

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

Complaint no. : 2895 of 2019
First date of hearing : 27.11.2019
Date of decision : 21.10.2020

Shalini Goel
W/o: - Sanjay Goel
R/o: - Flat No. B-203, Alaknanda
Apartments, GH-45, Sector-56, Gurugram

Complainant

Versus

- 1.M/s Sepset Properties Pvt. Ltd.
Through its authorized representative
Room No-205, Welcome Plaza,
S-551, School Block-II,
Shakarpur, New Delhi- 110092.
2.Harinder Nagar
3.Kunal Rishi
Both Director, M/s Sepset Properties Pvt. Ltd
11th floor, Paras Twin, Towers, Tower-B,
Golf Course Road, Sector 54, Gurugram

Respondents

CORAM:

Shri K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Sh. Shalini Goel
Shri Jasdeep Singh Dhillon

Complainant in person
Advocate for the respondents

ORDER

1. The present complaint dated 15.07.2019 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
	RERA registration valid up to	31.07.2021
7.	Occupation certificate received on	15.01.2019 (taken from the DTPC site)
8.	Allotment letter	10.01.2013 [Page 26 of complaint]



9.	Date of execution of apartment buyer agreement	30.04.2013 [Page 28 of complaint]
10.	Unit no.	03, 14 th floor, tower A [Page 33 of complaint]
11.	Unit measuring	1900 sq. ft. (super area)
12.	Payment plan	Construction linked payment plan [Page 63 of complaint]
13.	Total sale consideration of the subject unit as per statement of account dated 24.01.2019	Rs.1,18,52,769/- (including GST) [Page 71 of complainant]
14.	Total amount paid by the complainants as per statement of account dated 24.01.2019	Rs. 1,05,00,237/- (including GST) [page 71 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 42 of complaint]	06.09.2017 (the due date has been calculated from the receipt of environment clearance i.e. 06.09.2013)
16.	Date of offer of possession	24.01.2019 [Page 68 of complaint]
17.	Delay in handing over possession till offer of possession i.e. 24.01.2019	1 year 4 months and 18 days

3. As per clause 3.1 of the apartment buyer agreement dated 30.04.2013, 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 he has agreed to purchase a residential apartment in the above said project of the respondent company. The respondent company according, allotted the residential apartment bearing no. 03 at, 14th floor in Tower A of the tentative Super area of 1900 sq. ft. in "Paras Dewan" sector- 106, Gurugram. The apartment buyer agreement executed between the parties on 30.04.2013, the complainant was not given any chance to read out the terms and conditions contained therein or to get the same modified before execution.
5. The complainant submitted that the complainant has time passed and the complainant have been visiting the office of the respondent company with the hope to get her own residential apartment. In the year 2017, the stipulated date of possession i.e. 30.04.2017 also came, but the possession of the apartment was not handed over to the complainant on the due date.



Hence, this complaint inter alia for the following reliefs: -

- (i) Direct the respondent to handover the possession of the residential apartment in question with description of actual physical area of the apartment with clear bifurcation into actual carpet area and actual super area.
 - (ii) Direct the respondent to pay delay possession charges i.e. interest at prescribed rate as per provision of the Act on the entire amount paid by the complainant to the respondent i.e. Rs.1,19,50,622/- on account of delay in handing over the possession of the subject unit.
 - (iii) Direct the respondent to maintenance charges to be charged on after handing over the actual physical possession of the unit.
 - (iv) Direct the respondent to refund an amount of Rs.2,03,620/- taken by the promoter on account of labour cess, water and sewerage charges, external electrification charges.
 - (v) The present complainant be transferred to the Adjudicating Officer to pay total compensation and refund of an amount of Rs.13,50,000/-
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 respondent in his reply made the following submissions: -

- I. The respondent submitted that the present complaint is not maintainable and premature since the project is a RERA registered project, having registration number 118 of 2017, dated 28.08.2017, and in the terms of the registration certificate the due date of completion is 31.07.2021. which has not arisen in the present case, therefore the present complaint merits outright dismissal.
- II. The respondent submitted that the present complaint is infructuous and not maintainable since the construction of Tower- A has already been completed and the occupation Certificate has also been received on 15.01.2019.
- III. The respondent submitted that the complainant in the present complaint under reply has also admitted the fact that they have not paid the total consideration of Rs.1,08,26,500/-.
- IV. The respondent submitted that all the approvals for commencement of the construction work were received



towards the end of 2013 and the construction work began in January 2014;

V. that the present complaint is not maintainable since not only is the complainant in breach of the builder buyer agreement, but they are also in violation of section 19(6) RERA Act, 2016 which provides the rights and duties of the allottees and sub-clause (6) of Section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. As well as Haryana Real Estate (Regulation and Development) Rules, 2017.

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 parties 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 30.04.2013, 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. The possession of the subject unit has been offered to the complainants on 24.01.2019.
13. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer

agreement dated 30.04.2013 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 offer of possession i.e. 24.01.2019 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