Estate Regulation Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant - allottee is also under the right - duty, as per section 19(10) of the Real Estate Regulation Act, 2016. The respondent - promoter has sent various reminder letter and demand letter for clearing the outstanding dues, but the complainant refused the said dues and till date has paid only 26% of the total sale consideration. The respondent promoter has completed the construction and obtained the occupation certificate on 15.01.2019. The present complainant has failed to take possession of the allotted unit as well as making the payment of outstanding dues. In view of



the same, the respondent humbly prays that the present complaint is not maintainable in the eyes of law.

- xi. That the respondent has raised various demand letters and reminder letters send to the complainant thereafter, he paid an amount of Rs.27,03,406/- out of the total sale consideration of Rs.1,01,07,050/- Till date total outstanding dues an amount of Rs.74,03,644 /- is pending as per agreed payment plan.
- xii. That the complainant has filed the complaint after obtaining the occupation certificate. Thereafter the complainant files this present complaint it shows that the complainant surrender his right and duties of the allotted unit. In case of surrender the answering, respondent has right to forfeiture of the earnest money as applicable in the buyer's agreement and regulation made under this Act of 2016.
- xiii. As per clause 2.21 the earnest money in case of the allotted unit cancelled by promoter for nonpayment or surrender by the allottee. Also, under Clause 5 The Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of Earnest Money by the builder) Regulation 2018, the respondent is entitled to deduct 10% of the sum consideration towards Earnest Money as Cancellation of the allotment of Unit was the result of failure on the part of the allottee to clear its outstanding dues in terms of buyer's agreement. That before such Cancellation, the allottee was even served with several Reminder Letters etc. but despite that he deliberately chose not to pay any further sum leaving the builder with no other option except to cancel the allotment of his Unit subject to deduction of the Earnest Money.
- xiv. That the respondent is not a genuine Unit purchaser or an allottee as he has purchased the Unit for commercial and investment purpose for which the jurisdiction of this Hon'ble Authority cannot be invoked, since the object of RERA Act is to protect the interest of the allottee and not of an investor. Same

is also evident from the fact that the allottee ran out of cash and has not cleared its pending instalments resulting in surrender of the allotment of his Unit.

- xv. That the construction of the project was affected on account of unforeseen circumstances which were beyond the control. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of "*Deepak Kumar v. State of Haryana. (2012) 4 SCC 629*". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. Further, Developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. Further, the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed in the para-aforesaid

continued, despite which all efforts were made, and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. That despite the aforementioned circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the allottee. Upon completion of the construction of the unit in terms of the buyer agreement an application for the receipt of the occupation certificate was obtained on 15.01.2019 with respect to the tower in which the unit is situated with the statutory authorities.

- xvi. That the occupation certificate with respect to the tower where the Apartment is situated was only granted after inspections by the relevant authorities and after ascertaining that the construction was completed in all respect in accordance with the approved plans and that the apartment was in a habitable and liveable condition after obtaining the OC.
- xvii. That after obtaining the occupation certificate the complainant/promoter has offered the possession of the other allottee and the same take over the possession in well time.
- xviii. That the respondent has also fulfilled its all obligation under the Real Estate Regulation Act, 2016 and as per the buyer's agreement. The respondent promoter has completed the construction in all aspect and also obtained the occupation certificate of the allotted unit of the complainant was on 15.01.2019, from the department of town and country planning Haryana Chandigarh.
- xix. That the respondent herein who has suffered due to the breaches committed by the complainant since the said respondent has continued with the construction of the apartment despite the complainant not paying the complete consideration. Due to the failure of the complainant in paying the

complete consideration, the respondent has suffered immense monetary hardship.

- xx. That the complainants are not performing their obligations under the agreement. Moreover, the complainant also cannot seek interest or damages since he is in default, and it is the respondent who has completed the construction and can exercise his right to cancel the agreement or claim damages from the complainant for the defaults on his part.
- xxi. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'PARAS DWES' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.
- xxii. That, Graded Response Action Plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- xxiii. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect

on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent were forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the Respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the similar case of *Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors* has taken cognizance of the devastating conditions of the real estate sector and has directed the Union of India to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the Apartment.

- xxiv. That once the parties have duly contracted and locked their legal obligations by way of the buyer's agreement, no relief over and above the clauses of the agreement can be granted to the complainant. The Buyers agreement duly provides that for any period of delay beyond the contracted date of offer of possession, subjects to Force Majeure clause. Further, the developer/builder has obtained the occupation certificate on 15.01.2019.
- xxv. That the complainant has not been able to point out a single provision of either the Real Estate (Regulation and Development) Act, 2016 or the Haryana Real Estate (Regulation and Development) Rules, 2017 which has been violated by the respondent. Thus, this complaint is not entitled to any relief at all.



xxvi. Also, the Authority does not have the jurisdiction to entertain the present complaint in terms of Rule 28 & 29 of Haryana Real Estate (Regulation & Development) Rules, 2017 read with Regulation 25 of the Haryana Real Estate Regulatory Authority, Gurugram (General), Regulation, 2018. Moreover, submitted that the complainant does not have any valid or subsisting cause of action to file the present complaint. In view of the aforesaid submissions, the present complaint be dismissed with costs.

7. All other averments made in the complaint were denied in toto.

8. 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 these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

12. 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.

F. Findings on the objections raised by the respondent

F.I Objection regarding the complainant being investors.

13. The respondent has taken a stand that the complainant is an investor and not a consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment



through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act stands rejected.

F.II. Objection regarding the force majeure.

15. The respondent-promoter raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 18.04.2013 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 06.09.2017 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

16. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of

the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

17. In the present complaint, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 06.09.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

G. Relief sought by the complainant.

G.I Direct the respondent to refund the entire amount paid by the complainant to the respondent along with interest till the date of its realization.

18. That the complainant entered into a builder-buyer agreement with the respondent on 18.04.2013 for unit no. 06, 16th floor, tower-B, admeasuring 1665 sq. ft., for a total sale consideration of Rs.1,01,07,050/- in the respondent's project "Paras Dews," Sector-106, Gurugram. The complainant paid an amount of Rs.27,03,406/- towards the subject unit. The respondent obtained the occupation certificate for the said project on 15.01.2019.

Subsequently, the complainant filed the present complaint on 16.05.2023, after the issuance of the occupation certificate for the tower where the unit is located, seeking refund of the entire paid-up amount.

19. During the proceedings dated 05.09.2024, the counsel for the complainant argued that the complainant had already sent a legal notice to the respondent way back in 2019, seeking refund of the paid-up amount. However, the complainant has failed to corroborate his statement with documentary evidence. However, a letter, bearing a handwritten date 17.06.2017, was placed on record by the complainant, allegedly sent to the respondent seeking refund of the entire amount paid by the complainant. It is important to deliberate upon the authenticity of this document, as the complainant neither made a mention of it in the complaint, in the pleadings nor enclosed any postal receipts confirming its service to the respondent. Therefore, the said document cannot be relied upon.
20. Further, the respondent's counsel argued during the proceedings dated 05.09.2024 that several reminders were issued to the complainant regarding overdue payments, but the complainant failed to make timely payments. The Authority has reviewed the payment plan (Schedule III) from the buyer's agreement executed between the parties, which is extracted below for ready reference:

STAGE	PERCENTAGE	AMOUNT (RS.)
On Booking	As Applicable	7,50,000.00
Within 60 days of booking	20% of BSP-Less Booking Amount	9,98,250.00
120 days from the date of booking	10% of BSP	8,74,125.00
On completion of upper basement roof slab	7.5% of BSP + 50% of car parking	8,05,594.00
On completion of 1 st floor roof slab	7.5% of BSP + 50% of car parking	8,05,594.00
On completion of 4 th floor roof slab	7.5% of BSP + 50% of EDC/IDC	9,84,431.00
On completion of 8 th floor	7.5% of BSP + 50% of EDC/IDC	9,84,431.00

roof slab		
On completion of 12 th floor roof slab	7.5% of BSP	6,55,594.00
On completion of 16 th floor roof slab	7.5% of BSP	6,55,594.00
On completion of structure work	5% of BSP + 50% of PLC	4,37,063.00
On completion of brick work	5% of BSP + 50% of PLC	4,37,063.00
On completion of electronic conducting	5% of BSP	4,37,063.00
On completion of flooring	5% of BSP	4,37,63.00
At the time of offer of possession	5% of BSP + club charges + IFMS	8,45,185.00
TOTAL		10,107,050.00

21. Based on the documents placed on record and submissions made by both parties, it is evident that the complainant has only paid an amount of Rs.27,03,406/- i.e. 26 % against the total sale consideration of Rs.1,01,07,050/-. The respondent has sent various reminder letters on multiple dates between 2014 and 2017, demanding payment of the outstanding amount. The Authority observes that the respondent was justified in raising demands as per the agreed payment plan, and there is a default on the part of complainant to make payment of outstanding dues as per the agreed payment plan.
22. Furthermore, Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, imposes an obligation on the allottee to make timely payments. Moreover, under Section 18(1)/19(4), the allottee has the right to withdraw from the project if the promoter fails to deliver possession of the unit. However, since the complainant did not exercise this right and continued with the project, it implies a tacit desire to remain part of the project. Although the promoter delayed possession, the consequences of Section 18(1) apply, entitling the complainant to interest on the delayed possession. But, the complainant through present complaint intends to withdraw from the project.

23. As, per Clause 12.6 of the builder-buyer agreement, the respondent/promoter has the right to cancel/terminate the booking and forfeit the amount paid up-to the earnest money by the complainant if the allottee/complainant wishes to withdraw or surrender the allotment for any reason. The relevant clause is extracted below:

"12.6

The Purchasers) has fully understood and agreed that in case the Purchasers) withdraws or surrender his allotment, for any reason whatsoever at any point of time, then the Seller at its sole discretion may cancel/ terminate the booking/allotment/Agreement and shall forfeit the amounts paid/deposited up-to the Earnest Money, along with other dues of non refundable nature. No separate notice shall be given in this regard."

24. Now, the issue arises with regard to deduction of earnest money. In cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022***, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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."

25. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (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, from the date of filing of the present complaint i.e. 16.05.2023 till its realization (Note: Vide proceedings dated 05.09.2024 it was mentioned from the date of cancellation inadvertently) within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Restrain the respondent from raising any fresh demand with respect to the project.

26. That the complainant through present complaint is seeking refund of the amount paid to the respondent against the subject unit. In, light of the above findings the respondent is directed to refund the paid-up amount to the complainant after deduction. Additionally, the respondent is directed not to raise any fresh demand with respect to the subject unit.

A

G.III Direct the respondent not to create any third-party rights in the said unit till final realization of the total amount paid along-with interest.

27. Since the complainant has only paid 26% of the total sale price and has failed to make payments according to the agreed payment schedule, yet is seeking a refund of the entire paid-up amount and directions for restraining the respondent from creating third-party rights over the subject, the relief being sought is unreasonable and unjustified. Given the complainant's payment default and the fact that the respondent has already obtained an occupancy certificate for the tower where the unit is located, the Authority cannot accede to the above sought relief.

G.IV To initiate penal proceedings against the builder on account of violation of various Section/provisions of the Act, 2016 and rules frames thereafter.

28. The complainant has not clearly identified the violations of the Act, 2016, and its rules by the respondent. Without specific details about the alleged violations, there is no basis for the relief sought. Therefore, no directions or relief can be granted to the same.

H.Directions of the authority.

29. 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):

- i. The respondent is directed to refund the paid-up amount i.e. Rs.27,03,406/- to the complainant after deducting 10% of the sale consideration as earnest money along with interest at the prescribed rate i.e., 11.10%, from the date of filing of this complaint i.e., 16.05.2023 till the date of realization of payment. *(Note: Vide proceedings dated 05.09.2024 it was mentioned from the date of cancellation inadvertently)*

12

ii. 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.

30. Complaint stands disposed of.

31. File be consigned to the registry.

Dated: 05.09.2024

V. I - G
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM