

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

Complaint no. : 2639 of 2019

First date of hearing : 27.11.2019

Date of decision : 23.01.2020

1. Mr. Sameer Kadian
2. Mr. Surender Singh Kadian
Both R/o House No. 130/29, Vasant Vihar, **Complainants**
3rd Street, Sonapat Road, Rohtak, Haryana

Versus

M/s Sepset Properties Pvt. Ltd.
Regd. office: Room No-205, Welcome Plaza,
S-551, School Block – II, Shakarpur, Delhi-
110092

Corporate office: 11th floor, Paras Twin
Towers, Tower-B, Golf Course Road, Sector
54, Gurugram-122002, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Mukul Kumar Sanwariya Advocate for the complainants
Shri Jasdeep Singh Dhillon Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 to the allottee as per the agreement for sale executed inter se them.

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

| S.No. | Heads | Information |
|-------|--------------------------------------|---|
| 1. | Project name and location | "Paras Dews", Sector 106, Dwarka expressway, Gurugram |
| 2. | Project area | 13.762 acres |
| 3. | Nature of the project | Group housing project |
| 4. | DTCP license no. and validity status | 61 of 2012 dated 13.06.2012 valid upto 12.06.2020 |
| 5. | Name of licensee | M/s Sepset Properties Pvt. Ltd. |
| 6. | RERA Registered/ not registered | Registered vide no. 118 of 2017 dated 28.08.2017 |
| 7. | RERA registration valid up to | 31.07.2021 |
| 8. | Unit no. | 01, 8 th floor, tower-C [Page 35 of complaint] |
| 9. | Unit measuring (super area) | 1760 sq. ft. |

| | | |
|-----|---|---|
| 10. | Date of execution of apartment buyer agreement | 12.06.2013 [Page 32 of complaint] |
| 11. | Payment plan | Construction linked payment plan [Page 65 of complaint] |
| 12. | Total consideration of the subject unit | Rs. 1,05,44,320/- [Page 65 of complaint] |
| 13. | Total amount paid by the complainants as alleged in complaint | Rs. 1,00,63,026/- [page 76 of complaint] |
| 14. | Due date of delivery of possession as per clause 3.1 - 42 months + 6 months' grace period from the date of execution of agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later EC:- 06.09.2013 [Page 43 of complaint] | 06.09.2017 (the due date has been calculated from the date of receipt of environment clearance) |
| 15. | Date of offer of possession | 24.01.2019 [Page 74 of the complaint] |
| 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. | Status of the project | OC received on 15.01.2019 (taken from similar case file 1622/2019) |
| 18. | Occupation certificate received on | 15.01.2019 |
| 19. | Specific reliefs sought | i. Direct the respondent to hand over the possession of the allotted unit along with delay possession |

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| | | interest till date along with prescribed rate of interest as per the provisions pay the late possession. |
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3. As per clause 3.1 of the apartment buyer agreement dated i.e. 12.06.2013, the possession was to be handed over within a period of 42 months from the date of execution of apartment buyer agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later plus 6 months grace period. However, the date of commencement of construction has not been given by either of the parties. The environment clearance of subject project was granted on 06.09.2013. Accordingly, the due date of possession comes out to be 06.09.2017. Clause 3.1 of the apartment buyer agreement is reproduced below:

"3. Possession:

3.1 *Subject to clause 10.....the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (forty two) months with an additional grace period of 6 (six) months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to force majeure....."*

4. The possession of the subject apartment has been offered by the respondent to the complainants on 24.01.2019. The complainants seek delay interest as per section 18 of the Act. The complainants reserve their right to file a separate

application for seeking cost of litigation from the Adjudicating Officer. Hence, this complaint for the reliefs as stated above.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty. Also, the respondent has failed to file any reply despite service of notice and being represented through counsel.
6. 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.
7. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
8. The Authority is of the view that the Act is to protect the rights of the stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are

held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

9. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the Authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the apartment buyer agreement executed between the parties on 12.06.2013, possession of the booked unit was to be delivered within a period of 42 months plus 6 months' grace period from the date of execution of agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later. However, the date of commencement of construction has not been given by either of the parties. The environment clearance for the subject project was granted on 06.09.2013. Accordingly, the due date of possession comes out to be 06.09.2017. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 12.06.2013 to hand over the possession within the stipulated period. Therefore, the non-

compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled for delayed possession charges @10.20% p.a. w.e.f. 06.09.2017 till offer of possession i.e. 24.01.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

10. Counsel for the complainant has raised certain issues w.r.t. levying of taxes/cesses which are not as per clause 2.5 of the builder buyer agreement and are futuristic in nature. It is directed that the respondent should charge only those taxes/cesses which are as per agreement and respondent must desist from charging extra ordinary charges/taxes which are not leviable as on date.
11. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:
 - 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 complainants from due date of possession i.e. 06.09.2017 till the offer of possession i.e. 24.01.2019 within 90 days from the date of this order;

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainants which is not part of the apartment buyer agreement.
 - iv. The respondent should charge only those taxes/cesses which are as per agreement and respondent must desist from charging extra ordinary charges/taxes which are not leviable as on date.
12. Complaint stands disposed of.
13. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 23.01.2020

Judgment uploaded on 13.02.2020

HARERA
GURUGRAM