

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

Complaint no. : 3431 of 2019
First date of hearing : 27.11.2019
Date of decision : 23.01.2020

1. Ms. Shruti Jain
2. Mr. Anil Kumar Jain
Both R/o C-5/7, Vasant Vihar, New Delhi-110057. **Complainants**

Versus

M/s Sepset Properties Pvt. Ltd.
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 Gaurav Rawat

Authorized representative of
complainant

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	Residential 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, 2 nd floor, Tower-E [Page 29 of complaint]
9.	Unit measuring (super area)	1385 sq. ft.
10.	Date of execution of apartment buyer agreement	08.08.2013 [Page 22 of complaint]
11.	Payment plan	Construction linked payment plan [Page 56 of complaint]
12.	Total consideration of the subject unit	Rs. 97,44,875/- [Page 56 of complaint]

13.	Total amount paid by the complainants as per the complaint pg. 06	Rs. 88,39,519/- [page 19 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 52 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	Not offered
16.	Delay in handing over possession till date of decision i.e. 23.01.2020	2 years 4 months and 17 days
17.	Occupation certificate received on	15.01.2019 (taken from similar case file i.e. 1622/2019)
18.	Specific reliefs sought	i. Direct the respondent to pay delay interest on amount paid by the complainant i.e. Rs. 88,39,519/- along with pendent lite and future interest till actual possession thereon.

3. As per clause 3.1 of the apartment buyer agreement dated i.e. 08.08.2013, 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:

3.1the 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 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 not been offered by the respondent to the complainant till date. 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, explanation, other submissions made by the parties and the documents filed by the parties 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 parties 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 08.08.2013, 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 of subject project 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 08.08.2013 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 the date of offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

10. 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 date of this order within 90 days from the date of this decision and

thereafter monthly payment of interest shall be paid before 10th of every subsequent month till offer of possession.

- 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 agreement for sale.

11. Complaint stands disposed of.

12. 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