



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह. सिविल लाईंस. गुरुग्राम. हरियाणा

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 1201/2018
Date of Decision : 27.09.2021

Shri Sharat Gupta & Mrs Pooja Gupta
190, Old Model Town, Tohana, Fatehabad
Sector 106, Gurugram
703, Rainbow Apartments, Sector-43
Gurugram

Complainants

V/s

- 1. M/s Sepset Properties Pvt Ltd.**
Room No.205, Welcome Plaza
S-551, School Block-II
Shakarpur, Delhi-110092
- 2. M/s Paras Builtech Pvt Ltd.**
11th Flor, Paras Twin Towers
Tower-B, Sector-54, Gurugram
- 3. M/s Town & Country Planning**
HUDA Complex, Sector-14
Gurugram.

Respondents

Handwritten signature/initials

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27-9-2021

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

Present:

For Complainants:

For Respondents:

Himanshu
Mr. Himanshu Juneja, Advocate
Mr. Akshay Sharma, Advocate

ORDER

This is a complaint filed by Shri Sharat Gupta and Smt. Pooja Gupta (hereinafter referred as buyers) under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (in brief Act of 2016) read with Rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief 'Rules') against respondents M/s Sepset Properties Pvt Ltd. and Ors seeking directions to the latter to refund a sum of Rs.55,49,815/- alongwith prescribed rate of interest from the date(s) of payment till its realisation.

2. According to the complainants, respondent No.1 had purchased land measuring 13.762 acres in village Daulatabad, Gurugram and got licence No..61 of 2012 from respondent No.3 for development of group housing complex. The umbrella company M/s Indiabulls sold said housing project to M/s Paras Builtech Pvt Ltd.(respondent No.2), modus operandi being to transfer all the shareholding of respondent No.1 in favour of respondent No.2. In the year 2012-2013, respondent No.1 and respondent No. 2 launched a project in the name and style of "Paras Dews". On representation of said respondent No.1 and 2, they(complainants) applied for booking of an apartment. They were allotted a unit No.TF/0704 in Tower F, measuring 1385 sq ft.

3. Later on, they(complainants) came to know about the cheating and fraud played upon them by the respondents and other allottees, as the title

of land on which said housing project was being developed, is defective till date. Said respondents submitted wrong/tampered plans of the land with respondent No.3. The latter sanctioned building plans. Respondent No.1 and 2 were neither owners nor in possession of land of the project. Respondent No.2, paid huge money for purchase of FSI of said licence from M/s Indiabulls, by violating provisions of laws and further very cleverly, without seeking permission from the competent authority, got shareholding pattern. Respondent No.2 illegally and unlawfully purchased FSI of 13.762 acres of land(Licence No.61 of 2012). Through such sale of FSI, respondent No.2 assumed the role of developer, bye-passing relevant laws, provisions and rules of Haryana Development and Regulation of Urban Areas Act, 1975. Respondent No.2 had no privity of contract with respondent No.1 prior to purchase of FSI, as there is no provision in law to purchase FSI and thus respondent No.1 and 2 violated the provisions of the Urban Areas Act and are liable to be prosecuted.

4. After becoming suspicious about the bonafides as well as the acts and misdeeds of the respondents, they (complainants) stopped making payments after 2015, rather sent legal notice to the respondents claiming refund of deposited amount. The respondents neither replied to their legal notice nor refunded the amount received by them and hence this complaint is filed

5. Brief facts of complainant's case in tabular form are as under:

Project related details		
I.	Name of the project	"PARAS DEWS"
II.	Location of the project	Sector 106, Gurugram

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III.	Nature of the project	RESIDENTIAL
Unit related details		
IV.	Unit No. / Plot No.	T-F/0704
V.	Tower No. / Block No.	F
VI	Size of the unit (super area)	Measuring 1385 sq ft
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(original)	-
XI	Date of Allotment(original)	10.01.2013
XII	Date of execution of ABA/BBA (copy of BBA/SBA enclosed)	21.06.2013
XIII	Due date of possession as per BBA/SBA	Within 42 months plus six months from the date of ABA/BBA i.e. 21.06.2018
XIV	Delay in handing over possession till date	More than 3 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	
Payment details		
XVI	Total sale consideration	Rs. 95,57,900/-
XVII	Total amount paid by the complainants	Rs.55,19,815/-

6. According to record on case file, one Shri Jasdeep Dhillon, Advocate appeared on behalf of respondents on 10.09.2019 and filed memo of

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appearance. He undertook to file Vakalatnama within one week. There is no such vakalatnama or any other PoA in favour of Shri Jasdeep Singh Dhillon filed till today. By same order i.e. 10.09.2019, respondents were directed to file reply to amended complaint, within two weeks, with advance copy to other side i.e. complainants. Although, a draft of reply is on record but no date has been mentioned on it and same is not signed by anyone. There is an application captioned to have been filed under Rule 28 and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with regulation 25 of HARERA, Gurugram, 2018, seeking dismissal of complaint, signed in name of Akshay Sharma, on behalf of MPS Legal. There is no PoA/vakalatnama filed by any of respondents either in favour of Shri Akshay Sharma or MPS Legal. Said application is accompanied by an affidavit in the name of Abhinav Verma. The latter claims to be an authorized signatory of respondent (s). But there is no document to verify that Shri Abhinav Verma was authorized signatory of any of respondent(s). Further, neither any date is mentioned on this affidavit nor same is attested by notary public or Oath Commissioner.

7. Considering aforesaid facts, it can be taken that no written reply is filed by the respondents. Although application under Rule 28 and 29 of Rules 2017 referred above is also not properly filed but through this application, the respondents have raised preliminary objection, regarding jurisdiction of this forum. Even in the absence of any application, this forum was obliged to see if same has jurisdiction to try and entertain present complaint and hence said preliminary objection is dealt herewith.

8. It is averred in said application that vide notification dated 12.09.2019, Government of Haryana, amended The Haryana Real Estate (Regulation and Development) Rules 2017. Thereafter, complaints seeking reliefs other than compensation for non compliance of provisions of the Act

or Rules etc. were transferred from the Adjudicating Officer to the Authority. Vide order dated 16.10.2020, Hon'ble High Court of Punjab and Haryana in CWP No. 38144 of 2018 titled as M/s Experion Developers Private Limited vs. State of Haryana and others upheld said amendment in rules. The order of Hon'ble High Court has been challenged before the Supreme Court of India in SLP (C) no. 13005 of 2020 wherein Hon'ble Apex Court vide order dated 18.01.2021 has stayed operation of impugned order passed by Hon'ble High Court. In these circumstances, this forum has no jurisdiction to entertain the complaint seeking refund of the amount.

9. Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came up before the Hon'ble Haryana Real Estate Appellate Tribunal in case of **Sameer Mahawar Vs M G Housing Pvt Ltd.** where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the Rules of 2017. In September 2019, Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was further challenged before the Apex Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein the Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana High Court referred above. Said special leave petition is still pending before the Apex Court.

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10. When the order of Hon'ble Punjab & Haryana high Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, it amounts restoration of status qua ante i.e. when the complaints seeking refund, compensation and interest were entertained by the Adjudicating Officer. Considering all this, I think there is no legal impediment in entertaining this complaint, seeking relief of refund.

11. Although present complaint has been filed against three respondents, on 08.04.2021, it was submitted on behalf of complainants that they do not seek any relief against respondent No. 2 and 3 both of these respondents i.e. No. 2 and 3 be given up, being unnecessary. Now claims of complainant remains only against respondent No. 1.

12. Today i.e. 27.09.2021, learned counsel for complainant submitted that although his clients have claimed that respondent have no title on project land and same are liable to be prosecuted. The complainants don't stress on that issue rather claims ~~only~~ relief of refund against respondent No.1 only.

13. The complainants have put on file copy of Builder Buyer's Agreement executed between them and respondent No.1. Said agreement is shown to have been executed on 21.06.2013. Clause 3.1 of said BBA mentions that subject to Clause 10 herein any other circumstances not anticipated and beyond the reasonable control of the (Seller) ^{the seller} proposes to handover possession of the apartment to the purchaser(s) within a period of 42 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 the construction, whichever is later, subject to Force Majeure

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14. There is nothing on record to show as when respondents obtained licenses for raising construction of project or when commencement of construction was approved. In this way, taking the date of execution of this agreement i.e. 21.06.2013 as commencement date, the seller/developer was duty bound to hand over possession by 21.12.2016. Although, it is well settled that a developer is entitled for grace period only when same was not able ^{to} complete the project, within agreed time due to Force Majeure circumstances. Despite all this, even if grace period of six months ^{is} also ^{is} added, due date for handing over possession comes out to be 21.06.2017. As per complainants, the project/unit in question is not complete even today i.e. on the date of arguments. Respondent No.1 has thus failed to complete the project and to handover possession of unit in question to the complainants, within agreed period.

15. Section 18 of Act of 2016 provides for return of amount and compensation. According to sub-section 1-

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building -

- (a) In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) Due to continuance of his business as a developer on account of suspension of revocation of the registration under this Act or for any other reason;*

He shall be liable to demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

16. The Complainants are thus entitled to seek refund of the deposited amount alongwith interest and compensation. Consequently, complaint in hands is allowed and respondent No.1 is directed to refund the amount of

Rs.55,19,815/- deposited by the complainants to the lenders within 90 days from this order along with interest @ 9.30% p.a. from the dates of receipt of each payment till realisation. The respondent No.1 is burdened with cost of Rs.1,00,000/- towards litigation charges, to be paid to the complainants.

17. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
27.09.2021

Judgement uploaded on 08.10.2021.