

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

**Complaint No. : 271 of 2018**  
**First date of hearing: 27.06.2018**  
**Date of Decision : 30.10.2018**

1. Mrs. Harbans Kaur  
W/o Late Sadhu Singh  
R-29, Greater Kailash, Part-1  
New Delhi- 110048. **Complainants**
2. Mrs. Annie Manchanda  
D/o Late Mrs Surinder Kaur  
R-29, Greater Kailash, Part- 1  
New Delhi- 110048.

**Versus**

1. M/s Sepset Properties Pvt Ltd., through **Respondents**  
its chairman and Managing directors,
2. Mr.Thirattysubbaiah Paramasivan  
Shanmugara, Director
3. Mr. Stephen Andrews Francis, Director  
R/o Room 205, Welcome Plaza, S-551,  
School Block-Ii, Shakarpur, Delhi-  
110092.



**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Pradeep Sharma  
Ms Monika Balhara

Advocate for the complainant  
Representative on behalf for the  
respondent

Shri Dheeraj Kapoor

Advocate for respondent

**ORDER**

1. A complaint dated 15.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) rules, 2017 by the complainant Mrs. Harbans Kaur and Mrs. Annie Manchanda against the promoter M/s Sepset Properties Pvt Ltd., through its directors on account of violation of clause 3.1 of the builder-buyer agreement executed on 10.09.2013 for unit no. T-B/0205, 2<sup>nd</sup> floor, Tower B in the project “Paras Dews” for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	Paras Dews Sector- 106, Gurugram
2.	Area of the project	13.762 Acres
3.	Registered/unregistered	<b>Registered</b> (118 of 2017)
4.	DTCP license	61 of 2012 13.06.2012
5.	Payment plan	Construction linked payment plan
6.	Date of booking	29.12.2012
7.	Booking amount	Rs 7,50,000/-



8.	Date of execution builder buyer agreement	10.09.2013
9.	Unit no	T-B/0205,2 <sup>nd</sup> floor Tower B
10.	Area of unit	1760 sq. ft.
11.	Total consideration	Rs. 96,00,000
12.	Total amount paid by the complainant	Rs 48,64,000 /-
13.	Date of delivery of possession. As per clause 3.1: 42months+ 6 months+90 days months from date of execution or obtaining licenses whichever is later	10.12.2017
14.	Delay of number of months/ years up to date	10 months approximately
15.	Revised date of delivery of possession	March 2019

3. As per the details provided above, which have been checked as per record available in the case file provided by the complainants and respondents? A builder buyer agreement is available on record for T-B/0205, 2<sup>nd</sup> floor, tower B according to which the possession of the aforesaid unit was to be delivered by 10.09.2017. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance.



Accordingly, the respondents appeared on 27.06.2018. The case came up for hearing on 27.06.2018, 09.08.2018, 18.09.2018, 26.09.2018 and 17.10.2018 The reply has been filed on behalf of the respondents on 02.08.2018.

**FACTS OF THE CASE:**

5. The complainant No.1 namely Mrs. Harbans Kaur and complainant No.2 Mrs Annie Manchanda is granddaughter of complainant no.1. Complainant no.1 and her daughter late Mrs. Surinder Kaur W/o late Sh. Harbhajan Singh were the original allottees of apartment bearing no. T-B/0205, Sector 106, Gurugram. After the death of the original allottee, complainant No.2 was substituted as one of the original allottee with late Mrs. Surinder Kaur and same was duly approved by the respondents.
6. That at the time of booking the allottees were senior citizens and the purpose of purchasing the said apartment was for their own personal use. Complainant No.2 is the granddaughter of complainant no.1 and only surviving member in the family of complainant no.1.
7. One of the official of respondent no.1 approached to the complainant no.1 and deceased and gave the details about the residential project i.e. Paras Dew's, Sector 106,



Gurugram, Haryana being developed by M/s Sepset Properties Pvt. Ltd. respondent no.1 that believing the assurances accentuated by the officials of the respondent no.1 to be true, the complainant no.1 and original allottee decided to visit the registered office and corporate office of respondent no.1 at Delhi and Gurugram to know about the project. It is pertinent to mention herein that one official on the advice and instructions of the respondent no.1 briefed the complainants about the said project and its advantages at the project site and promised to show a sample apartment. Further the respondents also confirmed that the said project is free from all encumbrances and all permission are available with the respondent No.1 from the concerned authorities for constructing the above said project and with the group deriving its core competence from sound financial situation, technological superiority and skilled human resources to undertake such development projects in multi-location environment, the respondent No.1 assured that the project would be completed even before the scheduled date.

8. Complainants were persuaded to buy the flat developed by respondent no.1. A booking amount of Rs.7,50,000/-



was paid to respondent no.1 as advance booking of the apartment.

9. That after receiving the advance payment respondent no.1 allotted a unit bearing no. T-B/0205, 2nd Floor, tower-B, having super area of 1760 sq. ft. in the said project at the basic sale price of ₹ 5335/- per sq. ft. which excluded PLC, car parking, EDC, IDC, club membership and IFMS etc. Complainants were induced to opt for construction linked payment plan and thereafter further induced to enter into apartment buyer agreement after 12 months.
10. The said apartment buyer agreement was executed between respondents and complainants on 10.09.2013 for a basic sale consideration was Rs.97,53,840/- + other charges. That receipts of payments total amounting to Rs. 46,81,567/- were made by the complainants.
11. That in the month of November 2014, complainants were shocked and surprised when they came to know that the aforesaid project was not having proper licenses in accordance with law and even the construction work was also on halt on several occasion for the reason best known to respondents. Thereafter complainants tried to contact the officials of respondent no.1 regarding the issues but



their efforts went into vain and no one could give the cogent reply to her queries.

12. Respondent no.1 raised the demand letters from time to time for the balance outstanding against the total amount of the said apartment, accordingly complainant no.1 released the money as per demand letter till 08.08.2014. Thereafter, no demand notice ever received by the complainants.

13. That since possession of the said apartment was to be handed over to complainants within 42 months + 6 months+ 90 days grace period from the date of execution of the apartment buyer agreement dated 10.09.2013, which expired on 10.12.2017 , but all assurance are went into vain, the project is still not completed, only a concrete frame structure has been done at the project site.

14. It was to utter surprise and shock of the complainants when they received a reminder of a show cause notice for cancellation of the said apartment dated 08.04.2017 from the respondent no.1 demanding Rs.59,31,537/- along with interest to the tune of Rs.17,28,924/-. The complainants in bona fide faith made a call to the respondent no.1 at Delhi and enquired about the same and were relieved to know



from the respondent no.1 that the said notice was sent after demand notices and was a routine affair and there was nothing to worry if the complainants would be making the payments as soon as possible.

15. Respondents have misappropriated and embezzled the complainant's hard earned money of Rs.46,81,567/- and have cause wrongful gain to themselves and thus have caused wrongful loss to the complainants.
16. It is submitted that the respondents had assured that the necessary sanctions etc. had already been obtained and the assurances that the said project would be completed within time, were inter alia factors, which induced the complainants into booking the said apartment with the respondent no.1 and were the essence of the contract/agreement.
17. The respondent no.1 had not obtained necessary approvals and permissions, nor had it started the construction activity as they have no intention of delivering possession of the said apartment by the agreed date. Thus the respondent no.1 had completely violated and committed the breach of terms and conditions made at the time of builder buyer agreement.





**ISSUES RAISED BY THE COMPLAINANTS:**

- i. Whether or not the respondents have violated the terms and conditions of the agreement by not providing the flat in accordance with the agreement?
- ii. Whether or not the respondents are liable to refund the consideration amount of Rs. 46, 64,000 along with interest@18% per annum over the aforesaid consideration amount?
- iii. Whether or not the respondents could charge interest on pending payment despite without given demand notices and without completion of construction work of the said project.
- iv. Whether or not the respondents are liable to pay compensation for damages on account of mental harassment and physical discomfort caused to the complainant at 90 years of age?



**RELIEF SOUGHT BY THE COMPLAINANTS:**

18. The complainants are seeking the following relief:

- i. Refund consideration amount of the said flat which has been paid by the complainants to the respondent no 1 company against the said flat i.e. an amount of Rs 46,81,567 along with the penal interest @18% per annum over the aforesaid consideration amount.
- ii. Pay a sum of Rs 10,00,000 as compensation for damages on account of mental harassment caused to the complainants, lack of service, physical discomfort, mental agony which the complainants suffered due to only negligent act and deficiency in service on the part of the respondents.
- iii. Any other order or relief which this Hon'ble Real Estate Regulatory Authority, Haryana may deem fit and proper.

**RESPONDENTS REPLY:**

19. It is submitted that the complainants herein are not a genuine flat purchaser or a consumer and has purchased the said flat for commercial and investment .
20. Complainants have defaulted in making timely payments of the outstanding instalments as per the agreed schedule which is clearly indicative of the fact that the complainants



had booked the apartment with the sole motive of selling the same at a premium.

21. It is submitted that the complainants are defaulters and have failed to pay the last eight instalments in the construction linked payment schedule which was opted for and agreed to by the complainants. The complainants had booked an apartment for total consideration of Rs 1,11,12,800/-. Complainants have not disputed the fact that they have made the last payment only on 07.08.2014.

22. Despite repeated notices issued to the complainants, the complainants have failed to make payment and as on March 2018 the outstanding amount payable is Rs.59,31,537/- and interest thereon is aggregating to Rs.26,70,263/-. The complainants were sent show cause notice for cancellation of the booking and reminder to the show cause notice vide letters dated 28.08.2015, 09.04.2016, 08.04.2017 and 16.12.2017.

23. It is pertinent to point out that the complainants herein is trying to mislead and misguide this Hon'ble Court by stating that the complainants have not received any demand notice from the respondent since 08.08.2014.



24. Moreover the complainants herein have not even disclosed its letter dated 28.05.2016 wherein they requested the respondent to transfer the allotment in the name of complainant no.2 and also agreed to adhere to the terms and conditions of the agreement and also undertook to pay all the outstanding dues.

25. It is submitted that the respondents are willing to handover possession to the complainant subject to payment of the outstanding dues as per the builder buyer agreement. It is pertinent to point out that the complainants herein have agreed to comply with clause 3.2 of the builder buyer agreement which provides that the possession of the unit shall be handed over to the allottee only upon payment of the outstanding dues. Thus the complainants cannot hold the respondents liable for not handing over the possession when they themselves have failed to make the payments since September 2015 as per the agreed schedule and is in breach of the builder buyer agreement.

26. It is submitted that the present compliant is not maintainable since not only are the complainants in breach of the builder buyers agreement but they are also in violation of Real Estate Regulation Act, 2016 and the



Haryana Real Estate (Regulation and Development) Rules, 2017.

27. It is submitted that this hon'ble authority ought to take note of the fact that it is the respondent herein who has suffered due to the breaches committed by the complainants since the respondents have completed the construction of the apartment despite the complainants failing to make the payments as per the agreement.
28. It is submitted that the answering respondent does not have any relationship or link with respondent no.2 and respondent no.3 and still they have been made parties to the present compliant.

**REJOINDER:**

29. It is stated that the respondents have attempted to evade their liability by general, bald, vague and evasive denials. It is important to note that the respondents are trying to deny the claims of the 94,67,861/-

30. That the respondent is asking for interest liability of delay in payment at the rate of 18% whereas the company is quiet on interest liability towards the complainants due to delay in project. It is pertinent to note that the project



was supposed to be delivered within 42 months from the date of execution of this agreement with an additional grace period of 6 months that has ended on 10th September, 2017. Further grace period of 90 days for offer to handover the possession of apartment to the purchaser has also ended on 10th December 2017. It's been over ten months delay in handing over the possession of the said apartment to the complainants and the respondents have not once given a confirmation on the same till the date of filing the rejoinder.

#### **DETERMINATION OF ISSUES:**

After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issues wise findings of the authority are as under:

31. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 3.1 of builder buyer's agreement, the possession of the flat was to be handed over within 42 months along with grace period of 6 months+ 90 days from the date of execution of the builder buyers agreement or date of obtaining all licenses or approvals for commencement of construction,



whichever is later (with a grace period of 6 months+90 days) upon receipt of all project related approvals. In the present case, the builder buyer agreement was executed on 10.09.2013. Therefore, the due date of handing over possession will be computed from the said date. Accordingly, the due date of possession was 10.12.2017 and the possession has been delayed by ten months till date. The delay compensation payable by the respondents @ Rs.5/- per sq. ft. per month for the delayed period which is mentioned under clause 3.3 of the builder buyer's agreement.

The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*



As the possession of the flat was to be delivered by 10.12.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4) (a) of the Real Estate (Regulation and Development) Act, 2016.

32. With respect to **second issue**, the respondent is ready to hand over the possession of the flat, to meet the ends of justice; the complainant is given two options. Either he can deposit the remaining amount with interest at prescribed rate i.e. @10.45% per annum against possession or the respondents may forfeit the earnest money as per the builder buyer agreement of the total cost and cancel his allotment and refund the balance amount to the complainant. Further, the builder will charge only 10.45% i.e. prescribed rate of interest on account of delayed payments.

33. With respect to the **third issue**, there are letters and notices attached by respondents wherein they have demanded timely payment of the instalments by the complainants. However the complainant has defaulted in the same. Thus, the respondents may charge 10.45% i.e. prescribed rate of interest on account of delayed





payments which will commensurate with the construction linked payment plan.

34. Pertaining to the **fourth issue**, the complainants have made a statement during proceedings dated 27.06.2018 that they are not appearing before the authority for compensation but for the fulfilment of the obligations by the promoter as per the Act. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

#### FINDINGS OF THE AUTHORITY:

35. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



36. The authority is of the view of that the respondent has delayed the possession by approximately 10 months and thus is liable to hand over possession under section 11(4) of the Act.

37. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.

38. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

39. The flat was booked on 29.12.2012. As per clause 3.1 and 3.2 of the BBA dated 10.9.2013, the flat was to be delivered within 42 months + 6 months' grace period + 90 days i.e. 51 months which comes out to be 10.12.2017.

However, the builder has failed to fulfil his commitment with respect to the delivery of possession. Complainant has made payment of Rs.48, 64,000/- till date against total sale consideration amount of Rs.96 Lakhs. He intends to



withdraw from the project. The builder has issued him a number of notices from September 2014 to 2018. However, the complainant has defaulted in making timely payment of due instalments. The project is registered and as per the revised date of delivery of possession is March 2019.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

40. Thus, The Authority exercising power under section 37 of Real Estate (Regulation & Development) Act, 2016 issue directions:

- i. The complainant has been given two options: they can either deposit the remaining amount with interest at prescribed rate i.e. 10.45% per annum against possession or the respondents can forfeit the earnest money as per the builder buyer agreement of the total cost and cancel his allotment and refund the balance amount to the complainants.
- ii. The builder will charge only 10.45% i.e. prescribed rate of interest on account of delayed payments which will commensurate with the construction linked payment plan.



41. Case file be consigned to the registry.

42. The order is pronounced.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Date: 30.10.2018



HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 30.10.2018
Complaint No.	271/2018 Case titled as Mr. Harbans Kaur & Another V/S M/S Sepset Properties Pvt. Ltd. & Others
Complainant	Mr. Harbans Kaur & Another
Represented through	Shri Annie Manchanda daughter of the complainant in person.
Respondent	M/S Sepset Properties Pvt. Ltd. & Others
Respondent Represented through	Shri Jasdeep S.Dhillon, Advocate for the respondent.
Last date of hearing	17.10.2018
Proceeding Recorded by	Naresh Kumari & S L Chanana

**Proceedings**

Arguments heard.

The flat was booked on 29.12.2012. As per clause 3.1 and 3.2 of the BBA dated 10.9.2013, the flat was to be delivered within 42 months + 6 months grace period + 90 days i.e. 51 months which comes out to be 10.12.2017. However, the builder has failed to fulfil his commitment w.r.t the delivery of possession. Complainant has made payment of Rs.48,64,000/- till date against total sale consideration amount of Rs.96 Lakhs. He intends to withdraw from the project. The builder has issued him a number of notices from September 2014 to 2018. However, the complainant has defaulted in making timely payment of due instalments. Complainant has been given two

options (a) he can deposit the remaining amount with interest at prescribed rate i.e 10.45% per annum against possession or (b) the respondent can forfeit the earnest money as per the B.B.A of the total cost and cancel his allotment and refund the balance amount to the complainant. The builder will charge only 10.45% i.e. prescribed rate of interest on account of delayed payments which will be commensurate with the construction linked plan. The project is registered and as per revised date of delivery of possession is March 2019.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)