

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

**Complaint no. : 1579 of 2018**  
**First date of hearing : 21.02.2019**  
**Date of decision : 25.04.2019**

Mrs. Subhra Sen  
R/o : 26/4, Lane W-10, Western Avenue,  
Sainik Farm, New Delhi

**Complainant**

Versus

M/s. Fantasy Buildwell Pvt. Ltd.  
Office address: 11<sup>th</sup> Floor, Paras Twin Towers  
(Tower-B), Sector-54, Golf Course Road,  
Gurugram-122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Ravinder Singh Advocate for the complainant  
Shri Jasdeep Singh Dhillion Advocate for the respondent

**ORDER**

1. A complaint dated 13.11.2018 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 complainant Mrs. Subhra Sen against the promoter M/s. Fantasy Buildwell Pvt. Ltd. on account of violation of clause 3.1 of the apartment buyer

agreement executed on 10.07.2013 in respect of apartment described below in the project 'Paras Quartier', for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, an apartment buyer agreement has been executed on 10.07.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Paras Quartier", Sector-2, Gurugram
2.	RERA Registered/ not registered.	<b>Registered</b>
3.	RERA Registration no.	<b>164 of 2017 dated 29.08.2017</b>
4.	Revised completion date	<b>28.08.2022</b>
5.	Nature of the project	Group housing Colony
6.	DTCP License no.	74 of 2012 dated 31.07.2012
7.	Apartment/unit no.	01, 24 <sup>th</sup> floor, tower 'Iconic'
8.	Apartment measuring	6000 sq. ft.
9.	Date of allotment letter	27.01.2013
10.	Date of execution of apartment buyer's agreement-	10.07.2013

11.	Payment plan	Construction Linked Payment Plan
12.	Total cost of the said apartment as alleged by the complainant	Rs. 6,18,20,000 /-
13.	Total amount paid by the complainant till date as alleged by the complainant	Rs. 4,38,00,819/-
14.	Date of delivery of possession as per clause 3.1 of apartment buyer's agreement (42 months + 6 months grace period from the date of execution of agreement or from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later)  <b>(Due date of possession is calculated from the date of execution as all the required sanctions and approvals necessary for commencement of construction have not been supplied on record.)</b>	<b>10.07.2017</b>
15.	Delay in handing over possession till 25.04.2019	1 year 9 months 15 days
16.	Penalty as per clause 3.3 of the said apartment buyer agreement	Rs.5/- per sq. ft. per month of the super area for any delay in offering possession.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by

the complainant and the respondent. An apartment buyer's agreement dated 10.07.2013 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 10.07.2017. Neither the respondent has delivered the possession of the said unit till date to the complainant nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of delay as per clause 3.3 of apartment buyer's agreement dated 10.07.2013. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent appeared on 21.02.2019 and 25.04.2019. The reply has filed by the respondent and the same which has been perused. Written arguments have been filed on behalf of the complainant re-asserting the facts stated in the complaint and refuting the assertion made by the respondent in his reply.s

**FACTS OF THE COMPLAINT:**

6. Briefly stating the facts of the complaint, the respondent allotted the apartment and issued an allotment letter for the residential apartment no. PL-3/24 01 on 24<sup>th</sup> floor, admeasuring super area 6000 sq. ft.

7. The complainant submitted that the apartment buyer agreement was executed at Gurugram on 10.07.2013. The respondent has obtained a license bearing no. 74 of 2012 dated 31 July 2012 for the development of a residential group housing named “Paras Quartier” and has obtained building plan approval and other approvals from DTCP.
8. The complainant submitted that as per the terms of the agreement, the due date was 10.10.2017 and hence the respondent failed to give possession on time and violated the terms of the agreement as mentioned above. The promoter is making false assurances from the due date of possession and has failed to deliver the possession yet.
9. The complainant submitted that the respondent has violated the terms section 4(D) of the Act vide which the promoter was bound to maintain separate account and keep the 70% money realized from the complainant to cover the cost of the construction.
10. It is submitted that the complainant wishes to withdraw from the project due to the bad behaviour, illegal act and conduct of the complainant.

**ISSUES TO BE DECIDED:**

11. The relevant issues as culled out from the complaint are:
- i. Whether the respondent has failed to deliver the possession of the flat thereby violating the terms and conditions of the agreement?
  - ii. Whether the respondent is entitled to get the refund of the amount deposited by the complainant to the respondent?

**RELIEFS SOUGHT**

12. The complainant is seeking the following relief:
- i. Direct the respondent to refund the amount of Rs. 4,38,00,819/- along with interest in terms of section 15 of RERA Rules 2017.

**RESPONDENT'S REPLY**

13. The respondent submitted that the complainant has not come before the hon'ble authority with clean hands and has suppressed vital facts and on this ground alone the complaint is liable to be dismissed.

14. The respondent submitted that the complainant herein is not genuine flat purchaser or consumer and has purchased the said flat for commercial and investment purposes.
15. The respondent submitted that the complainant is defaulters and has regularly defaulted in payment of the instalments and has not paid any amount at all in lie of the last three due and payable instalments in the construction linked payment schedule which was opted for and agreed to by the complainant. However, despite repeated notices issued to the complainants, the complainants have failed to make payment and the current outstanding amount payable is Rs. 2,48,03,675/-.
16. It is submitted that the construction of the unit is in the final finishing stages wherein after completion of the structure, brick work and internal plaster, the tiles and window/door glass frames are under installation and respondent would be willing to handover possession subject to payment of outstanding dues. The respondent contended that the complainants herein agreed to comply with the terms and conditions of the allotment letter, clause 16 of which stipulates

that the respondent will be entitled to reasonable extension of time if there is any default on the part of the complainant.

17. The respondent further submitted that the present project is a RERA registered project having registration no. 164 of 2017 dated 29.08.2017 and the schedule for completion as per RERA approval is 28.02.2022 and thus there is no delay at all on the part of the respondent and therefore the present complaint being premature and infructuous merits outright dismissal.
18. The respondent submitted that the present complaint is not maintainable since not only are the complainant in breach of the builder buyers agreement but they are also in violation of the Real Estate (Regulation and Development) Act, 2017 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
19. The respondent submitted that this hon'ble commission ought to take note of the fact that it is the respondent herein who has suffered due to the breaches committed by the complainant since the respondent has continued the construction of the



apartment despite the complainant failing to make the payments as per the agreement.

20. The respondent submitted that the complainant has agreed to comply with clause 12.4 of the apartment buyer agreement which clearly stipulates that if the respondent has commenced construction then the complainant will not have any right to cancel/withdraw the agreement for any reason whatsoever. The project is in its advanced stage and even the flooring work has been completed.

21. The respondent submitted that in the present complaint under reply the complainant has not pointed out a single provision which has ben violated by the respondent under the RERA Act and rules.

22. The respondent submitted that the present complaint is not maintainable since the complainant has 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 the interest/compensation for which a complaint under form CRM in terms of rule 29 of the rules should have ben filed.

Thus, the present complaint being a joint complaint is not maintainable being in contravention of the Haryana Real Estate (Regulation and Development) Rules, 2017 and merits outright dismissal.

23. The respondent submitted that the present complaint is not maintainable since admittedly it has not been signed and affirmed by both the co-allottees of the unit.

#### **DETERMINATION OF ISSUES**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

24. In regard to the **first issue** raised by the complainant, as per clause 3.1 of the agreement dated 10.07.2013, the due date of possession comes out to be 10.07.2017.the respondent has failed in handing over possession on or before the said due date. However, the project is RERA registered wherein the respondent has undertaken to complete the construction by 28.08.2022.
25. As the promoter has violated the agreement by not giving the possession on the due date i.e 10.07.2017 as per the agreement, thus, the authority is of the view that the promoter

has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession.

26. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
27. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

**FINDINGS OF THE AUTHORITY:**

28. The respondent admitted the fact that the project Paras Quartier is situated in Sector-2, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real

estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

29. **Jurisdiction of the authority-** 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 complainant at a later stage.

30. The authority is of the view that the complainant is entitled for delayed possession charges at prescribed rate of interest w.e.f 10.07.2017.

**DIRECTIONS OF THE AUTHORITY:**

31. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) The respondent is directed to pay the complainant delayed possession charges at the prescribed rate of interest i.e 10.70% per annum w.e.f 10.07.2017 as per the provisions of section 18 (1) of the Real Estate

(Regulation & Development) Act, 2016 till the offer of possession.

- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the promoter shall not charge anything from the complainant which is not part of the agreement.
- (iii) The interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e 10.70% by the promoter which is same as being granted to the complainant in case of delayed possession.
- (iv) The arrears of interest so accrued so far shall be paid to the complainant within 90 days from the date of this order

32. The complaint is disposed off accordingly.

33. The order is pronounced

34. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 25.04.2019

Judgement Uploaded on 28.05.2019



HARERA  
GURUGRAM