

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 30.10.2018
Complaint No.	54/2018 case titled as Mr. Sunita Chaudhary & Anr. V/S Sepset Properties Pvt. Ltd. & Anr.
Complainant	Mr. Sunita Chaudhary & Anr.
Represented through	Shri Rakesh Hooda – brother in-law of the complainant in person.
Respondent	Sepset Properties Pvt. Ltd. & Anr
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 10<sup>th</sup> 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)

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

**Complaint No. : 54 of 2018**  
**Date of first hearing : 12.04.2018**  
**Date of Decision : 30.10.2018**

1. Ms. Sunita Chaudhary R/o J-102, First Floor, New Palam Vihar, Gurugram, Haryana
2. Mr. Rakesh Hooda R/o J-102, First Floor, New Palam Vihar, Gurugram, Haryana

**...Complainants**

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.

**...Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Rakesh Hooda

Brother in law of Complainant in person

Shri Jasdeep Singh Dhillon

Advocate of the respondents



## ORDER

1. A complaint dated 22.03.2018 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, 2017 by the complainants Ms. Sunita Chaudhary and Mr. Rakesh Hooda against the promoter, M/s Sepset Properties Pvt. Ltd. on account of violation of 3.1 of the apartment buyers' agreement executed on 17.04.2013 for unit no. 03, 20<sup>th</sup> floor ,tower C, in the project described as below 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 are as under: -

1.	Name and location of the project	Paras Dews, Sector 106, village Daultabad, Gurgaon
2.	Flat/apartment/plot no./unit no.	No. 2003, 20 <sup>th</sup> floor, tower C
3.	Nature of project	Group housing colony
4.	Flat measuring	1760 sq. ft
5.	RERA registered/unregistered	<b>Registered 118 OF 2017 valid upto 31.07.2021</b>
6.	DTCP licence no.	61 of 2012
7.	Date of execution of the Apartment buyer agreement	17.04.2013
8.	Payment plan	Construction linked plan
9.	Total consideration amount as per agreement	Rs. 1,05,54,880/-
10.	Total amount paid by the	Rs. 49,95,938 /-



	complainants upto date	
11.	Percentage of consideration amount	48% Approx.
12.	Date of delivery of possession. (42 months + 6 months grace period from date of receipt of environment clearance i.e 06.09.2013)	Clause 3.1 i.e. by 17.07.2017
13.	Delay of number of months/ years upto date	1year 3 months 13 days months approx.
14.	Penalty Clause as per builder buyer agreement	Clause 3.3 i.e. Rs. 5 per sq. ft. per month
15.	Cause of delay in delivery of possession	Due to force majeure

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. 03, 20<sup>th</sup> floor, tower C, according to which the possession of the aforesaid unit was to be delivered by 17.07.2017. The promoter's failed to deliver the possession of the said unit to the complainants 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 respondent's for filing reply and for appearance.



Accordingly, the respondent's 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 and 16.08.2018.

### BREIF FACTS OF THE COMPLAINT

5. The "PARAS DEWS" is a residential group housing project being developed by the respondents, 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 between complainants and respondents dated 17.04.2013. The respondents gave advertisement in newspapers as well as through their channel partners and showed a rosy picture about the project.
7. The complainants relied heavily on the representations, affirmations and commitments made by the respondent's staff and representatives and thereafter approached the respondents vide application dated 29.12.2012 for purchase



of 3 BHK apartment in the said project having an approximate super area admeasuring. 1760 sq. ft on 20<sup>th</sup> floor in tower C.

8. That pursuant to such application by the complainant, the respondents vide letter dated 10.01.2013, provisionally allotted the said apartment. That the complainants no.2 was added as second applicant for the said apartment by the respondents through endorsement deed dated 19.04.2014.

9. That, in March 2016, a mutual understanding was arrived between complainants and respondents, that since the complainants had 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 complainants for the allotted apartment. Furthermore, it was also agreed that the complainants will pay rest of the amount for the said apartment on 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 no.2 along with his wife had visited the construction site of the project, wherein, it came to



light that the respondents were 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 rooms 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 complainants raised their objection with full force to concerned officials of respondents vide email dated 24-May-17 and then through sequence of reminders and follow up mails but the respondents did not care to reply to the queries raised by the complainants.

11. That being frustrated and cheated by the acts and conduct of the respondent, the complainants 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 complainants were again forced by the wrongful conduct of the respondents 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 31.08.2017 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. That 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 complainants 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 complainants 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 environment clearance is 06.09.2013 so the stipulated period ended on 17.07.2017. Nearly 80% project is completed thus delaying the possession of the apartment deliberately or for reasons known best to them. Such uncalled act is leaving complainants in a lurch where they have left with no option but to pay rent as well huge EMIs to their banks.

16. That the complainants had booked the property in the aforesaid project to own a house for a standard living matching to their 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.



**ISSUES RAISED BY THE COMPLAINANTS:**

- i. Whether the respondents have intentionally and wilfully played fraud upon the complainants 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 49,95,938/- from complainants?
- 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 respondent 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?



**RELIEF SOUGHT BY THE COMPLAINANT:**

- 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 HRERA 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 that has been committed as mentioned



in Section 69 of RERA Act,2016 to be read with HARERA Rules,2017.

- vi. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- vii. To issue direction to pay the cost of litigation.
- viii. To issue direction to pay the compensation to complainants for compensation for their mental agony, pain and harassment.

### REPLY BY THE RESPONDENTS

17. The respondents have contended that the complainants had booked the flat for investment purpose on their 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 complainants are raising all these frivolous just to get the refund of their amount and to avoid making payments as per the payment plan.



18. The only grievance being raised by the complainants 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 complainants 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.
19. 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 complainants 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.
20. 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 complainants 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.

21. The respondents 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.

#### DETERMINATION OF THE ISSUES:

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

22. With respect of the **first, second, fifth and sixth issues** raised by the complainants regarding misrepresentation (first and





second issue) an allegation has been made without providing any proof of the same complainants has not discharged the burden of proof and accordingly issues cannot be decided. Respondents have not intentionally and wilfully played fraud upon the complainants by wrongfully portraying the colourful pictures of the project as it is admitted by the complainants that nearly 80% of the project is complete. 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 respondents which can be offered to the complainant as confirmed before the local commissioner. Complainants have 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 cremation ground.

23. With respect of the **third and fourth issue** raised by the complainants the amount paid by the respondents is in lieu of the apartment booked by the complainants and as per the



terms and condition of the builder buyer agreement agreed between the complainants and respondents.

24. With respect of the **seventh, eight and ninth issue** as per clause 3(1) of the agreement, the respondent's company was bound to deliver the possession of the said unit within 42 months with a grace period of 6 months and 90 days of the date of execution of the agreement to the complainants which comes to 17.07.2017 but the respondents have not delivered the possession of the said flat till date thereby delaying the possession by 1 year 3 months and 13 days.

*"3. Possession and holding charges*

*3(1) ...the company proposes to offer the possession of the said apartment to the allottee within a period of 42months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder (commitment period)....The allottee further agrees and understands that the company shall additionally be entitled to a period of 6 months plus 90 days(Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company."*



Keeping in view that the project is completed, and the complainants have agreed that 80% of the project is complete, the authority is of the view that in case refund is allowed in the present complaint, it will have adverse effect on the interest of

other allottees who wish to continue with the project. Therefore, the refund cannot be allowed in the present complaint.

Accordingly, the due date of possession was 17.07.2017 and the possession has been delayed by one year three months and thirteen days till the date of decision. The delay compensation payable by the respondents @ Rs.5/- per sq. ft. of the super area for every month of delay until the actual date fixed by the company for handing over the possession of the said apartment to the allottee as per clause (3)(iii) of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondents and are completely one sided as also held in para 181 of **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 respondents are in breach of the terms of the agreement as the respondents did not deliver the possession of the said unit within the stipulated time.

### ***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.*

As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoters are liable under section 18(1) proviso to pay interest to the complainants at the prescribed rate, for every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in*



*respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

## FINDINGS AND DECISION OF THE AUTHORITY

25. The preliminary objections raised by the respondents 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 complainants at a later stage.

26. The complainants have 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 other allottees. As per proviso to section 18(1) of the Act, if the complainants does not intend to withdraw from the project, they shall be paid interest for every month of delay till the handing over of the possession.

27. 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 respondents:

- i. 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 respondents which can be offered to the complainant as confirmed before the local commissioner. Complainants have 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 cremation ground.

- ii. Counsel for the respondents stated that earlier the respondents were 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 complainants 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 till actual date of possession. The arrears of interest accrued so far shall be made to the complainants within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10<sup>th</sup> of subsequent month till handing over the possession.



28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date : 30.10.2018



HARERA  
GURUGRAM

