

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

Date of decision: 15.04.2025

Name of the Builder		Sepset Properties Private Limited	
Project Name		"Paras Dew's", Sector 106, Gurugram	
Sr. No.	Case No.	Case title	Appearance
1.	CR/457/2023	Vaibhav Sharma Vs. Sepset Properties Private Limited	(Complainant) Sh. Rajiv Kumar Khare Advocate (Respondent) Sh. Yogantar Singh Chauhan
2.	CR/487/2023	Mauravi Sharma Vs. Sepset Properties Private Limited	(Complainant) Sh. Rajiv Kumar Khare Advocate (Respondent) Sh. Yogantar Singh Chauhan

CORAM:Shri Arun Kumar
Shri Ashok Sangwan**Chairman
Member****ORDER**

1. This order shall dispose of both the aforesaid complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Paras Dew's", Sector 106, Gurugram being developed by the same respondent/promoter i.e., "Sepset Properties Private Limited." The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the amount paid by the complainants along with interest at the prescribed rate.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Paras Dew's", Sector 106, Gurugram, Haryana			
Nature of the Project		Residential Group Housing Project			
Project area		13.762 acres			
DTCP License No. and validity		61 of 2012 dated 13.06.2012 Valid up to 12.06.2020			
HRERA Registration		118 of 2017 dated 28.08.2017			
Possession Clause		3. Possession "3.1 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 six(6) months from the date of execution of this Agreement or date of obtaining all licenses or approvals for the commencement of construction, whichever is later." (Emphasis supplied)			
Occupation certificate		15.01.2019			
Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. and size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	
1.	CR/457/2023 Vaibhav Sharma Vs. Sepset Properties Private Limited	Unit no. 04, 6 th Floor Block/tower no. A	17.04.2013	BSP-. Rs.1,14,63,000/- (Page 53 of complaint) AP-Rs. 1,08,93,514/- (As per statement of account)	

	DOF: 23.02.2023 Reply: Not filed	Admeasuring 1990 sq. ft. super area (Page 27 of complaint)		dated 11.02.2019 at page 58 of the complaint)
2.	CR/487/2023 Mauravi Sharma Vs. Sepset Properties Private Limited DOF: 23.02.2023 Reply: Not Filed	Unit no. 03, 15 th Floor Block/Tower no. -A Admeasuring 1990 sq. ft. super area (Page 25 of complaint)	03.04.2013	BSP-Rs. 1,11,62,800/- (page 55 of the complaint) AP-Rs. 1,07,91,248/- (As per statement of account Dated 11.02.2019 at (Page 61 of complaint)

The complainant herein is seeking the following reliefs:

1. To direct the respondent to **refund** the entire deposited amount **along with interest** from due date of receipts at the prescribed rate of interest to the complainant.
2. Direct the respondent to pay **legal expenses** of Rs.30,000/-, incurred by the complainant.

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the agreement in respect of subject unit for not handing over the possession by the due date, seeking refund of entire amount paid by the complainants along with interest at the prescribed rate.
5. The facts of both the complaints filed by the complainant-allottee(s) are similar. Herein, the particulars of lead case **CR/457/2023 titled as "Vaibhav Sharma Vs. M/s Sepset Properties Private Limited"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Unit and project related details

6. 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. N.	Particulars	Details
-------	-------------	---------

1.	Name of the project	"Paras Dews", Sector 106, Gurugram
2.	Nature of the project	Residential Group Housing Project
3.	Project area	13.762 acres
4.	DTCP license no. and validity status	61 of 2012 dated 13.06.2012 Valid up to 12.06.2020
5.	RERA Registered/ not registered	118 of 2017 dated 28.08.2017
6.	Date of Environment Clearances	06.09.2013
7.	Date of execution of Apartment Buyer's Agreement	17.04.2013 (as per page no. 20 of complaint)
8.	Unit no. and area	04, 6 th Floor, Tower-A admeasuring 1990 sq. ft. (super area) (as per page no. 23 of complaint)
10.	Possession clause	3. Possession "3.1 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 six (6) months from the date of execution of this Agreement or date of obtaining all licenses or approvals for the commencement of construction, whichever is later." (Emphasis supplied)
11.	Due date of possession Environment clearance date: 06.09.2013 + 6 months grace period	06.09.2017 (calculated from the date of start of receipt of environment clearance, being later including grace period being unqualified)
13.	Total sale consideration	Rs. 1,14,63,000/- (As per page 53 of the complaint)
14.	Amount paid by the complainant	Rs. 1,08,93,514/- (As per SoA on page 58 of complaint)

16.	Occupation certificate /Completion certificate	15.01.2019
17.	Offer of possession	24.01.2019

B. Facts of the complaint

7. The complainant has made the following submissions: -

- a. That M/s. Indtech India Private Limited was allotted by the respondent, on 10.01.2013, a unit no. T-A/0604, having a super area of 1900 sq. ft., on 6th floor in tower A in project "Paras Dews" situated at Sector 106, Dwarka Expressway, Gurgaon, Haryana, being developed by the respondent.
- b. That M/s. Indtech India Private Limited entered into a builder buyer agreement with the respondent on 17.04.2013.
- c. That the complainant booked in resale from the original allottee, the under construction unit and the same was endorsed in favour of the complainant by the respondent on 10.06.2015.
- d. That the total sale consideration of the unit including basic sale price, external development charges, internal development charges, parking, club membership charge and interest free maintenance security was Rs. 1,14,63,000/-, excluding taxes.
- e. That the complainant along with his wife Mrs. Mauravi Sharma, took a home loan of Rs. 88,70,000/- from HDFC Ltd., for a tenure of 20 years at an EMI of Rs. 77,257/-, for meeting his financial obligations towards purchase of the unit.
- f. That on 17.10.2016, 42 months agreed for delivery of possession by respondent expired on 17.04.2017, the grace period of 6 months also expired.
- g. That by 27.07.2017, the complainant had paid Rs.1,08,93,514/-, inclusive of taxes, to the respondent, against various demands raised by the respondent towards development of the unit.

- h. That the respondent issued offer of possession on 24.01.2019, after a delay of over 2 years and 3 months, along with a legally untenable Demand of Rs. 13,85,622/- on account of purportedly balance payable sale consideration of the unit and Rs. 2,03,620/- on account of maintenance charges.
- i. That the complainant visited the project site on 12.02.2019 for inspecting his unit and he found that his allotted unit was not in a habitable condition. He took photographs of the interior of the unit and informed the respondent of his findings/shortcomings in the unit and excessive charges in the demand note vide a letter handed over to respondent on 13.02.2019.
- j. That the complainant again went to the project site on 15.02.2019 for a closer scrutiny of the work done but, to his utter shock, Mr. Amit Sharma, a representative of the respondent refused him access to his unit. The complainant informed the respondent of this unfortunate event on 16.03.2019 vide an e-mail.
- k. That the complainant was denied access to the unit so he visited the club house and basement (parking area) and found the same were not complete and hence were unfit for use.
- l. That the builder buyer agreement is a one sided agreement drafted by the respondent to protect and promote, inter alia, his unlawful interests, cause unlawful enrichment to himself and unlawful loss to the complainant.
- m. That in view of the agreement being a one sided agreement and violations of terms of agreement, license, BRIII and OC, it can be concluded that the building plan and OC do not exist and the respondent is liable to obtain the BRIII, EC and OC afresh.
- n. That it is crystal clear that the completion of project has now been delayed by over 6 years and 3 months which is an inordinate delay and hence the allottee has option to elect to not accept possession and seek refund of all

the amounts paid along with interest on each amount from the date of payment till the date of actual refund into the hands of the complainant.

- o. That the complainant received a favourable order for DPC in CR 1217/2019 but the respondent did not comply with the order of this Authority.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- i. To direct the respondent to refund the amount paid by the complainant along with interest at prescribed rate.
 - ii. To direct the respondent to pay Rs. 30,000/- litigation cost.
9. 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.

10. That the reply on behalf of respondent had not been filed but an application for dismissal of complaint was filed by the respondent on 18.12.2023. The brief facts of application for dismissal of complaint filed by the respondent are given below:-

- a) That the present complainant had filed a previous complaint case no. 1217 of 2019 titled as *"Mr. Vaibhav Sharma Versus Sepset Properties Private Limited"* on 20.03.2019 seeking delay possession charges and the same was allowed by the Authority on 23.01.2020. The relevant para of the said judgment is reiterated below:-

- i. *The respondent is directed to pay the interest at the prescribed rate i.e., 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession, i.e., 24.01.2019.*
- ii. *The respondent is directed to visit the site along with the complainant and sort out the matter within a week's time regarding the deficiencies in the unit.*

iii. *The respondent is further directed not to charge any holding/ maintenance charges from the complainant.*

b) Thereafter the complainant filed the complaint before Hon'ble SCDRC on 27.05.2022 against the respondent and the same subject unit was dismissed and withdrawn vide order dated 09.01.2023. Now, the complainant has filed yet another complaint before the Authority and is seeking refund of the entire paid-up amount. It is submitted that the respondent had already completed the said project namely "Paras Dews" wherein the unit of the complainant is situated. The said project had already been completed in the year 2018 and occupation certificate has also been obtained on 15.01.2019. Thereafter, offer of possession was made on 24.01.2019 and same has already been mentioned in order dated 23.01.2020 passed by the A it is submitted by the complainant that the present complaint is not maintainable same being barred by res-judicata as matter had already been decided by this Authority and execution petition of the said order has already been disposed of and if there exist any objection as to the same, he should raise the same before the Executing Court and it should be decided by executing court as provided under Section 47 of CPC, 1908.

11. The brief facts of reply to the application for dismissal of complaint filed by the complainants are:-

- a. That the cause of action in CR/1217/2019 arose from the right conferred on the complainant by proviso to section 18(1) of RERA, 2016 as below :

"Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

- b. That cause of action in CC/28/2022 arose from the absolute and unbridled right conferred on the complainant by section 18(1) of RERA, 2016 as under:

"... he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment,"

- c. That it can be safely inferred that the complainant can seek refund of their amounts paid along with accrued interest, from the respondent. The contents of section 18(1) of the RERA 2016 do not imply, by any stretch of imagination, that a complainant cannot seek refund if Occupancy Certificate has been obtained by the respondent.
- d. That the issues stirred and the rights claimed in the SCDRC refund case and the HRERA refund case are not identical. Further, the SCDRC case was withdrawn; not dismissed on adjudication of issues involved. The respondent cannot bind allottee to take possession if the former obtained OC after expiry of delivery period.
- e. Further, the validity of both BR III and the OC has been challenged and burden of proof is on the respondent that he has met all the conditions stated in BR III and the OC in order to claim that he has valid BR III and OC. In the complaint vide Para 11-13, 15-29 and 31 and the annexures referred to therein, the respondent wilfully refused to comply with the directions of the Authority / Executing court and the conditions of BR III and the OC. Under such circumstances, the OC obtained by the respondent is not a valid OC and hence he cannot offer a valid possession. Thus, refund u/s 18(1) of the Act is inevitable.
- f. The offer of possession is not a valid one and hence the complainant is not bound to accept it. Further, the unit was in uninhabitable condition and the respondent willfully did not handover possession by removing

the defects and obtaining valid OC by meeting all the conditions of OC. The respondent cannot be permitted to take advantage of his own wrongs. The complainant cannot be forced under any law to take possession of an uninhabitable and unlawfully built dwelling unit.

- g. That the instant complaint is not barred by res judicata. The contention of respondent regarding execution would hold water if he had voluntarily complied with the directions of the Authority without forcing the complainants to invoke execution proceedings. In terms of the provisions of CPC 1908, the contention of respondent that the instant complaint is res judicata falls apart.
- h. That the law does not bind the complainant to invoke all the causes of action in a single plaint. Separate cause of actions can be invoked in separate litigations on the same subject matter. Only when further hitherto unknown facts of law, which conferred rights on the complainant to demand compliance by respondent with conditions of BRIII and OC, came to the complainants' notice, did they bring the fresh instant suit against the respondent to conclusively invoke their right u/s 18(1) of the Act to seek refund of all the principal amounts paid along with accrued interest.

12. 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 submission made by the parties.

E. Jurisdiction of the Authority

13. 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

14. 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

15. 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.

16. 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 complainants at a later stage.

G. Findings on the relief sought by the complainants

G. I To direct the respondent to refund of the total amount paid till date along with interest as per prescribed rate of interest as per RERA Act.

17. It is important to note that the complainant had previously filed CR No. 1217 of 2019, titled as *"Mr. Vaibhav Sharma Versus Sepset Properties"* on 20.03.2019 seeking delay possession charges and the same was allowed by the Authority on 23.01.2020. Thereafter, the complainant filed the complaint before Hon'ble SCDRC on 27.05.2022 against the respondent and the same subject unit was dismissed and withdrawn vide order dated 09.01.2023. Now, the complainant has filed yet another complaint before the Authority and is seeking refund of the entire paid-up amount.
18. The Authority observes that it is not disputed that prior to filing of the present complaint before the Authority, the complainant has already filed a complaint before the Authority bearing no. 1217/2019 in respect to the same subject unit. The said complaint was disposed of by the Authority vide order dated 20.03.2019 directing the respondent to pay the interest at the prescribed rate i.e., 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 24.01.2019.
19. After consideration of all the facts and circumstance, Authority is of view that the present complaint seeking refund is not maintainable in light of the fact that the complainant had already exercised the remedy of delay possession charge under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") which was granted on 23.10.2020. Section 18(1)(a) of the RERA Act provides that where the promoter fails to complete or is unable to give possession of an apartment, plot or building in

accordance with the terms of the agreement for sale, the allottee shall have the option to either withdraw from the project and claim refund of the amount paid along with interest and compensation, or to continue in the project and claim interest for the period of delay, the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building:-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

20. Further, this Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and finally decided by this Authority in the former complaint bearing CR.No. 1217 of 2019. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under

Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—*The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*

Explanation II.—*For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

Explanation III.—*The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*

Explanation IV.—*Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

Explanation V.—*Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

Explanation VI.—*Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .*

1[Explanation VII.—*The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.*

Explanation VIII. —*An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited*

jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

21. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.
22. Complaint stands disposed of.
23. File be consigned to registry.

Ashok Sangwan
Member

Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.04.2025