

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

Complaint no. : 1439 of 2019
First date of hearing : 30.07.2019
Date of decision : 21.10.2020

1. Mr. Rajit Shrivastav
2. Mrs. Surbhi Shrivastav
Both R/o: - Flat No. A-803, Ramkrishan
Apartments, Plot No. 12, sector-23,
Dwarka, New Delhi.

Complainants

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: 11th floor, Paras Twin
Towers, Tower-B, Golf Course Road, Sector-
54, Gurugram-122002, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sh. Animesh Goyal Advocate for the complainant
Shri Jasdeep Singh Dhillon Advocate for the respondent

ORDER

1. The present complaint dated 04.04.2019 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 as provided under the provisions 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 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 Dew's", Sector 106, 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.	Allotment letter in old unit no. as per annexure C-1	10.01.2013 [Page 22 of complaint]
9.	Old Unit no. as per transfer of flat annexure 5	T-D/0603, 6 th floor, tower-D [Page 30 of complaint]
10.	Date of execution of builder buyer agreement	16.03.2015 [Page 55 of complaint]



11.	Unit no.	02, 12 th floor, tower D [Page 58 of complaint]
12.	Unit measuring Increase in super area as per revision of super area letter dated 24.01.2019 annexure- 11	2275 sq. ft. (super area) 2355 sq. ft. [Page 97 of complaint]
13.	Payment plan	Construction linked payment plan [Page 88 of complaint]
14.	Total sale consideration of the subject unit as per payment plan annexure- C	Rs.1,37,97,075/- [Page 88 of complainant]
15.	Total amount paid by the complainants as per payment schedule dated 18.02.2019	Rs. 1,32,14,727/- [page 92 of complaint]
16.	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. [Page 67 of complaint]	06.09.2017 (the due date has been calculated from the receipt of environment clearance i.e. 06.09.2013)
17.	Date of offer of possession	24.01.2019 [Page 94 of complaint]
18.	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 16.03.2015, 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:

3.1the 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 complainants submitted that the respondent/promoter company has issued an allotment letter dated 10.01.2013 in favour of Mr. Ishteyaque Ahmed for unit no. T-D/0602, 6th floor, Tower D, Sector-106, Gurugram in this project. After the first allottee sold this unit in favour of Mr. Rajit Shrivastav and Mrs. Surbhi Shrivastav as per Agreement to Sell (annexure-C/3, page no 26 to 27 of this complaint) the second allottee that i.e. complainant and the promoter/respondent company have issued a transfer confirmation letter executed the flat buyer agreement dated 16.03.2015 in question.
5. The complainants submitted that the on 24.01.2019 the respondent sent two letters to the complainants vide these letters the respondent offered the possession of the allotted unit. In the said letter the respondent is illegally and unauthorizedly demanded maintenances charges, club charges and the charges for alleged increased super area



without any notice and knowledge or consent from the complainant. The complainant asked the respondent to clarify and justify the alleged demands claimed by the respondent, but the respondent did not give any satisfactory reply to the complainant. The letters of offer of possession increase super area stated above.

6. The complainants submitted that possession of the subject apartment has been offered by the respondent to the complainants on 24.01.2019. However, the complainant has alleged that the unit is not in a habitable condition and the possession has not been offered as per the provision of the Act. The complainants seek delay interest as per section 18 of the Act. The complainants reserve their right to file a separate application for seeking cost of litigation from the Adjudicating Officer.

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

- (i) to direct the respondent to hand over the possession of the Unit No. TD-1202, 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.
7. 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.
1. 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.1,39,59,740/-.
- 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.
8. The Authority further on the date of hearing 20/08/2019 observed the OC has been received and possession was offered in 24.01.2019. But the complainant alleged that the finishing works are incomplete, and unit is not habitable. In order to



ascertain the latest status of the project, the Authority appointed a team of Local Commissioner and directed them to submit their report within 20 days. The team of Local Commission submitted their report on 30.09.2019 and the relevant paras are reproduced as under:

"During site inspection, the complete project "Paras Dews" being developed by Sepset Properties Pvt. Ltd. has been physically inspected and it found that there are six no's of towers in the project out of which four tower have been granted Occupation Certificate by DTCP and construction of 2 towers is progressing.

- *The work in complainant's tower D is completed in all aspects.*
- *The work of complaint unit no. 1203 is completed in all aspects. Only final coat of internal paint and wooden flooring in master bedroom is left which will be carried out at the time of possession.*
- *The common facilities of the project such as STP, water treatment plan, solar energy panel, internal roads, landscaping, parks, convenient shopping, rain water harvesting, storm water drain are completed in all respects and fully functional whereas structure work for community building is completed and internal finishing works are progressing. At present 80-90 labour force are working to complete the internal finishing work of community building."*

9. 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.
10. 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.

11. Arguments heard.

12. 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.

13. 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 16.03.2015, 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



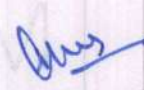
subject unit has been offered to the complainants on 24.01.2019.

14. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 16.03.2015 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.
15. 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.
16. Complaint stands disposed of.
17. 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.