



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

Complaint No. : 1239/2019
Date of Decision: 02.02.2021

Nidhi Bhattacharya W/o Shri Anuttam Bhattacharya,
& Shri Anuttam Bhattacharya S/o Shri Tapobrata Bhattacharya
Both R/o 524, Ground Floor, Orchid Island, Sector-51, Gurugram.
Complainants

V/s

M/s SEPSET PROPERTIES PVT. LTD.,
Room No. 205, WELCOME PLAZA,
S-551, SCHOOL BLOCK-II, SHAKARPUR,
, DELHI-110092

Respondent

Complaint under Section 31 of the Real Estate
(Regulation and Development) Act, 2016

Argued by:

For Complainants:

Sh. Rajan Gupta, Advocate

For Respondent:

Ms. Tanya Sawarup, Advocate

ORDER

This is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as Act of 2016) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as Rules of 2017) filed by the complainants named above seeking refund of amount deposited with the respondent-company for booking a flat in its project known as PARAS DEWS

Sh. c c 2/2/2021



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located in Sector -106, Dwarka Expressway, Gurugram, measuring 1385 sq. ft. bearing no. 03, floor 6, Tower-E, for a sum of Rs. 9364000/- on account of violations of obligations of the promoter under section 11 (4)(a) of the Real Estate (Regulation and Development) Act, 2016. Before taking up the case of complainants, the reproduction of the following details is must and which are as under:-

Project related details		
I.	Name of the project	"PARAS DEWS
II.	Location of the project	Sector-106, Dwarka Expressway, Gurugram.
III.	Nature of the project	Residential

Unit related details		
IV.	Unit No. / Plot No.	T-E/0603
V.	Tower No. / Block No.	Tower E
VI	Size of the unit (super area)	1385 sq. ft. (128.670 sq. mts.)
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking	29.12.2012
XI	Date of Allotment	-Do-
XII	Date of execution of BBA (copy of BBA be enclosed as annexure-1)	07.05.2013

Sh. c. c. 2/2/2021



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XIII	Due date of possession as per BBA	07.05.2017/07.08.2017
XIV	Delay in handing over possession till date	About 3*1/2 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	Rs. 5/- sq. ft.
Payment details		
XVI	Total sale consideration	Rs.93,64,000/-
XVII	Total amount paid by the complainant	Rs. 84,19,940/-

2. It is the case of the complainants that the respondent company was developing a residential group housing colony known as "PARAS DEWS" in sector-106, Dwarka Expressway, Gurugram. Believing the respondent company, the complainants booked the abovementioned flat measuring 1385 sq. ft. for total sale consideration of Rs. 93,64,000/-. A Builder Buyer Agreement (annexure P/1) dated 07.05.2013 was executed between the parties and as per the same, the project was to be completed by the respondent within a period of 48 months from the date of execution of that document i.e upto 07.05.2017. It is the case of the complainants that they paid a sum of Rs. 84,19,940/- (annexure P/2) to the respondent and the remaining amount was to be paid as per installments as the project was having a construction linked plan. The respondent failed to perform its part of the contract and to complete the project on time. When despite a number of oral reminders, the respondent failed to offer the possession of the allotted unit, a complaint seeking refund of the amount deposited with it besides interest and other charges was filed.

3. But the case of the respondent as set up in the written reply that though the complainants booked a flat in its project known by the name of

Chlcc 2/2/2021



“PARAS DEWS” and which lead to execution of a Builder Buyer Agreement. But they committed default in making payments of the installments due. It was denied that there is any delay in completing the project. The complainants are taking benefit of their own wrongs. Since there was violation of terms and conditions of Builder Buyer Agreement, so neither the complainants are entitled to seek refund of the deposited amount nor any compensation as alleged. It was further pleaded that the respondent company has received occupation certificate for Towers A to D and the construction of Tower-E in which the unit of the complainants is located is at the final stage. Lastly, the complainants are investors, and they cannot invoke the jurisdiction of this forum to seek any relief.

4. All other averments made in the complaint were denied in toto.
5. To decide the rival pleas, the following issues arise for consideration:
 - (i) Whether the respondent/developer violated the terms and conditions of the Builder Buyer Agreement?
 - (ii) Whether there was any reasonable justification for delay in offering the possession of the allotted unit?
 - (iii) Whether the claimants are entitled for refund of the paid amount besides interest and other charges?
6. I have heard the learned counsel for both the parties in person as well as through video conferencing and have also perused the case file.
7. Some of the admitted facts of the case are that the complainants booked a residential unit in the project of respondent known as “PARAS DEWS” situated in Sector 106, Dwarka Expressway, Gurugram in the year 2012 for a basic sale price of Rs. 5880 per sq. ft. and having an area of 1385 sq. ft. A Builder Buyer Agreement (annexure P-1) was executed between the parties on 07.05.2013. The due date to hand over the possession of the allotted unit as per that document was 42 months with an additional grace period of 6 months as evident from clause 3.1. In pursuant to that document, the claimants started depositing the various amounts against the allotment. They deposited a total sum of Rs. 84,19,940/- upto 28.12.2015 as evident from statement of account (annexure P-2). The project in which the unit of

Sh. C. C. 2/2/2021



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the claimants is located was to be completed under the **construction linked plan**. It is the case of complainants that though they have deposited more than 90% of the amount due with the respondent company but it failed to complete the project and offer the possession of the allotted unit upto the due date i.e. 07.05.2017. A number of oral reminders in this regard were issued but with no result. Moreover, a period of more than 3 years has passed since the due date and there is lot of change in circumstances. So, now the complainants do not want to continue with the project and seek refund of the amount deposited besides interest and compensation from the respondent-company.

8. But on the other hand, it is contended on behalf of the respondent that though there is delay in completion of the project in which the complainants were allotted a unit but that was due to various factors such as delay in making payments by the complainants and various other allottees, and non-receipt of various sanctions from the competent authorities etc. It was ~~further~~ pleaded that the respondent has already completed construction of some towers (A to D) in this project and obtained occupation certificate (annexure R-2 on 15.01.2019). The construction of the tower in which the complainants was allotted a unit is in full swing and is likely to be completed very soon. Lastly it is pleaded that keeping in view the present scenario, sentiments of the real estate industry and force majeure, every effort is being made to complete the project and handover its possession to the allottees. If refund is allowed at this stage, then it will be detrimental to the interest of the project and it may collapse giving a wrong signal for other projects of the respondent as well as other real estate developers.

9. A Builder Buyer Agreement was executed between the parties on 07.05.2013 with regard to the allotted unit for a total sale consideration of Rs. 93,64,000/-. It is not disputed that the complainants paid more than 90% of the price of the allotted unit upto year 2015. The allotment of the unit was made to the complainants under the **construction linked plan**. Its construction was to be completed within 42 months with a grace period of 6 months. Admittedly there is nothing on the record to show that as to what is the stage of construction of the project in which the complainants was allotted the unit. Neither any document in this regard has been placed on the file nor there are any photograph to prove the stage and extent of

Shl c c 2/2/2021



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construction of the project. It is pleaded on behalf of respondent that though there is some delay in completion of the project but that is due to delay in making payments by the allottees including the complainants. But the plea advanced in this regard is devoid of merit. A perusal of the statement of account (annexure P-2) shows otherwise and vide which it is proved that the complainants paid a total sum of Rs. 84,19,940/- to the respondent upto 28.12.2015. Secondly, except one reminder (annexure R-5), there is nothing on the record to show that there was any delay in making payment by the complainants against the allotted unit and they were issued any other reminder. Then, the plea of respondent that it had already received occupation certificate of towers A to D in that project does not help it show that the construction of tower-E is also going to be completed soon. No document worth the name has been placed on the file to prove that fact. It is pleaded on behalf of the respondent that Builder Buyer Agreement was executed by the complainants with the respondent-company out of their free will and consent and now, they cannot withdraw from the same and the court should be very slow to interfere in its genuineness. But again the plea taken in this regard is devoid on merit. In cases of **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghvan (2019) 5, SCC, 725** and followed in **Wg. Cdr. Arifur Rahman Khan & Others Vs. DLF Southern Homes Pvt. Ltd 2020, SCC online SC 667**, it was held by the Hon'ble Apex Court of the land that when the respondent/builder failed to complete the project in time and deliver the possession of the allotted unit to the complainant as per allotment letter or the apartment buyer agreement, then the allottee has a right to ask for refund if the possession is inordinately delayed. Lastly, in case of **Ireo Grace Real Tech Pvt. Ld. Vs. Abhishek Khanna & Others, Civil Appeal no. 5785 of 2019 decided on 11.01.2021**, the Hon'ble Apex Court allowed refund of the amount deposited by the allottees with the developer besides interest at the rate of 9% P.A when it was proved that there was delay in handing over the possession of the allotted unit. So, in such a situation neither the respondent promoter can seek to bind the complainants with such one sided contractual terms nor can ask them to wait for the offer of possession indefinitely after the due date has expired. So, findings on both these issues are returned accordingly.

10. Thus, in view of my discussion above and taking into consideration all the material facts brought on record by both the parties, it is held that the

Shc c c 29/2/2024



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claimants are entitled for refund of the amount deposited with the respondent-company besides interest. Consequently, the following directions are hereby issued to the respondent:-

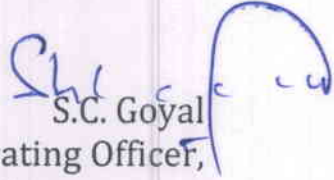
- (i) To refund the entire amount of Rs. 84,19,940/- besides interest at the prescribed rate i.e. 9.30% P.A. from the date of each payment till the date on which the full refund alongwith compensation in the form of interest in terms of this order is paid to the complainants.
- (ii) The respondent shall pay a sum of Rs. 1,00,000/- inclusive of litigation charges as compensation to the complainants.

11. The payments in terms of this order shall be made by the respondent-company to the complainants within a period of 90 days from today and failing which legal consequences would follow.

12. Hence, in view of my discussion detailed above, the compliant filed by the complainants against the respondent-company is ordered to be disposed off accordingly.

File be consigned to the Registry.

Judgement uploaded on 18.02.2021


S.C. Goyal
Adjudicating Officer,
HARERA, Gurugram
02.02.2021

2.2.2021