

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 23.01.2019
Complaint No.	936/2018 Case titled as M/s Fabtex Merchants Pvt. Ltd. Through Director Sanjeev Bagaria Vs DLF Limited
Complainant	M/s Fabtex Merchants Pvt. Ltd. Through Director Sanjeev Bagaria
Represented through	Shri Suneet Bagaria – director of the complainant-company with Shri Ajay Verma, Advocate.
Respondent	M/s DLF Limited
Respondent Represented through	Shri Chandra Shekhar DGM Legal on behalf of the respondent-company with Shri Ishaan Dang Advocate for the respondent.
Last date of hearing	21.12.2018
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.

Arguments heard.

Occupation certificate has already been received by the respondent and a copy of the same has been placed on the record. Project is complete and the possession of the unit has already been offered to the complainant.

It has been contended by counsel for the complainant that there are certain changes in the layout plan, as such, he wants refund, as per the provisions of section 1.6 (b) of the BBA which reads as under:-

“.....in the event the majority of the allottee(s) consent to and/or do not object to, within a period of 30 days, to such addition (s) and/or alteration(s) and the Company decided to go ahead with such changes/direction, and in case any Allottee(s) objects to such change in writing within stipulated period, the Allottee(s) understands that he/she shall be given the right to exit out of the scheme and the Company shall cancel the allotment, refund the entire amount paid by the Allottee, without any forfeiture, alongwith payment of simple interest @ 10% p.a . The Company shall accede to the request of the Allottee(s) within 90 (ninety) days of the receipt of such notice/objection and refund of such amounts.”

The argument raised by the counsel for the complainant has been well taken. In reply to this contention, counsel for the respondent has stated that the change in layout plan (i) does not affect adversely in any manner to complainant (ii) better amenities, club facility in a larger manner has been extended to the complainant and as such, there is no cause for any refund arising out of the contention raised by the counsel for the complainant.

In our considered view, the plea taken by the counsel for the complainant is not tenable as it is not adversely affecting the interest of buyer in any manner, so there is no need for refund.

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

Samir Kumar  
(Member)  
23.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint No. : 936 of 2018**  
**First date of hearing: 21.12.2018**  
**Date of Decision : 23.01.2019**

M/s. Fabtex Merchants Pvt. Ltd.  
(Through its Director Sh. Sanjeev Bagaria)  
Address:- 331/332, Kucha Ghasi Ram,  
Fathepuri, Chandni Chowk, Delhi- 110006.

**Complainant**

Versus

M/s DLF Ltd.  
Address: - 3<sup>rd</sup> floor, Shopping Mall, Arjun Marg,  
DLF City Phase- I, Gurugram – 122002  
Also at DLF Centre, Sansad Marg,  
New Delhi – 110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Ajay Verma  
Shri Suneet Bagaria

Advocate for the complainant  
Director of the complainant  
company

Shri Ishaan Dang  
Shri Chandra Shekhar

Advocate for the respondent  
DGM (Legal) of the respondent  
company.

**ORDER**

1. A complaint dated 13.09.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 by the complainant M/s. Fabtex Merchants Private Limited through its Directors Sh. Sanjeev Bagaria against the promoter M/s DLF Ltd., on account of violation of clause 1.6(b) of the apartment buyer's agreement executed on 17.05.2015 for unit no.CM 411 B, on 11<sup>th</sup> floor, building no. 4B, admeasuring 7361 sq. ft. super area in the project "the camellia", located at DLF golf course, DLF Golf Links, DLF 5, sector 42, Gurugram for not accepting the withdrawal of the complainant and refunding the paid amount of the complainant which is obligation of the promoter under section 11 (4) (a) of the Act *ibid.* सत्यमेव जयते

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

1.	Name and location of the Project	"The Camellia", DLF Golf Links, DLF 5, sector 42, Gurugram.
2.	Total area of the project	542.67 acres
3.	Nature of real estate project	Group housing colony
4.	DTCP license no.	Memo no. ZP-914/AD/(RA)/2015/3871 dated 11.03.2015
5.	Date of booking	20.06.2013
6.	Allotted apartment/unit no.	411 B (shifted <b>from</b> apartment no. 711)
7.	Allotted unit admeasuring area	7361 sq. ft. super area
8.	RERA registered / unregistered.	<b>Unregistered</b>
9.	Date of execution of apartment buyer's agreement	29.04.2017 ( <b>Annx P-7</b> )
10.	Total consideration	Rs. 20,64,27,500/-



11.	Payment Plan	Construction linked payment plan
12.	Total amount paid by the complainant till date	Rs. 19,87,46,286/- ( <b>Annx P-13</b> )
13.	Respondent's letter inviting objections/suggestion for revision in building plans	12.06.2018 ( <b>Annx P-8</b> )
14.	Complainant's letter seeking withdrawal of allotted apartment	10.07.2018 ( <b>Annx P-9</b> )
15.	Due date of possession	<b>20.06.2018</b> <b>Clause 10.1:-</b> 60 months' from the date of application
16.	Delay in delivery of possession till date	7 months approx.
17.	Date of offer of possession	Could not be ascertained from the records.

3. 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 29.04.2017 has been placed on record, according to clause 1.6 of the said agreement the complainant is entitled for the refund of paid amount with interest @ 10% p.a. on option of exit out. The respondent has failed to refund the paid amount till date to the complainant which is in violation of clause 11(4)(a) of the Act *ibid*.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 23.01.2019. The case came up for



hearing on 21.12.2018 and 23.01.2019. The reply has been filed by the respondent on 22.10.2018 which has been perused.

**Facts of the complaint:-**

5. Briefly put facts relevant for the disposal of the present complaint are that on 10.06.2013, one Mr. Sanjeev and Mr. Suneet Bagaria (original buyers) booked an apartment admeasuring 7196 sq. ft. with four car parking space in the respondent's project namely 'the camellias' located at DLF golf course, sector 42, Gurugram. Pursuant to aforesaid booking of Mr. Sanjeev Bagaria and Mr. Suneet Bagaria, respondent vide allotment letter dated 20.06.2013, allotted apartment no. 711 admeasuring 7196 sq. ft. in the project. An apartment buyer's agreement dated 17.05.2015 for the allotted apartment no. 711 was executed by the respondent in favour of Mr. Sanjeev and Mr. Suneet Bagaria.

6. The complainant submitted that the apartment no. 711 was renumbered and respondent vide letter dated 03.04.2014 changed the apartment no. from 711 to 411 B. It was further submitted by the complainant that in the year 2017, they got the booking name changed from their individual name Mr. Sanjeev



Bagaria and Mr. Suneet Bagaria to its company name M/s. Fabtex Merchants Pvt. Ltd. through its Director Mr. Sanjeev Bagaria, which was duly confirmed by the respondent vide confirmation letter dated 17.03.2017.

7. The complainant submitted that the fresh apartment buyer's agreement dated 29.04.2017 was executed between the complainant and respondent. It was stated by the complainant that on 12.06.2018, respondent vide letter had invited objections/suggestions for a revision in the site plan and building plans of the project. In response to the respondent's letter dated 12.06.2018, the complainant vide letter dated 10.07.2018 sought withdrawal of booking and refund of the paid amount on the plea that the changes in the layout were not in line with the requirement of the complainant. The complainant also vide letter dated 02.08.2018 and email dated 04.08.2018 requested the respondent for providing of occupation certificate, but the respondent did not pay heed to the complainant's request.

8. Hence, the complainant was constrained to file the instant complaint.





**9. Issues raised by the complainant:-**

- i. Whether the respondent is liable to refund Rs. 20,06,78,523.26/- (i.e. Rs. 19,87,46,286/- + TDS of Rs. 19,32,237.26/-) alongwith interest @ 10% p.a. as per clause 1.6(b) of the apartment buyer's agreement dated 17.05.2015.
- ii. Whether the complainant is entitled to receive interest as prescribed under rule 15 of the Haryana RERA Rules, 2017.

**10. Reliefs sought: -**

- i. Refund of Rs. 20,06,78,523.26/- alongwith interest as per clause 1.6(b) of the apartment buyer's agreement dated 17.05.2015.
- ii. Direct the respondent to pay interest as per rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.



**Respondent's Reply**

11. The respondent has raised preliminary objections that the present complaint is not maintainable in law or on the facts. The provisions of the real estate (Regulation and Development) Act,

2016 are not applicable to the project in question. The application for issuance of occupancy certificate in respect of the apartment in question was made on 27.12.2016, i.e. well before the notification of the Real Estate Regulation and Development rules 2017. Thus, the project in question is not an 'ongoing project' under rule 2(1)(o) of the Rules. The present complaint is liable to be dismissed on this ground alone.

12. The respondent contended that the present complaint is not maintainable before the authority. The complainant has filed the present complaint seeking refund of the residential apartment booked for purchase by the complainant.
13. The respondent submitted that the complaint is not maintainable before this authority. The complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, and not by this hon'ble authority.
14. The respondent contended that the complainants have no locus standi or cause of action to file the present complaint. The



complaint is estopped by its own acts, conduct, omission, etc. from filing the present complaint.

15. It was further contended by the respondent that PNB housing finance ltd. is a necessary party to the present complaint and the complaint is liable to be dismissed for the want of non-joinder of necessary parties.
16. The respondent had submitted that the initial allottees (Mr. Sanjeev Bagaria and Mr. Suneet Bagaria) obtained loan from Kotak Mahindra Bank. Lien of the said bank was duly marked in the records of the respondent on the basis of letter dated 19.02.2014 sent by initial allottees to the respondent alongwith terms and conditions of the sanction of loan. Separate request in this regard had also been made by Kotak Mahindra Bank to the respondent vide letter dated 19.02.2014. The lien of Kotak Mahindra Bank was duly marked by the respondent in its records and letter dated 21.02.2014.
17. The respondent further submitted that complete details pertaining to the transaction have not been furnished by the complainant. That, Mr. Sanjeev Bagaria, thereafter, addressed a letter dated 12.09.2016 to the respondent whereby it was



communicated that the loan in respect of the aforesaid apartment had been shifted from Kotak Mahindra bank to PNB housing finance ltd. Accordingly, a request had been made by Mr. Sanjeev Bagaria to remove the lien of Kotak Mahindra Bank and mark the lien of PNB housing finance ltd. in place thereof.

18. Another letter dated 14.09.2016 had been sent by PNB housing finance ltd. whereby the respondent had been called upon to issue NOC/letter, creating charge of the said bank in respect of the apartment in question. In was stated by the respondent that in response to the letter, the respondent had issued letter dated 14.09.2016 to PNB Housing Finance Ltd. wherein it was stated that the respondent had no objection to the giving of loan by the aforesaid institution to the initial allottees (Mr. Sanjeev Bagaria and Mr. Suneet Bagaria). It was further stated in the aforesaid letter that in the event of cancellation of allotment of the apartment by the respondent for any reason, refund of all amounts received over and above the earnest money and other dues which were forfeitable would be given to directly PNB Housing Finance Ltd.



19. The respondent submitted that as per letter dated 03.08.2017 issued by them to PNB housing finance ltd., whereby the respondent had noted the lien of the aforesaid financial institution, in respect of the apartment in question. It was clearly stated that in the event of cancellation of the allotment of aforesaid apartment, the respondent would refund all amounts received over and above the earnest money and other dues which were forfeitable as per the terms of agreement directly to PNB housing finance ltd. and only thereafter the lien of the said financial institution would be released.
20. The respondent contended that the complainant was fully aware of all the above mentioned relevant facts but has chosen not to implead PNB housing finance ltd. as party to the present litigation although, in the records of the respondent the mortgage of the apartment continues to subsist in favour of PNB housing finance ltd.
21. The respondent contended that in the entire complaint, the complainant has deliberately failed to give any reference of the proposed changes. The respondent by making the proposed changes wanted to realign the boundary of the site resulting in



an increase in the area of the land by approximately 1.2 acra, which was bound to considerably enhance the quality of landscape as well as its functionality. The FAR of the club had been increased from approximately 6000 sq. mtrs. To over 10,000 sq. mtrs. All these changes were being made by the respondent at its own cost were bound to increase the value, utility and overall look and feel of the project/apartments located therein.

22. The respondent submitted that only one objection/ descent had been received to the proposed revision in building plans and the same had also been subsequently withdrawn. This fact had been transparently conveyed by the respondent to senior town planner, Gurugram vide letter dated 10.07.2018. It was further submitted by the respondent that since no other objection had been received by the respondent within stipulated period of 30 days, the revised building plans submitted by the respondent of community building of 'the camellias' project be approved.



23. The respondent issued public notice in newspaper dated 07.06.2018 for intimation to general public with regard to proposed revision of building plans for community building of

‘the camellia’ project. Subsequently, vide letter dated 01.08.2018 had been sent by the respondent to the complainant intimating that the period of 18 months available to the allottee for commencing/carrying out interior works in the apartment would commence from 31.10.2018. The complainant was called upon to do the needful at the earliest. Thus, it is evident that the respondent had expeditiously proceeded to undertake the implementation of the project.

24. The respondent further submitted that the complainant did not lodge any protest or send any letter/correspondence to the respondent within the stipulated period of 30 days commencing from 12.06.2018 voicing its objections to the proposed revision of building plans in respect of the community building. Thus, the complainant themselves at fault and the complaint is liable to be dismissed.



**Determination of issues: -**

After taking into consideration the submissions made by both the parties and perusal of records, detailed wise findings and determination of issues of the authority is as mentioned below -

- i. With respect to **first and second issue** raised by the complainant, it is evident that vide letter dated 12.06.2018 respondent has invited objections/suggestions from the complainant for a revision in the site plan and building plan of group housing namely 'the camellias' through which the enhancement or revision was done in the layout, however on account of change in specification of the plan which is not as per the choice of the complainant, the complainant has opted for the withdrawal of the allotment from the project vide letter dated 10.07.2018 in terms of clause 1.6 (b) para 2 of the apartment buyer's agreement dated 29.04.2017. Clause 1.6(b) para 2 of the agreement dated 29.04.2017 is reproduced below –

*“.....in the event the majority of the allottee(s) consent to and/or do not object to, within a period of 30 days, to such addition(s) and/or alteration(s), and the Company decided to go ahead with such changes/direction, and in case any Allottee(s) objects to such change in writing within stipulated period, the Allottee(s) understands that he/she shall be given the right to exit out of the scheme and the Company shall cancel the allotment, refund the entire amount paid by the Allottee, without any forfeiture, alongwith payment of simple interest @ 10% p.a. The Company shall accede to the request of the Allottee(s) within 90 (ninety) days of the receipt of such notice/objection and refund of such amounts.”*





- ii. Hence, the complainant was well within his rights to exercise for refund of the paid amount as per the terms of agreement as quoted above. However, during the course of arguments, counsel for the respondent has stated that occupation certificate has been received by the respondent and the copy of which has been placed on the record as **annexure R/27**. Project is complete and the possession of the unit has been offered to the complainant.

**Findings of the authority:-**

25. The authority has complete jurisdiction to decide the complaint in regard to 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.



26. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, 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.

27. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**34 (f) Function of Authority –**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*



**Decision and direction of the authority:-**

28. During the course of arguments, counsel for the complainant has contended that there are certain changes in the layout plan, as such, he wants refund as per clause 1.6(b) of the BBA. In reply to this contention, counsel for the respondent has stated that the changes in the layout plan does not adversely affect the basic amenities and club facility in any manner rather the facilities provided has been improved with such changes in the layout. In our considered view, the plea taken by the counsel for the complainant is not tenable as it does not affect the interest of the buyer in any manner, so order for the refund of paid amount would not serve the interest of justice.

29. 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 issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is liable to pay delayed possession charges @ 10.75% p.a. to the complainant on Rs.



19,87,46,286/- from due date of delivery of possession i.e. 20.06.2018 till the date of offer of possession within 90 days from the date of order.

- (ii) Since the project is not registered, therefore, the authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under section 59 of Act ibid.

30. The order is pronounced.

31. Case file be consigned to the registry. Copy of this order be consigned to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: - .....

Judgement Uploaded on 08.02.2019

