

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

Complaint no. : 2255 of 2019
First date of hearing : 27.11.2019
Date of decision : 12.03.2020

1. Mrs. Sarika Verma
2. Mr. Manish Verma
Both R/o: K-72 A, Basement,
Kalkaji, New Delhi-110085

Complainants

Versus

M/s Sepset Properties Pvt. Ltd.
Corporate office: 11th floor, Paras
Twin Towers, Tower-B, Golf Course
Road, Sector 54, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri. Munish Malik
Ms. Tanya Swarup

Advocate for the complainants
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 colony
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.	07, 9 th floor, tower-B [Page 55 of complaint]
9.	Unit measuring (super area)	1665 sq. ft.
10.	Date of execution of apartment buyer agreement	07.04.2013 [Page 52 of complaint]
11.	Payment plan	Construction linked payment plan [Page 85 of complaint]
12.	Total consideration of the subject unit	Rs. 1,01,07,050/- [Page 85 of complaint]



13.	Total amount paid by the complainants as per the complaint	Rs. 95,01,545/- [page 88 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	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 86 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.	Occupation certificate received on	15.01.2019
18.	Specific reliefs sought	i. Direct the respondent to pay the late possession interest as per the prescribed rate to the complainants.

3. As per clause 3.1 of the agreement for sale dated i.e. 07.04.2013, 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:

3.1*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....."*

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. 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. 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 07.04.2013, 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 07.04.2013 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.

9. Arguments heard. The respondent has already obtained occupation certificate on 15.01.2019 and offered the possession of the allotted unit to the complainant on 24.01.2019. 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 flat 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. The complainant is directed to take over the possession of the allotted unit within a period of 30 days by paying remaining amount, if any. The respondents are within their rights to charge holding charges and maintenance charges after the possession is offered by them to the complainant. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.05% per annum by the respondent which is the same as is being

granted to the complainant in case of delayed possession charges.

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. 10.05% 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 complainants are directed to take over the possession of the allotted unit within a period of 30 days by paying the remaining amount, if any.
- iv. The respondents are within their rights to charge holding charges and maintenance charges after the possession is offered by them to the complainant.
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate which is same as is being granted to the complainants in case of delay possession charges.

- vi. The respondent shall not charge anything from the complainants which is not part of the flat buyer agreement.
11. Complaint stands disposed of.
12. File be consigned to registry.

12.3.20
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

[Signature]
(Subhash Chander Kush)

Member

Dated: 12.03.2020

Judgment uploaded on 02.06.2020