

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

Complaint no. : 1622 of 2019
First date of hearing : 29.08.2019
Date of decision : 23.01.2020

Mr. Suraj Bhan Chhillar
R/o Ward No.1, M.C. Colony,
Charkhi Dadari, Dist. Bhiwani,
Haryana-122018.

Complainant

Versus

M/s Sepset Properties Pvt. Ltd.
Office at: 11th floor, Paras Twin Towers
(Tower B), Sector 54, Golf Course Road,
Gurugram, Haryana-122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Venket Rao
Shri Jasdeep S. Dhillon

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 30.04.2019 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 complainant Mr. Suraj Bhan Chhillar, against the promoter M/s Sepset Properties Pvt. Ltd., on account of violation of the clause 3.1 of the apartment

buyer's agreement executed on 24.04.2013 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 24.04.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under:

1.	Name and location of the project	"Paras Dews", Sector-106, Gurugram.
2.	Nature of the project	Residential group housing colony
3.	Project area	13.762 acres
4.	DTCP license no.	61 of 2012 dated 21.06.2012 valid upto 12.06.2020
5.	Building plans approved on	29.12.2012 (page 22 of complaint)
6.	Environmental clearance	06.09.2013

		(page 28 of reply)
7.	Registered/ not registered	Registered
8.	HRERA registration no.	118 of 2017 dated 28.08.2017
9.	HRERA registration certificate valid up to	31.07.2021
10.	Occupation certificate received on	15.01.2019 (page 20 of reply)
11.	Unit no.	04, 11 th Floor, Tower D
12.	Unit measuring	2275 sq. ft. Note: vide letter dated 24.01.2019, the area of the apartment stands revised to 2355 sq. ft. (page 95 of complaint)
13.	Date of execution of apartment buyer's agreement	24.04.2013 Note: Agreement dated 24.04.2013 was executed for BSP of Rs.5,250/- per sq. ft. Subsequently, another agreement was executed dated 24.03.2015 for BSP of Rs.4,459/- per sq. ft.
14.	Payment plan	Construction linked plan [Page 66 of complaint]
15.	Total cost of the unit as per statement of account dated 22.05.2019	Rs.1,21,27,225/- Note: the total sale consideration on account of increase in area of 80 sq. ft. stands revised to Rs.1,25,25,545/- [Page 23 of reply]
16.	Total amount paid by the complainant as per statement of account dated 22.05.2019	Rs.1,13,97,100/- [Page 26 of reply]

17.	Due date of delivery of possession as per clause 3.1 of apartment buyer's agreement i.e. within a period of 42 months with an additional grace period of 6 months from the date of execution of this agreement (24.03.2015) or date of obtaining all licenses or approval for commencement of construction (EC granted on 06.09.2013) , whichever is later.	06.09.2017
18.	Offer of possession	24.01.2019 [Page 42 of reply]
19.	Delay in handing over possession till date of offer of possession i.e. 24.01.2019	1 year 4 months 18 days
20.	Penalty clause as per clause 3.3 of apartment buyer's agreement dated 24.04.2013	The company shall pay compensation calculated @ Rs.5/- per sq. ft. per month for the delayed period of offer to hand over the possession of the apartment provided that the purchaser has paid the entire amount to the seller strictly on time or as demanded by the seller.
21.	Specific relief sought	Direct the respondent to provide delay interest till date along with prescribed rate of interest as per the provisions.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by

the complainant and the respondent. An apartment buyer's agreement dated 24.04.2013 as well as 24.03.2015 is available on record for the aforesaid unit. According to which the possession of the said unit was to be delivered by 06.09.2017 and the possession was offered by the respondent on 24.01.2019. The respondent has not paid any interest for the period it delayed in offering the possession. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 29.08.2019. The respondent through its counsel appeared on 29.08.2019. The reply filed on behalf of the respondent on 27.05.2019 has been perused by the authority.

Facts of the complaint

6. The complainant submitted that the unit bearing no. D/1104, 11th floor, tower-D, measuring 2275 sq. ft., in the project '**PARAS DEW'S**', Sector-106, Gurugram, Haryana, was originally booked by Mr. Ajit Singh Kothari in 2012 for a basic sale price of Rs.5,250/- per sq. ft. The same was later

transferred in the name of Mrs. Bimla Aggarwal and further, vide affidavit dated 05.04.2013, the unit was transferred in the name of Mr. Suraj Bhan Chhillar, the complainant.

7. The complainant submitted that on 24.04.2013, the apartment buyer's agreement was executed between the complainant and the respondent. As per clause 3.1 of the said agreement, the possession of the said unit was to be handed over within 42 months with an additional grace period of 6 months from the date of obtaining licences or from the date of signing of the agreement whichever is later. It is pertinent to note that there are no definite timelines defined for the builder to start the construction or for that matter, complete the project. However, it was assured by the respondent that the project will be completed within 42 months plus 6 months grace period from the signing of the agreement. Therefore, the due date for handing over the possession was 24.10.2016, but the respondent failed to hand over the possession of the unit to the complainant within time.

8. The complainant submitted that in March 2015, the respondent approached the complainant for signing a new

buyer's agreement. The complainant had paid a huge amount of Rs.61,82,992/- till March 2015 and was stuck due to the decision of the respondent to deny an honourable exit to the complainant from the project. The same was executed on 24.03.2015, for a sale consideration of Rs,1,21,27,225/- including EDC and IDC. However, it was assured by the respondent that the possession of the unit will be handed over in terms of previous agreement dated 24.04.2013. Therefore, the date of handing over of possession was 24.10.2016.

9. The complainant submitted that he had always paid all the instalments on time as per payment schedule whenever demands were raised by the respondent. The complainant had paid huge amount of Rs.1,13,83,653/- i.e. approximately 93% of the agreed sale consideration, till 24.04.2017, against the demands raised by the respondent from time to time according to payment schedule of the unit.
10. The complainant submitted that the respondent issued a letter dated 24.01.2019 stating revision in super area of the unit booked by the complainant from 2275 sq. ft. to 2355 sq. ft. and

informing that the amount for the increased area will be charged along with the demand for offer of possession.

11. The complainant submitted that the respondent vide letter dated 24.01.2019, sent offer of possession, stating that the occupancy certificate for the project has been received and raised an arbitrary demand of Rs. 16,91,624/- on offer of possession and a demand of Rs. 4,43,634/- for the increase in super area of the unit. It is further submitted that the respondent raised the said arbitrary demands without providing and adjusting the interest for delay in handing over of possession.
12. The complainant submitted that the respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the agreement and failed to provide the prescribed rate of interest on delay in handing over of possession in terms of section 18 of the Act read with the Rules made thereunder.
13. The complainant submitted that the project is an 'ongoing project' and is subject to registration under section 3 of the said Act and rule 2(o) of the said Rules. The complainant could

not ascertain as to whether the project/phase thereof, is registered or not.

Reliefs sought

14. The complainant has sought for the following reliefs:

- i. Direct the respondent to provide the complainant with prescribed rate of interest on delayed possession from the scheduled date of possession i.e. 24.10.2016, till the actual date of possession.

Respondent's reply

15. The respondent submitted that the complainant herein is not a genuine apartment purchaser or consumer and had purchased the said apartment for commercial and investment purposes for which the jurisdiction of this authority cannot be invoked, since the object of the said Act is to protect the interests of the consumers and not the investors. Since, the complainant has not been successful in selling the apartment at a premium, he has filed this frivolous complaint just to avoid making the remaining payments in terms of the agreed payment plan.

16. The respondent submitted that the complainant herein has himself been guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates. This same is not permissible in terms of the said Act and in view of the same, the complaint may be dismissed.
17. 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.
18. The respondent submitted that the present complaint is not maintainable since the possession had to be handed over to the complainant in terms of clause 3.1 and 3.2 of the apartment buyer's agreement which clearly provide that subject to the complainant complying with all the terms of the 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 from the date of execution of the apartment buyer's agreement or date of obtaining all

license and approvals for commencement of the construction, whichever is later subject to force majeure. All the approvals for commencement of construction work were received towards the end of 2013 and construction work commenced in January 2014. Thus, completion and offer of possession was subject to the complainant having complied with all the terms and conditions of the said agreement, which has not been done in the present case since the complainant admittedly has not paid the full consideration and the outstanding dues.

19. The respondent submitted that the construction of the apartment is complete and the offer of possession has already been issued to the complainant on 24.01.2019 with the demand for the remaining payment. However, the complainant has not only failed to make the payment of the due amount, it has raised the present complaint to harass the respondent and the respondent is willing to handover possession to the complainant subject to payment of the outstanding dues as per the said agreement.

20. The respondent submitted that section 19 of the said Act lays down the rights and duties of the allottees and section 19(6)

provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. In the present case, it has been admitted by the complainant that he has failed to make complete payment therefore, the complainant is in breach of the said Act and Rules made thereunder. It is the respondent herein who has suffered due to the breaches committed by the complainant since the respondent has continued with the construction of the apartment despite the complainant not paying the complete consideration.

21. The respondent submitted that the hon'ble Supreme Court in the case of ***Saradmani Kandappan and ors. V. S. Rajalakshmi and ors.*** decided on 04.07.2011, (2011) 12 SCC 18, in para 33 and 34, while interpreting similar contracts and involving performance of reciprocal promises in respect to immovable properties has interpreted section 52, 53 and 54 of the Indian Contract Act, 1872 to hold that in case of a contract wherein payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obliged to

perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

The said dictum is applicable in the present case as well since not only does the order of performance of reciprocal performances as per the agreement mandates timely payments by the complainant but also since the complainant admitted in the complaint of not having paid the due and payable instalments. Therefore, the respondent was not obliged to complete the construction and offer possession till the time the complainant performs his obligation 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 construction and can exercise his right to cancel the agreement or claim damages from the complainant for the defaults on his part.

22. The respondent submitted that the complainant had himself approached the respondent after verifying the project in question and had made an application for booking of the flat after their complete satisfaction of the project and its possible appreciation in the market.

Findings of the authority

23. 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 Town & Country Planning Department, 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 planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.
24. There are two buyer agreement one dated 24.04.2013 and another is dated 24.03.2015. As per the later buyer agreement, the possession of the unit was to be handed over to the complainant on 24.03.2019, as such credibility of subsequent buyer agreement which has been signed by both the parties on their own volition can be relied upon. However, counsel for the complainant has raised a very patent objection

that as per buyer agreement, the possession of the allotted unit alongwith other amenities in the forum of club etc. was to be handed over by the respondent whereas various amenities in the forum of club etc. are missing from the scene. As such, the possession of the unit cannot be said to be a complete possession. No doubt the OC has been received on 15.01.2019 and offer of possession letter has been given to the complainant on 24.01.2019. As such complainant is entitled for delayed possession charges @ 10.20% per annum. Since other amenities in the forum of club etc. are missing, as such, the complainant can knock the door of the Adjudicating Officer for compensation.

Decision and directions of the authority

25. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the parties in the interest of justice and fair play:

- i. The respondent is liable to pay delayed possession charges at prescribed rate of interest i.e. 10.20% per annum w.e.f. the due date of possession i.e. 06.09.2017 till offer of possession i.e. 24.01.2019 as per the provisions of section 18 (1) proviso of the Real Estate (Regulation and Development) Act, 2016
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The promoter shall not charge anything from the complainant which is not part of the apartment buyer agreement.

26. Complaint is disposed of.

27. Case file be consigned to the registry.

(**Samir Kumar**)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.01.2020

(**Subhash Chander Kush**)

Member

Judgment uploaded on 13.02.2020