

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

Complaint No. : 55 of 2018
Date of first hearing : 12.04.2018
Date of Decision : 30.10.2018

Mrs. Samta Lochab R/o J-102, First
Floor, New Palam Vihar, Gurugram,
Haryana

...Complainant

Versus

1. M/s Sepset Properties Pvt. Ltd.
Regd. Office: Room no. 205,
Welcome Plaza, S-551, School Block
II, Shakarpur Delhi-110092
2. Paras Buildtech India Pvt. Ltd.
11th Floor, Paras Twin Towers
(Tower B), Sector-54, Gurugram-122002

...Respondents

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

Shri Rakesh Hooda
Shri Jasdeep Singh Dhillon

Complainant in person
Advocate of the respondents



BRIEF

1. A complaint dated 28.03.2018 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, HARERA 2017 by the complainant Mrs. Samta Lochab, against the promoter M/s Sepset Properties Pvt. Ltd. and Paras Buildtech India Pvt. Ltd., on account of violation of 3.1 of the apartment buyers' agreement executed on 17.04.2013 for unit no. 02, 20th floor, tower C having 1760 sq. ft. in the project described as below for not giving possession on 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 are as under: -

1.	Name and location of the project	Paras Dews, Sector 106, village Daultabad, Gurgaon
2.	Flat/apartment/unit no.	02, 20 th floor, tower C
3.	Flat measuring	1760 sq. ft
4.	RERA registered/unregistered	Registered
5.	Date of execution of the Apartment buyer agreement	17.04.2013
6.	Payment Plan	Construction linked plan
7.	Total consideration amount as per agreement	Rs. 1,05,54,880/-
8.	Total amount paid by the Complainant upto date	Rs.93,66,955 /-
9.	Percentage of consideration amount	88% Approx.
10.	Date of delivery of possession. (42 months + 6 months + 90 days grace period from date of execution of agreement or grant of approvals i.e. 06.09.2013)	Clause 3.1 i.e. by 17.07.2017
11.	Delay of number of months/ years upto date	1 year 3 months approx..
12.	Penalty Clause as per builder	Clause 3.3 i.e. Rs. 5 per sq.



	buyer agreement	ft. per month
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3. As per the details provided above, which have been checked as per record of the case file, an apartment buyer agreement is available on record for unit no. 02, 20th floor, tower C, according to which the possession of the aforesaid unit was to be delivered by 17.07.2017. The promoters have failed to deliver the possession of the said unit to the complainant by the due date nor has paid any compensation i.e. @ Rs. 5 per sq. ft of the said unit per month for the period of the such delay as per apartment buyer agreement dated 17.04.2013. 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 for appearance. Accordingly, the respondents appeared on 12.04.2018. The case came up for hearing on 12.04.2018, 01.05.2018, 24.05.2018, 05.07.2018, 26.07.2018, 16.08.2018, 12.09.2018 and 30.10.2018.



FACTS

5. The “PARAS DEWS” is a residential group housing project being developed by the respondent no.1, on a parcel of land admeasuring 13.762 acres situated at Sector 106 in the revenue estate of village Daultabad, Tehsil and District Gurgaon. The project was launched in mid of 2012.
6. That an apartment buyer’s agreement has been executed by and between complainant and respondents dated 17 April, 2013. The respondents gave advertisement in newspapers as well as through their channel partners and showed a rosy picture about the project.
7. The complainant relied heavily on the representations, affirmations and commitments made by the respondent’s staff and representatives and thereafter approached the respondents vide application dated 29th December,2012 for purchase of 3 BHK apartment in the said project having an approximate super area admeasuring 1760 sq. ft on 20th floor in tower C.



8. That pursuant to such application by the complainant, the respondent no.1 vide letter dated 10th January 2013, provisionally allotted the said apartment.
9. That, in March 2016, a mutual understanding was arrived by and between complainant and respondent no.1, that since the complainant has not paid since Dec. 2014 till March 2016, so as one-time settlement, both the parties agreed that, the respondents, would not charge any interest or penalty for delayed payment by the complainant for the allotted apartment. Furthermore, it was also agreed that the complainant has to pay Rs. 10,00,000/- as onetime payment and Rs. 2,00,000/- as per month instalment from April 2016 till date of possession of the said apartment. The aforementioned mutual understanding has been re-validated by the respondents by virtue of email dated 03.02.2017.
10. On 21.05.2017, the complainant along with her husband had visited the construction site of the project, wherein, it came to light that the respondent no.1 was not constructing the apartment as per design/drawing supplied along with the said agreement. That, the half balcony to be attached with one of the



room of the apartment, which was shown in the design/layout supplied at the time of execution of the agreement, was found missing at the time of inspection of the apartment. The complainant raised her objection with full force to concerned officials of respondents vide email dated 24.05.2017 and then through sequence of reminders and follow up mails but the respondent no.1 did not care to reply to the queries raised by the complainant.

11. That being frustrated and cheated by the acts and conduct of the respondents, the complainant finally requested to cancel the allotment of the said apartment vide email dated 30.06.2017. However, no reply has been given by the respondents and complainant was again forced by the wrongful conduct of the respondent no.1 to give reminder mails. That on 02.08.2017 the respondent's officials reverted and said they have checked their grievance and found no discrepancy in the layout plan and actual construction at site.

12. On 31 August, 2017 the officials of the respondents through an e-mail reverted by stating that, ***"plan used in BBA is tentative and subject to vary as per project requirement"***. So, the



- respondents even after accepting their fault and unfair trade practice has not redressed such a vital issue, which hits at the roots of the agreement.
13. The complainant has paid Rs. 93,66,955/- i.e. nearly 90 % of payment out of total consideration i.e. Rs. 1,05,54,880/- agreed at the time of execution of buyer agreement and the respondents had charged Rs. 3.00 lacs for allotment of car parking space exclusive of the basic consideration which is against the settled principle of law and natural justice.
14. That the respondents have misled the complainant by suppressing the material information at all times i.e. before, during or after the site visit or inspection of the documents. The project site is situated near cremation ground. Such variations were never been conveyed by the respondents till date. Moreover, such things have not been shown in the site plan enclosed with the apartment buyer's agreement and other publications related to the project. They concealed and misrepresented this critical information from the prospective buyers by forging the site plan and layout plan. Had such shortcomings be disclosed at the time of booking the apartment



then the complainant would not have booked the apartment in said project.

15. That as per para 3.1 of the agreement, the respondents were supposed to deliver the possession of apartment within 42 months with a grace period of 6 months from date of allotment of the apartment. In the instant case, date of allotment is 17.04.2013 so the stipulated period of 42 months ended on 17.10.2016, further extended by 6 months i.e. 17.04.2017. Nearly 80% project is completed thus delaying the possession of apartment deliberately or for reasons known best to them. Such uncalled act is leaving complainant in a lurch where he has left with no option but to pay rent as well huge EMIs to their banks.

16. That the complainant had booked the property in the aforesaid project to own a house for a standard living matching to his standard and taste, but they were cheated by the respondents as they have failed to fulfil their promise of giving the possession of the property on time.



17. Issues raised by the complainant:

- i. Whether the respondents have intentionally and wilfully played fraud upon the complainant by wrongfully portraying the colourful picture of the project?
- ii. Whether the respondents have intentionally and wilfully misrepresented the facts related to the project?
- iii. Whether the respondents have wrongfully accepted the payment to the tune of INR 93,66,955/- from complainant?
- iv. Whether the respondents have wrongfully repeatedly demanded further payment in lieu of wrongly constructed apartment?
- v. Whether the construction of the allotted apartment in variation to the layout plan or approvals, shown and supplied by the respondents amounts to breach of contract by the respondents?
- vi. Whether the respondents have intentionally and wilfully failed to develop the allotted apartment as per the specifications and layout plan supplied by the respondents, in due course of time?
- vii. Whether the respondents have intentionally and wilfully failed to deliver the possession of allotted apartment in due time as



- mentioned in the apartment buyers agreement issued by the respondents?
- viii. Whether the respondents are liable to refund the total amount received by them in lieu of apartment?
- ix. Whether the respondents are liable to pay the penalty and interest on the total amount received by them?

18. RELIEF SOUGHT:

- I. To give necessary directions to the respondents for return of the payment made in lieu of unit/apartment till date along with 18% interest from the date of execution of builder/apartment buyer agreement till realization as per the provisions of Sec. 18 and Sec. 19(4) of the RERA Act.
- II. To impose penalty upon the respondents as per the provisions of Section 60 of RERA Act for willful default committed by them.
- III. To impose penalty upon the respondents as per the provisions of Section 61 of RERA Act for contravention of Sec.12, Sec.14, and Sec. 16 of RERA Act.



- IV. To direct the respondents to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HARERA Rules,2017.
- V. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act,2016 to be read with HRER Rules,2017.
- VII. To issue direction to pay the compensation to complainant for compensation for his mental agony, pain and harassment.

(* Declaration to be filed)

REPLY

19. The respondents have contended that the complainant had booked the flat for investment purpose on her own judgment and investigation and also inspected all the relevant project related documents before booking the flat. Since the market prices have come down due to sluggish economy, the complainant is raising all these frivolous issues just to get the



- refund of their amount and to avoid making payments as per the payment plan.
20. The only grievance being raised by the complainant in the present complaint is that one of the balcony in the apartment is rectangular whereas it was supposed to be L-shaped. In regard to the same, the respondents have submitted that the apartment is being constructed in accordance with the approved layout plan and the balcony which the complainant herein is disputing is exactly the same in the constructed apartment as shown in the approved layout plan. The same has also been filed at the time of registration with RERA. The layout plan annexed with the agreement was a tentative layout plan.
21. The respondents submitted that the complainant is a defaulter and has failed to pay outstanding instalments. The complainant has made the last payment only on May 2017 and has thereafter defaulted in payment of the outstanding dues despite the assurance to pay Rs 2 lac per months till payment of all dues.
22. The respondents further contended that the complaint is not maintainable in terms of clause 12.4 of the agreement which clearly stipulates that if the opposite parties have commenced



construction then the complainant shall not have any right to cancel/withdraw the agreement for any reason. The project is near completion and even the flooring work has been completed.

23. Further, respondent no. 2 does not have any role to play in the present project as all the documents including the agreement placed on record by the complainant have been signed by respondent no. 1. Moreover, both respondents are separate legal entities. Thus, it is clear that respondent no. 2 is not a necessary party to the present complaint and prayed for deletion of respondent no. 2 from the array of parties in the present complaint.

24. The respondents have stated that the present complaint is premature since all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014 and in terms of 3.1 of the agreement, the seller is to handover the possession within 51 months from the date of execution of the agreement or date of obtaining all licences or approvals for commencement of construction, whichever is later.



25. Determination of issues

- i. Regarding the **first and second issue** raised by the complainant, the complainant has made a baseless allegation of wilful misrepresentation without substantiating the same. As the burden of proof is not discharged, the said issue cannot be determined.
- ii. Regarding the **third and fourth issue** raised by the complainant, the respondents have raised demand as per the payment schedule and the complainant had paid at a total sum of Rs. 93,66,955 /- to the respondents.
- iii. Regarding the **fifth issue and sixth issue**, as far as the claim of the complainant regarding the specifications of the balcony is concerned, the counsel for the respondents have agreed that if the complainant is so insistent at L-shape balcony, then they will offer him as first right out of the available flat having L-shape balcony but in case there is a difference in the area, the sum will be paid as per the original rate of allotment by the complainant.



iv. Regarding the **seventh issue, eighth and ninth issue** raised by the complainant, as per clause 3.1 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 17.07.2017. The clause regarding possession of the said unit is reproduced below:

“3.1 POSSESSION OF FLOOR

The seller proposes to handover the possession of the Apartment to the Purchase(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 ...”

Accordingly, the due date of possession was 17.07.2017. therefore, there is delay of 11 months in handing over the possession as far as the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (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.”



The complainant has sought refund of the amount paid by them along with interest @18% p.a. and intend to withdraw from the project. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the interest of the other allottees who wish to continue with the project. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.

26. 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.



FINDINGS AND DECISION OF THE AUTHORITY

27. As the possession of the flat was to be delivered by 17.07.2017 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana

Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

28. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

“34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:



37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

29. Keeping in the view of the authority as per report dated 9.8.2018 from local commissioner, three units/flats bearing No. C-2031, C-2305 and C-2308 having L-shape balcony are available with the respondent which can be offered to the complainant as confirmed before the local commissioner. Complainant has submitted that he is interested in exchange of flat No. C-2301 having L-shape balcony with the original allotted flat No. 2002 in complaint No. 55. He has further added that in case of complaint No. 54, he would like to retain the original flat bearing No. C-2003 as the location of other two flats having L-shape balcony are facing shamshan ghat. Counsel for the respondent stated that earlier the respondent was planning to deliver the possession of the flats by 31.12.2018 but due to non-receipt of occupation certificate, now they are likely to deliver the possession by 31.03.2019. Due to delay in possession of flat, the promoter shall pay interest to the complainant at the prescribed rate of interest i.e. 10.45% per annum in both



complaints. This amount shall be paid from due date of possession i.e. July 2017.

30. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue following directions to the respondent:

- I. The respondents are duty bound to hand over the possession of the said unit by 31.03.2019 as per statement made by the promoter during the hearing. In case of failure of the promoter to abide by the date as stated by them for giving possession, the allottee shall be entitled to get refund of the amount deposited by him along with prescribed interest u/s section 19(4) of the Act *ibid*, if he wants to withdraw thereafter.
- II. The respondents are duty bound to pay the interest at the prescribed rate i.e. 10.45% on the amount paid by the complainant i.e. Rs. 93,66,955/- for every month of delay from the due date of possession i.e. 17.07.2017 till the actual date of handing over of the possession.
- III. The respondents are directed to pay interest accrued from 17.07.2017 to 31.03.2019 on account of delay in handing over of possession which shall be paid to the complainant after adjusting any due against the allottee within 90 days from the



date of decision and subsequent interest to be paid by the 10th of every succeeding month.

31. The order is pronounced.
32. Case file be consigned to the registry.

(Samir Kumar)
Member

Dated: 30.10.2018

(Subhash Chander Kush)
Member



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 30.10.2018
Complaint No.	55/2018 Case titled as Mrs. Samta Lochab V/S Sepset Properties Pvt. Ltd. & Another
Complainant	Mrs. Samta Lochab
Represented through	Shri Rakesh Hooda, husband of the complainant in person.
Respondent	Sepset Properties Pvt. Ltd. & Another
Respondent Represented through	Shri Jasdeep Singh Dhillon, Advocate for the respondent.
Last date of hearing	17.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

As per report dated 9.8.2018 from local commissioner, three units/flats bearing No.C-2031, C-2305 and C-2308 having L-shape balcony are available with the respondent which can be offered to the complainant as confirmed before the local commissioner. Complainant has submitted that he is interested in exchange of flat No.C-2301 having L-shape balcony with the original allotted flat No.2002 in complaint No.55. He has further added that in case of complaint No.54, he would like to retain the original flat bearing No.C-2003 as the location of other two flats having L-shape balcony are facing shamshan ghat.

Counsel for the respondent stated that earlier the respondent was planning to deliver the possession of the flats by 31.12.2018 but due to non-receipt of occupation certificate, now they are likely to deliver the possession by 31.03.2019. Due to delay in possession of flat, the promoter shall pay interest to the complainant at the prescribed rate of interest i.e. 10.45% per annum in both complaints. This amount shall be paid from due date of possession i.e. July 2017. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
30.10.2018