

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

**New Complaint no. : 96 of 2021**  
**First date of hearing: 30.03.2021**  
**Date of decision : 21.09.2021**

1. Mr. Vineet Kapoor
2. Mrs. Nandita Kapoor  
Both RR/O: - Flat no. 1103, Sector-49,  
Orchid Petals, Tower-2, Sohna Road,  
Gurugram.

**Complainants**

**Versus**

M/s Sepset Properties private limited  
Regd. Office at: - Room No. 205, Welcome  
Plaza, S-551, School, Block-II, Shakarpur,  
Delhi- 110092.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Sh. Saurabh Gupta  
None

Advocate for the complainants  
Advocate for the respondent

**HARERA**  
**ORDER**

1. The present complaint dated 13.01.2021 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

provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, 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.N.	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.	Unit no.	04, 6 <sup>th</sup> floor, Tower- E [Page no. 34 of complaint]
9.	Unit measuring	1385 sq. ft. [super area]
10.	Date of execution of flat buyer agreement	17.04.2013 [page no. 31 of complaint]
11.	Date of allotment letter	10.01.2013 [page no. 27 of complaint]



12.	Payment plan	Construction linked payment plan [Page no.64 of complaint]
13.	Total consideration	Rs.92,80,900/- [as per payment plan page 64 of complaint]
14.	Total amount paid by the complainants	Rs.83,48,516/- [as per receipt information page 116 of reply]
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 43 of complaint]	17.10.2016  Due date of possession can be calculated by the date of execution of this agreement. [Note:- 6 month grace period is not allowed]
16.	Delay in handing over possession till date of this order i.e. 21.09.2021	4 years 11 months and 4 days

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint: -

- I. That the respondent company launched a residential group housing project titled "Paras Dew's" being developed on a land parcel situated at Sector-106, Gurgaon, Haryana.
- II. The complainants desired to purchase an apartment in the project being developed by the respondent. In this regard, the respondent assured to the complainants that it has taken all the necessary permissions and approvals for the project from the competent authorities and will deliver possession in the

- project within a period of forty eight (42+6) months from the date of execution of the apartment buyer agreement i.e. 17.04.2013.
- III. The complainants, on believing the bona fide of them and the representations made by it with regards to the project, decided to book an apartment bearing no. T-E/0604 on the 6th floor in the project. Subsequently, on 29.12.2012 the complainants paid Rs.7,50,000/- vide cheque bearing no. 000008 to respondent as the booking amount. Thereafter, the respondent provided the complainants with an application form dated 29.12.2012 detailing the terms and conditions of allotment in the project.
- IV. The respondent subsequently allotted to the complainants a unit in the project, numbered T-E/0604 in tower E, admeasuring 1,385 sq. ft. under construction linked payment plan (2 BHK) vide allotment letter dated 10.01.2013.
- V. The complainants agreed to pay a total sale consideration of Rs.92,80,900/- to them for the said apartment . Subsequently, the complainants paid to the respondent Rs .9,11,955/- vide cheque bearing no. 000025 dated 11.02.2013 on account of payment within 60 days of booking the unit. The remaining part of the total sale consideration of the apartment was to be paid by the complainants in multiple stages, linked to the construction and delivery of the apartment. The complainants subsequently entered into an apartment buyer's agreement dated 17.03.2013 with the respondent was constrained to signing the agreement on the dotted line.



- VI. That pursuant to the terms agreed upon between both the parties in the apartment buyer agreement, the respondent was to provide possession of the apartment to the complainants within Forty-Eight (42+6) months, i.e., by 17.04 .2017. It is submitted that the respondent has abjectly failed to complete the construction and hand over the possession till date.
- VII. The complainants further bring to the notice of this authority clause 3.3 of the agreement, wherein the respondent has fixed a meagerly compensation i.e. Rs.5/- per sq. ft. to be paid by it in the event of delayed possession when in fact them has been charging enormous interest at the rate of 18% per annum on the delayed payments as stated in clause 2.21 of the agreement. It is submitted that the said clause is ex- facie one-sided, unfair, and unreasonable.
- VIII. That the complainants are entitled for delayed interest @ 18% per annum at the same rate as charged by the respondent for delayed payment.
- IX. The complainants showing faith in the bona fide of the respondent to deliver the apartment, and hoping to get the dream home they worked so hard for years and years to afford, continued to make payments as and when called by the respondent.
- X. The complainants are greatly aggrieved by this 44 month delay as on 22.12.2020 caused by the respondent in delivering the apartment, and seek the same quantum of interest from the respondent for the delay in delivering the possession of the said

unit as the respondent seek from them for delay in making payments i.e. 18% p.a.

- XI. That the respondent is liable to pay to them as interest amount totalling to Rs.40,62,127/- as on 31.12.2020 on account of delay caused by the respondent in delivery of possession of the said unit.
- XII. That various calls were made by the complainants to the office of the respondent and their customer relationship personnel. However they were shocked to see that there was no clear intimation regarding the delivery of possession. That the complainants vide email dated 27.10.2020 and 04.12.2020 sought information about the possession of their apartment, however they were shocked to see despite such a delay, the respondent to failed to respond to any of the said email.
- XIII. That the complainants seek the leave of this authority to file an application seeking compensation before the adjudicating officer. The complainants most humbly pays that the respondent may be directed to handover possession and execute the title documents in favour of the complainants.

**C. Relief sought by the complainants.**

4. The complainantshad sought following relief(s):
- The respondent to handover the possession of the unit to the complainants along with interest @ 18% accrued from the 'originally promised date of possession' till the 'actual delivered date of possession'.



- The respondent to pay delayed interest @18% a sum of Rs.31,23,993/- after adjusting the amount payable by the complainant towards the last Installment.
5. 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.

**D. Reply by the respondent.**

6. The respondent contested the complaint on the following grounds.

The submissions made therein, in brief are as under:-

- I. That the complainants have not come before this authority with clean hands. The complainants have suppressed vital facts and, on this ground, alone, the complaint is liable to be dismissed.
- II. That the complainants are not a genuine flat purchaser or consumer and has purchased the said flat for commercial and investment purposes for which the jurisdiction of this authority cannot be invoked, since the object of the Act is to protect the interests of the consumers and not the investors. The same is also brought out from the fact that since the complainants have not been successful in selling a flat at a premium, he filed this frivolous complaint just to avoid making the remaining payments in terms of the agreed payment plan.
- III. That the complainants have been themselves guilty of not adhering to the payment schedule and have made most of the

payment after passing of the respective due dates. The same is not permissible in terms of the Act, and in view of the same, the complaint merits ought right dismissal.

- IV. That the project is a registered project, having registration number 118 of 2017, dated 28.08.2017. The permission from authorities for completion of project was till 31.07.2021. Keeping in view the COVID-19 crises the respondent has taken steps for seeking extension of the said permission from authorities.
- V. That the complaint is infructuous as the respondent has applied for occupancy certificate for tower E & F of the project with the competent authority and is awaiting occupancy certificate for the said towers. It is pertinent to point out that towers A to D of the project are already complete and the occupation certificate has also been received on 15.01.2019.
- VI. There is no merit in the complaint or the contention that there has been any delay on the part of the respondent since it is admittedly the complainants who have defaulted in payment of their instalments as per the agreed payment plan. That the respondent had applied to DTCP for grant of occupancy certificate for towers E & F of the project along with all the requisite documents.
- VII. That the complaint is not maintainable since possession had to be handed over to the complainants in terms of **Clauses 3.1 and 3.2** of the builder buyer agreement which clearly provide that subject



to the complainants complying with all the terms of the builder buyer agreement and making timely payments of the instalments as and when they fall due the respondent proposes to offer the possession of the apartment within a period of 51 months of the date of execution of the apartment buyers agreement or the date of obtaining all licences or approvals for commencement of construction, whichever is later, subject to force majeure. All the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014.

- VIII. That the complaint is not maintainable since the complainants are not only in breach of the builder buyer's agreement have also violated provisions of the Act, the rules, 2017.
- IX. That this authority ought to take note of the fact that it is the respondent who has suffered due to the breaches committed by the complainants since the respondent has continued with the construction of the unit despite the complainants have delayed in paying their consideration. Due to the failure of the complainants in paying their complete consideration the respondent has suffered immense monetary hardship. It is most humbly prayed that this authority ensures that the complainants comply with the terms of the builder buyer agreement and the provisions of the Act, 2016 and the rules, 2017.

7. 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.

**E. Jurisdiction of the authority**

8. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I. Objection regarding entitlement of DPC on ground of complainants being investors.**

9. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the



Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of **Rs.83,48,516/-** to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

10. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined

or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

## **G. Findings on the relief sought by the complainant**

### **G.I. Delay Possession Charges**

11. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

12. Clause 3.1 of the apartment buyer developer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

### **3 Possession**

*3.1. Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc as prescribed the Seller, whether under this Agreement or otherwise, from time to time, the 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(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. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90(ninety) business days, after the expiry of grace period for offer to hand over the possession of the Apartment to the Purchaser...*

*...The obligation of the Seller to offer possession to the Purchaser under this Clause shall be subject to Force Majeure."*

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to force majeure and all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

14. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 17.10.2016 and further provided in agreement that promoter shall be entitled to a grace period of 6 months subject to force majeure. The respondent has not mentioned any grounds/circumstances on the happening of which he would become entitled for the said extension of period. As per buyer agreement the construction of the project is to be completed by 17.10.2016 which is not completed till date. It may be stated that asking for the extension of time in completing the construction is not a statutory right nor has it been provided in the rules. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's

agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent



/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

21. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), 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 17.04.2013, the possession of the subject apartment was to be delivered within a period of 42 months from the date of execution of this agreement i.e. (17.04.2013) or date of obtaining all licences or approvals for commencement of construction whichever is later. Therefore, the due date of handing over possession is calculated by the date of execution of this agreement dated 17.04.2013 which comes out to be 17.10.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 17.10.2016. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the apartment buyer agreement dated 17.04.2013 executed between the parties.

Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

22. 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 complainants are entitled to delay possession charges at rate of the prescribed interest @ 9.30% p.a. w.e.f. 17.10.2016 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.

#### **H. Directions of the authority**

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 17.10.2016 till the handing over of possession of the allotted unit through a valid offer of possession after obtaining the occupation certificate from the competent authority.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 17.10.2016 till the date of order by the authority shall be paid by the promoter to

the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules;

- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainants which is not the part of the flat buyer agreement.

24. Complaint stands disposed of.

25. File be consigned to registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Vijay Kumar Goyal)**

Member

Dated: 20.10.2021

Judgement uploaded on 29.10.2021