

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

Complaint No. : 1623 of 2019
First date of hearing: 29.08.2019
Date of Decision : 12.03.2020

1. Mr. Rajiv Garg (Through GPA Holder Mr.
Kailash Chandra Garg)
2. Mrs. Uma Garg (through GPA Holder Mr.
Kailash Chandra Garg)
Resident of A3/5 (G.floor), DLF, Phase I,
Gurhaon-122002

Complainant

sVersus

Sepset Properties Private Limited
11th Floor Paras Twin Towers Golf Course
Road, Sector 54, Gurugram-122002,
Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Ms. Tanya Swarup

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 16.04.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Rajiv Garg

and Mrs. Uma Garg against the promoter Sepset Properties Pvt. Ltd. (through managing director/director/authorised representative) on account of violation of the clause 3.1 of builder buyer's agreement dated 29.04.2013 in respect of flat no. 07 3rd floor Tower-C , admeasuring 1665 sq. ft' of the project 'Paras dew's' located at Sector 106, Gurugram for not handing over possession of the subject apartment on the due date i.e. by 06.12.2017 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act ibid.

2. Since the apartment buyer agreement dated 29.04.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act ibid.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	'Paras Dew's', sector-106, Gurugram
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2.	Flat no.	07, 3 rd floor, tower C
3.	Nature of real estate project	Residential group housing project
4.	DTCP license no.	61 of 2012 dated 13.06.2012
5.	Admeasuring super area of the allotted unit	1665 sq. ft'
6.	RERA registered/unregistered	118 of 2017 dated 28.08.2017 valid upto 31.07.2021
7.	Date of execution of builder buyer agreement	29.04.2013
8.	Payment Plan	Construction linked payment plan
9.	Total consideration amount	Rs. 1,02,48,575/- (as per payment plan annexe with the builder buyer agreement on page 75)
10.	Total amount paid by the complainant till date	Rs. 97,32,168/- (as per statement of complainant on page 48 of reply)
11.	Due date of delivery of possession 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	06.09.2017 (the due date has been calculated from the date of receipt of environment clearance)
12.	Date of Offer of possession	24.01.2019 [pg. 90 of the complaint]

13.	Delay in handing over possession i.e. 24.01.2019	1 year 4 month 18 days
14.	Relief sought:	Direct the respondent to handover the possession of the subject unit and pay delayed possession charges.

4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement dated 29.04.2013 is available on record for the aforesaid unit no. 07, 3rd floor, tower C according to which the possession of the same was to be delivered by 06.09.2017. The respondent has failed to deliver the possession till date. Therefore, the promoter has not fulfilled his obligation which is in violation of section 11(4)(a) of the Act *ibid*.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The matter came up for hearing on 29.08.2019, 10.09.2019, 15.10.2019, 27.11.2019, 23.01.2020 and 03.03.2020 and 23.01.2020 respectively. The reply filed on behalf of the respondent has been perused by the authority.

6. As per clause 3.1 of the builder buyer agreement dated i.e. 29.04.2013, 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:

- a.The seller proposes to hand over the possession of the apartment to the purchaser(s) within a period of 42 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....."
7. 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. Hence, this complaint for the reliefs as stated above.

8. 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.
9. 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.
10. 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.
11. 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 builder buyer agreement

executed between the parties on 29.04.2013, 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 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 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 29.04.2013 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 @10.05% 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.

12. Arguments heard. Occupation certificate has been received by the respondent as on 15.01.2019. The authority is of the considered view that there is a delay

on the part of the respondent to offer physical possession of the allotted unit to the complainant. As per terms and conditions of builder buyer agreement executed between the parties, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.05% per annum on the amount deposited by the complainant with the respondent from the due date of possession till the offer of physical possession of the allotted unit.

13. Besides DPC, counsel for the complainant has raised sundry issues which are given as below:-
- I. Levy of labour cess - since it is to be paid by the respondent, as such no labour cess should be charged by the respondent;
 - II. One-time additional charges - since the respondent have not been defined any additional charges and as such, respondent is restrained from charging the same.
 - III. Two years additional maintenance charges- only one-year maintenance charges shall be charged by the respondent in advance after handing over the possession of the unit to the complainant,

- IV. Club usage charges - since no occupation certificate has been obtained by the respondent, as such, they cannot charge club charges at this juncture.
14. 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. 10.05% 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.
 - 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 builder buyer agreement.
15. Complaint stands disposed of.
16. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.03.2020

Judgment uploaded on 02.06.2020