

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

Complaint no. : 1217 of 2019
First date of hearing : 08.07.2019
Date of decision : 23.01.2020

1. Mr. Vaibhav Sharma
R/o G-31, Palam Vihar,
Gurugram-122017, Haryana

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri V.K. Singh
Shri Jasdeep Singh Dhillon

AR on behalf of the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/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.

- The particulars of the project, the details of 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.	Heads	Information
1.	Project name and location	"Paras Dews", Sector 106, Dwaraka 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 valid upto 31.07.2021
7.	RERA registration valid up to	31.07.2021
8.	Unit no.	04, 6 th Floor, Tower-A [Page 33 of complaint]
9.	Unit measuring (super area)	1900 sq. ft.
10.	Date of execution of Apartment buyer agreement	17.04.2013 [Page 30 of complaint]
11.	Payment plan	Construction linked payment plan [Page 63 of complaint]



12.	Total consideration of the subject unit (as per payment schedule on page 67 of complaint Annexure P/5)	Rs. 11,463,000/- [Page 63 of complaint]
13.	Total amount paid by the complainant (as per payment schedule on page 67 of complaint Annexure P/5)	Rs. 1,07,27,707/- [page 67 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 42 of complaint]	06.09.2017 (has been calculated from the date of receipt of environment clearance)
15.	Date of offer of possession	24.01.2019 [Page 71 of the complaint]
16.	Delay in handing over possession till date of offer of possession i.e. 24.01.2019	1 year 4 months 18 days
17.	Status of the project	OC received on 15.01.2019 (taken from similar case file 1622 of 2019)
18.	Specific reliefs sought	i. Direct the respondent to handover the possession.

3. As per clause 3.1 of the Builder Buyer agreement dated i.e. 17.04.2013, the possession was to be handed over within a period of 42 months from the date of execution of 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 which has been calculated from the date of execution of agreement. Clause 3.1 of the agreement for sale is reproduced below:

3.1 (1) *"The Seller proposes to hand over the possession of the apartment to the purchaser(s) within 42 months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining of all licenses or approvals for commencement of construction, whichever is later....."*

4. The possession of the subject apartment has been offered by the respondent to the complainant on 24.01.2019. The complainant seeks delay interest as per section 18 of the Act. The complainant 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 have not filed the reply despite service of notice.
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 submissions made during the hearing.

7. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainant 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 allottee are protected.
9. On consideration of the circumstances, the evidence and other record, submissions made by the complainant 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 17.04.2013, 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 nor any document is on record regarding date of obtaining of approvals regarding commencement of construction. Hence, the due date of possession has been calculated from the date of execution of agreement which comes out to be 06.09.2017. Accordingly, it is the failure of the promoter to fulfil his obligations and responsibilities as per the Apartment Buyer agreement for sale dated 17.04.2013 to hand over the possession within the stipulated period. Accordingly, 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 complainant is 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. Hence, the Authority hereby pass this order and issue the 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 complainant from due date of possession i.e. 06.09.2017 till the offer of possession i.e. 24.01.2019.
 - ii. The respondent is directed to visit the site alongwith the complainant and sort out the matter within a week's time regarding the deficiencies in the unit;
 - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
 - iv. The respondent is further directed not to charge any holding/maintenance charges from the complainant.
11. Complaint stands disposed of.
12. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.01.2020