

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

Complaint no. : 785 of 2020
First date of hearing : 12.03.2020
Date of decision : 21.10.2020

Mrs. Chetna Dogra
R/o: - House No. 1181,
Sector-4, Urban Estate Gurugram- 122001

Complainant

Versus

M/s Sepset Properties Pvt. Ltd.
Regd. office: Room No-205, Welcome Plaza,
S-551, School Block-II, Shakarpur,
New Delhi- 110092
Also, at: - 11th 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. Sanjeev Sharma Advocate for the complainant
Sh. Jasdeep Singh Dhillon Advocate for the respondent

ORDER

1. The present complaint dated 26.02.2020 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 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 Dews", Sector 106, Dwarka expressway, Gurugram
2.	Project area	13.762 acres
3.	Nature of the project	Residential 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	10.01.2013 [Page 16 of complaint]
9.	Date of execution of builder buyer agreement	15.05.2013 [Page 22 of complaint]
10.	Unit no.	01, 16 th floor, tower B [Page 25 of complaint]

11.	Unit measuring (super area)	1760 sq. ft.
12.	Payment plan	Construction linked payment plan [Page 55 of complaint]
13.	Total sale consideration of the subject unit as per payment plan annexure- C	Rs.1,16,84,800/- [Page 55 of complainant]
14.	Total amount paid by the complainants as per customer statement dated 04.04.2019	Rs.31,45,000/- [page 58 of complaint]
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 [Page 34 of complaint]	06.09.2017 (the due date has been calculated from the receipt of environment clearance i.e. 06.09.2013)
16.	Delay in handing over possession till date of decision i.e. 21.10.2020	3 years 5 months and 6 days

3. As per clause 3.1 of the apartment buyer agreement dated 15.05.2013, 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:

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 complainant submitted that the parties executed the apartment buyer agreement on 15.05.2013. The respondent has failed to handover the possession of the unit to the complainant in the promised date of possession i.e. 15.05.2017 including grace period as per the buyer developer agreement. Hence, the respondent failed to give possession of the flat even till date.
5. The complainant submitted that the respondent has utterly failed in fulfilling their obligation to deliver the unit within the stipulated time as per the apartment buyer agreement and failed to offer possession in terms of section 11(4) (a) and 18 of the Act read with Rules.

Hence, this complaint for the inter alia reliefs, detailed above.

- (i) to direct the promoter to provide declaration including that of common area u/s 19(5) of the Act along with

declaration on affidavit to be submitted with Director Town and Country Planning or the declaration with Real Estate Regulatory Authority at the time of registration;

- (ii) to direct the promoter to pay interest for the delayed period of possession as arrears of DPC and further ordered to pay interest for each month till the possession is handed over;
- (iii) to direct the promoter to recalculate the interest on equitable basis from the beginning and reimburse, if charged extra than MLCR;
- (iv) to direct the promoter to refund back the charges if levied charged extra without providing Garage and on common areas or basements than for parking;
- (v) to direct the promoter to get the conveyance deed made in the name of Association of allottees for common areas etc, and hand over the complex to them in three months' time.

6. 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.

7. The authority issued notice of the complaint to the respondent by speed post and also on given email address at (sukghpreetsingh@Parasbuildtech.com). The delivery report of which shows that the same was delivered. However, despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. However, the promoter/respondent company and his advocate have marked attendance on 21.10.2020. This is a clear evidence that the service was completed.
8. 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.
9. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. 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.

12. 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 15.05.2013, 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.

13. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 15.05.2013 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 actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

14. 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.
15. Complaint stands disposed of.
16. 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.