

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 18.12.2018
Complaint No.	726/2018 Case Titled As Gundeep Singh Chhabra V/S Sepset Properties Pvt Ltd
Complainant	Gundeep Singh Chhabra
Represented through	Ms. Tanisha Srivastava proxy counsel for Shri Uttam Datt, Advocate for the complainant.
Respondent	Sepset Properties Pvt Ltd
Respondent Represented through	Shri Jasdeep Singh Dhillon, Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

**Proceedings**

**Project is registered with the authority.**

Arguments heard.

As per clause 3.1 of the Builder Buyer Agreement dated 28.3.2013 for unit No.T-A/0501, 5<sup>th</sup> floor, Tower-A, Paras Dews, Sector-106, village Daultabad, Gurgaon, possession was to be handed over to the complainant within a period of 42 months + 6 months grace period from the date of execution of this agreement or date of obtaining all licences or approvals for commencement of construction whichever is later. As per record the date of commencement of construction is 6.9.2013. As such, due date of possession comes out to be 6.12.2017. However, the respondent has not delivered the

unit in time. Complainant has already deposited Rs.43,85,549/- with the respondent against a total cost consideration of Rs.1,26,03,000/-.

Keeping in view all the facts on record, both respondent/builder and complainant/buyer are given two options (i) settle their matter out of the court (b) builder can forfeit 10% of the earnest money and refund the balance amount alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days.

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

Samir Kumar  
(Member)  
18.12.2018

Subhash Chander Kush  
(Member)  
18.12.2018

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

**Complaint No. : 726 of 2018**  
**Date of first hearing : 26.09.2018**  
**Date of Decision : 18.12.2018**

1. Mr. Gundeep Singh Chhabra  
2. Mr. Sundeep Singh Chhabra  
R/o. W-10/38, Western Avenue,  
Sainik Farms, New Delhi.

**Complainants**

Versus

M/s Sepset Properties Pvt. Ltd.  
Regd. Office: Room no. 205,  
Welcome Plaza, S-551, School Block II,  
Shakarpur, Delhi-110092

Corporate Office:  
11<sup>th</sup> floor, Paras Twin Towers,  
Tower- B, Golf Course Road,  
Sector- 54, Gurugram,  
Haryana.

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri. Uttam Datt, Traun  
represented through Ms.  
Tanisha Srivastava (proxy  
counsel)

Advocate of the complainant

Shri. Jasdeep Singh Dhillon

Advocate of the respondent

**ORDER**



1. A complaint dated 16.08.2018 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, Mr. Gundeep Singh Chhabra and Mr. Sundeep Singh Chhabra, against the promoter M/s Sepset Properties Pvt. Ltd., on account of violation of 3.1 of the builder buyers' agreement executed on 28.03.2013 for apartment no. 1, 5<sup>th</sup> floor, tower A, admeasuring 1900 sq. ft. super area in the project described as below for not giving possession on the due date i.e. by 06.12.2017 which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.
2. Since the builder buyer's agreement dated 28.03.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application under section 34(f) of the Act ibid for non-compliance of obligation on the part of the respondent.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Paras dew's, sector 106, village Daultabad, Gurugram.
----	----------------------------------	---



2.	Nature of real estate project	Residential group housing
3.	Date of booking	29.12.2012
4.	Date of allotment letter	10.01.2013
5.	DTCP License no.	61 of 2012 dated 13.06.2012
6.	Apartment/unit no.	T-A/0501, 5 <sup>th</sup> floor, tower A
7.	Flat measuring	1760 sq. ft.
8.	RERA registered/unregistered	<b>Registered vide no. 118 of 2017</b>
9.	Date of execution of the builder buyer's agreement	28.03.2013
10.	Payment Plan	Construction linked plan
11.	Total consideration	Rs. 1,26,03,000/-
12.	Total amount paid by the complainant till date	Rs.43,85,549 /-
13.	Percentage of consideration amount	35% approx.
14.	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)	06.12.2017
15.	Delay of number of months/ years upto date	1 year
16.	Penalty clause as per builder buyer agreement	Clause 3.3 i.e. Rs. 5/- per sq. ft. per month
17.	Revised date of delivery of possession as per RERA certificate	<b>31.07.2021</b>
18.	Status of the project	Almost complete as per the reply but no photos have been annexed in this regard.



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 apartment no. T-A/0501, 5<sup>th</sup> floor, tower A in the project stated above, according to which the possession of the aforesaid apartment was to be delivered by 06.12.2017. The promoters have neither delivered the possession of apartment to the complainants by the due date nor has paid any compensation i.e. @ Rs. 5/- per sq. ft. per month of super area for the period of the such delay as per apartment buyer agreement dated 28.03.2013. Therefore, the promoter has not fulfilled his committed liability till date.

4. The respondent appeared on 18.12.2018. The case came up for hearing on 18.12.2018. The reply has been filed by the respondent on 25.09.2018 and the rejoinder has been filed by the complainants on 18.12.2018 which has been perused.

**Facts of the case :-**

5. The complainants submitted that the “paras dewas” is a residential group housing project developed by the respondent, on a parcel of land admeasuring 13.762 acres situated at Sector 106 in the revenue estate of village Daultabad, Tehsil and District Gurugram. The project was launched in mid of 2012.



6. The complainants alleged that the respondents gave advertisement in newspapers as well as through their channel partners and showed a rosy picture about the project. The complainant relying on the said representations approached the respondents vide application dated 29.12.2012 for purchase of a residential apartment in the said project. Pursuant to aforesaid booking of the complainant, respondent vide allotment letter dated 10.01.2013, allotted apartment no. T-A/0501, admeasuring 1900 sq. ft. super area in the project in favour of complainant.

7. The complainants submitted that on 28.03.2011, apartment buyer agreement for the allotted apartment was executed between the parties. The total consideration of the apartment was agreed at Rs. 1,26,03,000/- out of which the complainant has made total payment of Rs. 43,85,549/- on various dates under construction linked payment plan. As per clause 3.1 of the apartment buyer agreement, possession of the apartment was to be delivered within a period of 42 months plus 6 months' grace period thereof from the date of execution of agreement or date of obtaining all licenses or approvals, whichever is later.





8. The complainants alleged that at the time of initial booking in 2012, it was represented by the respondents that the construction of tower A would be completed by 28.09.2016 or by 28.03.2017, with an additional grace period of 6 months. The construction of the project was delayed and commenced only in 2013.

9. The complainants further alleged that even after collecting about 40% of the sales consideration from the complainant, the respondent deliberately did not complete the construction of the project on time and till date have not been able to complete the construction or give the possession of the flats. The complainants time and again sent letters to the respondent seeking refund of the paid monies with interest, however, the respondent did not pay any heed to the request of the complainant. Therefore, the complainant was constrained to file the instant complaint before this authority.

**Issues raised by the complainant:-**

- ***Whether the respondent has fulfilled their contractual and legal obligations towards the complainants regarding the project 'paras deus'?***

**11. Reliefs sought:-**





- Direct the respondent to refund the sum of Rs. 43,85,549/- as paid by the complainant towards the sales consideration of the apartment in question, alongwith interest payable under section 18 read with section 19(4), section 71 of the Real Estate (Regulation and Development) Act, 2016 and rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

**Respondent's Reply:-**

12. The respondent contended that the complainants did not come to this authority with clean hands. The complainant has suppressed material facts and complaint is liable to be dismissed on this ground alone. The respondent further contended that the complainants are not genuine flat purchaser and have purchased the said flat for commercial and investment purpose.

13. The respondent in addition contended that the complainants have defaulted in making timely payments of the outstanding instalments as per the agreed schedule. The complainant have failed to pay the last nine instalments for the demands against (i) completion of the 1<sup>st</sup> roof slab dated 25.06.2014, (ii) completion 4<sup>th</sup> floor roof slab dated 26.09.2014, (iii) completion of 8<sup>th</sup> floor roof



slab dated 24.12.2014, (iv) completion of 12<sup>th</sup> floor roof slab dated 26.03.2014, (v) completion of 16<sup>th</sup> floor roof slab dated 24.06.2015, (vi) on completion of structure dated 28.09.2015, (vii) on completion of electric conducting dated 28.03.2016 and (viii) on completion of flooring dated 21.12.2016.

14. The respondent submitted that despite repeated notices issued to the complainant, the complainant has failed to make the payments of outstanding amount of Rs. 76,61,410/- and interest thereon aggregating to rs. 45,65,143/- The complainant was finally sent show cause notice for cancellation and reminders to the show cause for cancellation of the booking vide letters dated 04.01.2017, 07.02.2017, 08.04.2017 and 16.12.2017. The present complaint is filed merely to avoid the cancellation of his booking.

15. The respondent submitted that the construction of the flat is almost complete and the respondent is willing to handover possession to the complainants' subject to payment of the outstanding dues as per the builder buyer agreement.

16. The respondent contended that the present complaint is not maintainable since the complainant have not only breached the terms of builder buyer agreement by not paying the instalments on



time but they are also in violation of Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

17. The respondent contended that the present complaint is not maintainable since the complainants have not filed the present complaint as per the correct form of the Haryana Real Estate (Regulation and Development) Rules, 2017 and the complainant in the complaint is seeking reliefs of refund and compensation for which a complaint under form CRM in terms of rule 29 if the rules should have been filed. Thus, the present complaint being a joint complaint is not maintainable being in contravention of the Haryana Real (Regulation and Development) Rules, 2017 and merits outright dismissal.

18. It is submitted by the respondent that as per clause 12.4 of the apartment buyer's agreement clearly stipulates that if the respondent have commenced construction than the complainant shall not have any right to cancel/withdraw the agreement for any reason whatsoever. The project is in its advance stage and even the flooring work has been completed. Thus, the present complaint is



not maintainable in view of clause 12.4 of the apartment buyer's agreement and is liable to be dismissed with costs.

**Rejoinder: -**

19. The complainants have filed rejoinder to the reply of the respondent denying each and every contentions raised by the respondent.

**Determination of issue:-**

20. As regards the **issue** raised by the complainants, as per clause 3.1 of the builder-buyer agreement, the respondent company proposed to hand over the possession of the said unit by 06.12.2017. Clause 3.1 regarding possession of the subject apartment is reproduced below:

*“3.1 ....., the seller proposes to handover the possession of the apartment to the purchaser(s) within a period of 42 (Forty Two) months with an additional grace period of 6 (six) 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.....”*

21. Accordingly, the due date of possession on calculation came out to be 06.12.2017, however the possession has not been offered to the complainant till date, therefore, there is



a delay of one year for which the complainant is entitled for interest at prescribed rate as delay charges in terms of section 18(1) proviso of the Act *ibid*. However, the respondent during the course of argument has contended that the complainant themselves was defaulter and did not make payment of nine instalments despite repeated notice from the respondent. Hence, the complainant is liable to pay outstanding dues at the same prescribed rate to the respondent.

22. 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 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 by the respondent for every month of delay till the handing over of the possession.

**Findings of the authority:-**

23. The preliminary objection regarding jurisdiction of the authority stands dismissed. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

24. The complainants 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.”*

25. 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.*

**Decision and direction of the authority :-**

26. Keeping in view all the facts on record, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues following directions to the both the parties –

- i. Both the parties, complainant as well as the respondent are at liberty to go for amicable settlement of the matter; or





- ii. The respondent is at liberty to refund the paid up amount of the complainant after deducting 10% of the sales consideration which comes to Rs.31,25,249/- alongwith prescribed rate of interest @10.75% p.a. from the date of last payment till the date of order amounting to Rs.15,92,378.58/-.

27. The order is pronounced.

28. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: .....

HARERA  
GURUGRAM



Judgement Uploaded on 08.01.2019