

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

Complaint no. : 1438 of 2019  
First date of hearing : 29.08.2019  
Date of decision : 21.10.2020

Shri Sumit Gupta  
R/o: - Flat No. A-404, Ramkrishna  
Apartments, Plot No. 12, Sector-23,  
Dwarka, New Delhi  
Through his special power of attorney holder  
Smt. Surbhi Shrivastav  
R/o: - Flat No. A-803, Ramkrishna  
Apartments, Plot No. 12, Sector-23,  
Dwarka, New Delhi.

**Complainant**

Versus

M/s Sepset Properties Pvt. Ltd.  
Regd. office: Room No-205, Welcome Plaza,  
S-551, School Block-II,  
Shakarpur, New Delhi- 110092  
Corporate Office: 11<sup>th</sup> Floor, Paras Twin  
Towers, Tower-B, Golf Course Road, Sector 54,  
Gurugram-122002, Haryana

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Sh. Animesh Goyal  
Shri Jasdeep Singh Dhillon

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 04.04.2019 has been filed by the complainant/allottee 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 as provided under the provision of the Act or the rules and regulations made there under or 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 complainant, 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, Gurugram
2.	Project area	13.762 acres
3.	Nature of the project	Residential Group housing Project
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	<b>Registered vide no. 118 of 2017 dated 28.08.2017</b>
	RERA registration valid up to	31.07.2021
7.	<b>Occupation certificate</b> received on	15.01.2019 (annexure R/2, page 23 of reply)



8.	Date of execution of apartment buyer agreement	12.06.2013 [Page 25 of complaint]
9.	Unit no.	0902, 9 <sup>th</sup> floor, tower D [Page 28 of complaint]
10.	Unit measuring	2275 sq. ft. (super area)
11.	Revision of super area	2355 sq. ft. [Page 69 of complaint]
12.	Payment plan	Construction linked payment plan [Page 58 of complaint]
13.	Total sale consideration of the subject unit as per applicant ledger dated 06.04.2019	Rs.1,46,46,640/- [ Page 26 of reply]
14.	Total amount paid by the complainant as per applicant ledger dated 06.04.2019	Rs. 1,35,67,139/- [page 29 of reply]
15.	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	06.09.2017 (the due date has been calculated from the receipt of environment clearance i.e. 06.09.2013) [Page 37 of complaint]
16.	Date of offer of possession	24.01.2019 [Page 66 of complaint and 45 of reply]
17.	Delay in handing over possession till offer of possession i.e. 24.01.2019	1 year 4 months and 18 days

3. As per clause 3.1 of the apartment buyer agreement dated 12.06.2013, the possession was to be handed over within a



period of 42 months within an additional grace period of six 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, subject to force majeure, the due date of possession has been calculated from the receipt of environment clearance i.e. 06.09.2013 which comes out to be 06.09.2017. Clause 3.1 of the apartment buyer agreement is reproduced below:

*"3. Possession:*

*.....the seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42(forty two) 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, subject to force majeure....."*

4. The complainant submitted that the present complaint has been filed through his special power of attorney dated 22.02.2019 namely Mrs. Surbhi Shrivastav. All documents filled by the complainant are signed by Mrs. Surbhi Shrivastav.
5. The complainant submitted that in the year 2012, the respondent advertised their proposed project called "Paras Dews" in Sector- 106, Gurugram. The respondent specifically stated that the possession of the units shall be delivered within



42 months of signing of the builder buyer agreement/application letter.

6. The complainant further submitted that he has booked the flat in the month of December 2012 by giving of Rs. 7,50,000/-. After receiving of amount the respondent duly signed and executed an apartment buyer agreement dated 12.06.2013 after delay of 6 months and allotted unit no. TD-902 are in favour of complainant.
7. The complainant further submitted that on 24.01.2019 the respondent sent two letters to the complainant; vide these letters the respondent offered the possession of the allotted unit. In the said letters the respondent has illegally and unauthorizedly demanded maintenance charges, club charges and the charges for alleged increased super area without any notice and knowledge or consent of the complainant.
8. The complainant further submitted that after the offering of possession to the complainant, the complainant visited the unit and found that the construction of the allotted unit and tower is not complete in all manner and the construction work was still going on. The building was incomplete, and the unit could not have been fit for habitation or for handing over the possession as falsely claimed by the respondent.

Hence, this complaint inter alia for the following reliefs: -



- (i) to direct the respondent to hand over the possession of the Unit No. TD-902, Paras Dews, Sector-106, Gurugram to the complainant complete in all respects as per allotment along with penalty for delayed possession @18% per annum compounded half yearly interest for every year of delayed possession to be calculated proportionately to every day of delay from date of payment till realization;
  - (ii) to direct the respondent to pay interest at the rate of 18% per annum on the entire payment made by the complainant to the respondent from the date of offer of possession till the flat is transferred in the name of the complainant;
  - (iii) to direct the respondent to struck off the alleged demand raised towards maintenance charges, club charges and the charges for increased super area and the respondent be directed to issue fresh demand letter;
9. On the date of hearing, the Authority explained to the respondent/promoter on 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.
10. The respondent in his reply made the following submissions: -

- I. The respondent submitted that the present complaint is not maintainable and premature since the project is a RERA registered project, having registration number 118 of 2017, dated 28.08.2017, and in the terms of the registration certificate the due date of completion is 31.07.2021. which has not arisen in the present case, therefore the present complaint merits outright dismissal.
- II. The respondent submitted that the present complaint is infructuous and not maintainable since the construction of Tower- D has already been completed and the occupation Certificate has also been received on 15.01.2019.
- III. The respondent submitted that the complainant in the present complaint under reply has also admitted the fact that they have not paid the total consideration of Rs.1,19,43,750/-.
- IV. The respondent submitted that all the approvals for commencement of the construction work were received towards the end of 2013 and the construction work began in January 2014;

- V. that the present complaint is not maintainable since not only is the complainant in breach of the builder buyer agreement, but they are also in violation of section 19(6) RERA Act, 2016 which provides the rights and duties of the allottees and sub-clause (6) of Section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. As well as Haryana Real Estate (Regulation and Development) Rules, 2017.
11. 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.
  12. The authority on the basis of information, explanation, other submissions made, and the documents filed by the parties is of considered view that there is no need of further hearing in the complaint.
  13. Arguments heard.
  14. The authority has complete jurisdiction to decide the complaint regarding 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.

15. On consideration of the documents, and submissions made by both the parties regarding contravention of provisions of the Act, 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 12.06.2013, 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, subject to force majeure, accordingly the due date of possession has been calculated from the receipt of environment clearance i.e. 06.09.2013 which comes out to be 06.09.2017. The possession of the subject unit has been offered to the complainants on 24.01.2019.
16. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 12.06.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section




18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at the prescribed rate of interest @ 9.30% 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.

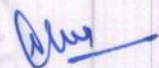
17. Hence, the authority hereby passes the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% 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 15.03.2019 (the receipt of occupation certificate i.e. 15.01.2019 + 2 months)
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.



- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
- vi. The respondent is directed not to charge holding charges till 15.03.2019 and if chargeable them only after 15.03.2019.
18. Complaint stands disposed of.
19. File be consigned to registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.10.2020

Judgement Uploaded on 01.12.2020.

**HARERA**  
**GURUGRAM**