



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

PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 15.01.2019
Complaint No.	694/2018 Case titled as Mr. Amit Minda & Anr. V/S Fantasy Buildwell Pvt Ltd.
Complainant	Mr. Amit Minda & Anr.
Represented through	Ms. Neeta Sinha Advocate for the complainant.
Respondent	Fantasy Buildwell Pvt Ltd.
Respondent Represented through	Shri Jasdeep Dhillon, Advocate for the respondent.
Last date of hearing	18.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

The complainant was allotted unit No.PL-2/1102-11th floor admeasuring 5000 sq. feet in Paras Quartier, Sector-2 village Gwal Pahari Gurugram vide allotment letter dated 3.5.2013. Construction work on Tower PL-2 has not even been started by the respondent and counsel for respondent says that it might have been scrapped. The complainant opted for construction linked plan and made a payment of Rs.1,38,73,287/-. No BBA

has been signed. Keeping in view that the said tower has not taken up for construction so far, the complainant intends to get the amount refunded which has been paid by him to the respondent. Counsel for the respondent during the last proceedings offered them an alternative unit which has now been declined by the complainant to accept. Counsel for the respondent brought before the authority clause 14 of the terms and conditions wherein following has been mentioned:-

“If for any reason the Company is not in a position to allot the unit applied for by the Applicant (s), the Company shall be responsible only to consider allotment of an alternative property or refund of the amount deposited without any interest and the company's decision shall be final and binding upon the Applicant. However, the company shall not be liable for any other damages/compensation on this account”.

As both options are available with the company either to consider an alternate allotment of property or refund the amount deposited by the complainant. It is upto the complainant if he wish to accept the alternate property and in this case this alternative property has been declined. Accordingly, now the other course of action is left to refund the amount deposited by the complainant. Tower where the complainant has been allotted a unit has been scrapped. The promoter has illegally, irregularly and mischievously kept this amount with him and at the last stage now he is offering an alternate unit. The clause as mentioned has also been mischievously been worded that refund of amount deposited without any interest. This is abuse of dominate position by the builder and is totally untenable and unpragmatic as he has no right to keep the amount without

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

any interest. The counsel for the respondent pointed out the conduct of the complainant regarding not supplying necessary documents with the complaint such as BBA (which was sent to them but not returned after signing). Keeping in view the totality of circumstances, the authority is of the opinion that respondent has no right to keep an amount of Rs.1,38,73,287/- with him as he is unable to give the unit allotted to the complainant. Due to tower not to be constructed by the respondent and so far commencement of construction has not taken place, respondent is directed to return the amount received by him in respect of the non-existing unit with prescribed rate of interest within 90 days from issuance of this order. The interest payable by the promoter to the allottee shall be from the date the promoter received the amount or part thereof and interest thereon be refunded.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

—
Dr. K.K. Khandelwal
(Chairman)
15.01.2019

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

Complaint no. : 694 of 2018
First date of hearing: 18.12.2018
Date of decision : 15.01.2018

Ms. Amit Minda and Kanta Devi Minda
H.NO. N-2/31, DLF Phase-II,
Gurugram, Haryanan

Complainants

Versus

M/s Fantasy Buildwell Pvt. Ltd.
Regd. Office: B-39, Friends Colony West,
New Delhi- 110065

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Smt. Neeta Sinha
Shri. Jay Savla

Advocate for complainant
Advocate for the respondent

ORDER

1. A complaint dated 08.08.2018 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 complainants Ms. Amit Minda and Kanta Devi Minda against the promoter M/s



Fantasy Buildwell Pvt. Ltd., on account of violation of the clause 3.1 of flat buyer agreement in respect of apartment described as below for not handing over possession even after lapse of considerable period which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

DTCP license no. 74 of 2012 dated 31.07.2012

Nature of real estate project: Residential group housing colony

1.	Name and location of the Project	"Paras Quartier" Sector-2, village Gwal Pahari, Gurugram.
2.	Flat/Apartment/Unit No.	PL-2/1102, 11 th floor
3.	Flat measuring	5000 sq. ft.
4.	RERA registration	Not registered
5.	Date of start of construction	Cannot be ascertained
6.	Date of execution of FBA	Not executed
7.	Basic sale price	Rs. 4,38,00,000/-
8.	Total consideration amount as per account statement dated	Rs. 4,72,00,000/-/-
9.	Total amount paid by the complainant till date	Rs. 1,38,73,287/-
10.	Allotment letter dated	03.05.2013
11.	Occupation certificate dated	04.06.2018
12.	Payment plan	Construction linked plan



13.	Date of delivery of possession as per clause 3.1 of FBA (42 Months + 6 months grace period from the date of execution of the agreement or date of obtaining all licences or approvals for commencement of Construction)	Cannot be ascertained
14.	Delay of number of years / months/ days till date	Cannot be ascertained
15.	Penalty clause as per flat buyer agreement	Sub clause 3 of clause 3 of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat.
16.	Cause of delay in delivery of possession	No valid reason explained by the promoter for the delay.

3. The details provided above have been checked as per record available in the case file. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed on behalf of the respondent. the case came up for hearing on 18.12.2018.

Facts of the complaint

4. The complainants submitted that they was Induced by advertisements and representations made by M/s Fantasy Buildwell Pvt. Ltd. in respect to their project "Paras Quartier" situated at Sector-2, Village Gwal Pahari, Gurgaon-Faridabad



road, district Gurgaon (now Gurugram), Haryana, the complainants vide application, applied for allotment of one residential apartment. M/s Fantasy Buildwell Pvt. Ltd. acting through its directors and officers, allotted a residential apartment bearing No. PL-02/1102 on 11th floor, admeasuring super area of 5,000 sq. ft. (464.511 sq. mtrs.) vide allotment letter dated 03.05.2013 at the basic sale price of Rs. 8,918/- per sq. ft. under the construction linked payment plan. However, the complainants were surprised to received another letter on the same day i.e. 03.05.2013 where the basic sale price was shown as Rs. 9100/- per sq. ft.

5. The complainants submitted that in compliance with the terms of the allotment letter, the complainants paid a sum of Rs. 40,00,000/- vide cheque no. 644036 dated 15.04.2013 drawn on ICICI bank Ltd. to M/s Fantasy Buildwell Pvt. Ltd. as a booking amount. M/s Fantasy Buildwell Pvt. Ltd. issued receipt dated 03.05.2013 acknowledging the said payment.
6. The complainants submitted that M/s Fantasy Buildwell Pvt. Ltd. failed to start any construction activity of the tower in which the complainants had booked the aforesaid unit/flat.



Whenever the complainants inquired from you addressees, the representative of M/s Fantasy Buildwell Pvt. Ltd. informed the complainants that the construction of the tower will be completed on time as the construction activities shall be commenced soon. The complainants, on many occasions, enquired from the representatives of the M/s Fantasy Buildwell Pvt. Ltd. to provide the copy of licence issued by competent authority for constructing the said tower in the said project. However, the same was not provided on one pretext or other.

7. The complainants submitted that after receiving no information regarding progress of project, payment of amount etc. No phone calls are being received by the staff or the management of the firm the complainants sent a legal notice date 15/05/2018 which was also not replied.

8. The complainants submitted that the respondent have committed breach of trust and have cheated the complainants. The complainants would not have made the payments of the said amount but for the reorientations and promises made by respondent no.1 and their directors and officers. The



complainants visited on several occasions to find out the activities at the site and to meet the concerned officials in respect thereof and incurred huge expenses. The complainants suffered mental and physical agonies for which the complainants are liable to compensate and the complainants assess the said compensation to the tune of Rs. 1,00,00,000/-.

9. The complainants submitted that the respondent have misappropriated the said amount paid by the complainants and therefore, are liable to be prosecuted under the provisions of law. That the respondent failed to start any project constructions activities till date. That the apartment buyer agreement has not been signed till date by the respondent.

Issue raised by the complainant

10. **The main issue raised by the complainant is why the possession of the unit having super area approx. 5000 sq. ft. in the said project has not been delivered to the complainant till date?**



Relief Sought

The complainants are asking for the following reliefs:-

- i. The complainants made the total payment of Rs. 1,38,73,287/- to M/s Fantasy Buildwell Pvt. Ltd., which is summarized as under:-

	Cheque Nos.	Dated	Amount (in Rs.)	Drawn on	Receipt No./dated
1	644036	15.04.2013	40,00,000/-	ICICI Bank Ltd.	03.05.2013
2	001307	15.07.2013	54,37,610/-	ICICI Bank, Karnal Road, New Delhi	0289/16.07.2013
3	056963	21.11.2013	44,35,677/-	ICICI Bank, New Delhi-110034	0348/20.11.2013
		TOTAL	1,38,73,287/-		

- ii. That M/s Fantasy Buildwell Pvt. Ltd. are liable to pay the following amount:- total payment made by our client Rs.1,38,73,287/- and Interest @ 24% w.e.f. last payment i.e. 21.11.2013 till date

- iii. Alternatively:-



- a. Direct the respondent to refund the amount of Rs. . 1,38,73,287/- to the complainants which was paid by the complainants to M/s Fantasy Buildwell Pvt. Ltd. for residential apartment bearing No. PL-02/1102 on 11th Floor, admeasuring Super area of 5,000 sq. ft vide allotment letter dated 03.05.2013;
- b. Direct to the respondent to pay compensation of Rs. 1,00,00,000/- to the complainants for mental agony, harassment and losses suffered, as per Section 18 read with Section 19 of the RERA, 2016;

Respondent's reply

11. The respondent submitted that the complainants herein are not genuine flat purchasers or consumers and have purchased the said flat foe commercial and investment purposes.
12. The respondent submitted that complainants have not been successful in selling the flat at a premium he has stopped makings as per the agreed schedule and has now filed this



frivolous complaint just to avoid making the rest of the payments.

13. The respondent submitted that complainants have deliberately not placed on record the terms and conditions of the provisional allotment. The complainants have also not disclosed the fact that the apartment buyer agreement was sent to them on 26.04.2014 but despite the same they have not signed the same.
14. The respondent submitted that the present complaint is not maintainable since the complainants had opted for construction linked plan and the possession had to be handed over to the complainants within 51 months of start of construction or execution of the builder buyer agreement despite repeated reminders from the respondent.
15. The respondent submitted that present complaint is not maintainable since not only the complainants are in breach of the terms of allotment but they are also in violation of Section 19 of the RERA Act.



16. The respondent submitted that in present complaint the complainants have not been able to point out a single provision of either the RERA Act or the HARERA rules which has been violated by the respondent.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the findings of the authority is as under :

17. With respect to the **sole issue** raised by the complainants, that possession of the unit having super area approx. 5000 sq. ft. in the said project has not been delivered to the complainants till date. The complainants failed to provide any date of start of construction and the builder buyer's agreement has not been executed. The present issue has been dealt in detail by the authority in succeeding para no. 22-24.



Findings of the Authority

18. **Jurisdiction of the authority-**

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

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.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

19. The project is not registered, as such notice under section 59 of the RERA Act,2016 for violation of section 3(1) if the Act be issued to the respondent. Registration branch is directed to do the needful.
20. The complainant was allotted unit no. PL-2/1102-11th floor admeasuring 5000 sq. ft. in Para Quartier, Sector-2 village



Gwal Pahari Gurugram vide allotment letter dated 03.05.2013. construction work on tower PL-2 has not even been started by the respondent and counsel for respondent says that it might have been scrapped. The complainant opted for construction linked plan and made a payment of Rs.1,38,73,287/-. No BBA has been signed. Keeping in view that the said tower has not taken up for construction so far, the complainant intends to get the amount refunded which has been paid by him to the respondent. Counsel for the respondent during the last proceedings offered them an alternative unit which has now been declined by the complainant to accept. Counsel for the respondent brought before the authority clause 14 of the terms and conditions wherein following has been mentioned:-

"If for any reason the company is not in position to allot the unit applied for by the applicant(s), the company shall be responsible only to consider allotment of an alternative property or refund of the amount deposited without any interest and the company's decision shall be final and binding upon the applicant. However, the company shall not be liable for any other damages/ compensation on this account"



21. As both option are available with the company either to consider an alternative allotment of property of refund the

amount deposited by the complainant. It is upon the complainant if he wish to accept the alternate property and in this case this alternative property has been declined. Accordingly, now the other course of action is left to refund the amount deposited by the complainant. Tower where the complainant has been allotted a unit has been scrapped. The promoter has illegally, irregularly and mischievously kept this amount with him and at the last stage now he is offering an alternative unit. The clause as mentioned has also been mischievously been worded that refund of amount deposited without any interest. This is abuse of dominate position by the builder and is totally untenable and unpragmatic as he has no right to keep the amount without any interest. The counsel for the respondent pointed out the conduct of the complainant regarding not supplying necessary documents with the complaint such as BBA (which was sent to them but not returned after signing).



22. Keeping in view the totality of circumstances, the authority is of the opinion that respondent has no right to keep an amount

of Rs. 1,38,73,284/- with him as he is unable to give the unit allotted to the complainant.

Decision and directions of the authority

23. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby direct the respondent to return the amount received by him in respect of the non-existing unit with prescribed rate of interest within 90 days from issuance of this order as the tower in question is not constructed by the respondent and so far commencement of construction has not taken place. The interest payable by the promoter to the allottee shall be from the date the promoter received the amount or part thereof and interest thereon be refunded.



24. Since, the respondent has failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

25. The order is pronounced.
26. Case file be consigned to the registry. The order be endorsed to the registration branch for further proceedings U/S 59.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.01.2018

Judgement Uploaded on 21.01.2019

