

PROCEEDINGS OF THE DAY		15
Day and Date	Friday and 17.02.2023	
Complaint No.	CR/5059/2021 Case titled as Satya N Poddar and Shakuntala Poddar Vs FANTASY BUILDWELL PVT. LTD.	
Complainant	Satya N Poddar and Shakuntala Poddar	
Represented through	Shri Sukhbir Yadav Advocate	
Respondent	FANTASY BUILDWELL PVT. LTD.	
Respondent Represented through	Shri Harshit Batra and Ms. Tanya Advocates	
Last date of hearing	21.10.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The present complaint was filed on 23.12.2021 with the adjudicating officer and the reply on behalf of respondent was received on 10.02.2023.

File has been received on transfer from Adjudicating Officer in view of the judgment dated 11.11.2021 passed by the Hon'ble Apex Court in the case bearing no. **SLP(Civil) No(s). 3711-3715 OF 2021) titled as M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors.,** and wherein it was held that as matters regarding refund and interest under section 18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the Adjudicating officer.

The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement quoted above, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP and it is observed that there is no



**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.हो. विभाग गुरु सिविल लाईंस गुरुग्राम हरियाणा

material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

Keeping in view the judgement of Hon'ble Supreme Court in case titled as M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra), the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019 has ruled those procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the facts mentioned in the complaint and the reply received from the respondent and submissions made by both the parties during the proceedings.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	Particulars	Details
1.	Name of the project	"Paras Quartier", Sector-2, at Village Gwal Pahari, District- Gurugram
2.	Project area	10.096875 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	74 of 2012 dated 31.07.2012 valid up to 30.07.2020
5.	Name of licensee	Maxicon Traders Pvt. Ltd. and 2 others
6.	Date of environment clearances	12.07.2013 [Page 69 of reply]
7.	RERA Registered/ not registered	Registered vide no. 164 of 2017 dated 29.08.2017

21/05/2021

8.	RERA registration valid up to	28.08.2022
9.	Unit no.	PL-1/03 02 (Page no. 16 of complaint)
10.	Allotment Letter	22.12.2012 (Page 56 of complaint)
11.	Unit area admeasuring	5350 sq. ft. (Page no. 56of complaint)
12.	Date of execution of apartment agreement buyer	20.02.2013 (Page no. 58 of the complaint)
13.	Possession clause	3. Possession <i>3.1 subject to clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the seller and any restrain/restriction from any courts/authority and subject to the purchaser 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 the provisions, formalities, documentations, etc. as prescribed by th seller, whether under this agreement or otherwise, from time to time the seller proposes to offer to hand over the possession of the apartment to the purchaser with in a period of 42 (Fourty-two) months within additional grace period of 6 (six) months from the date of execution of this agreement or date of obtaining all licenses or approvals for</i>



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 लाइंस गुरुग्राम हरियाणा

		<i>commencement of construction, whichever is later, subject to force majeure. The purchaser(s) agrees and understands 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. Any application for the occupation certificate in respect of the project shall be filed in the due course. The seller shall give notice of offer of possession in writing to the purchaser with regard to the handing over the possession, whereafter, within 30 (thirty) days, the purchaser shall clear its outstanding dues when complete documentary formalities and take physical possession of the apartment.</i> (Page 27 of the complaint).
14.	Due date of possession	cannot be ascertained as date of obtaining all licenses or approvals for commencement of construction, whichever is later is not mentioned
15.	Total sale consideration	Rs. 4,95,92,000/-
16.	Amount paid by the complainants	Rs. 4,87,58,273 /- (As alleged by the complainant)
17.	Occupation certificate	04.06.2018 [Page 171 of reply]
18.	Offer of possession	19.07.2018 (PAGE 99 of complaint)



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/5259/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पीडब्ल्यूडी विमान गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

The counsel for the complainant states that after booking of the apartment in 2012, a BBA was executed on 20.02.2013 and as per its possession clause, the unit is to be handed over within 42 months from the date of BBA or approvals or commencement of construction whichever is later. It is not specified as to what other approvals are required for commencement of construction since the building plans of the above project were already approved on 04.10.2012 and hence, the due date of possession is to be calculated from the date of BBA which comes out to be 20.08.2016 as no grace period can be allowed because the same has not been utilized by the respondent either for completing the formalities required for handing over of possession or obtaining of OC/CC.

The complainant at the time of booking assured of ultra luxury amenities and specifications being a high end apartment having a sale consideration of Rs.4,95,92,000/- against which an amount of Rs.4,87,58,273/- has already been paid. But without completing and finishing the apartment as per required specifications with wide gaps in the execution, the offer was made on 19.07.2018 but the letter of offer was sent through mail dated 27.07.2018 only. However, this offer of possession is not a valid as held by the Authority in case of Sandeep Basu Versus Emaar as the offer was accompanied with unreasonable demands and the complainant has exchanged a series of emails with the respondent for necessary rectifications but the same was not effected. Further the attention has been drawn towards clause 3.6 of BBA which provides that once physical possession is taken over by the allottee, the allottee shall have no claim of any kind against the seller in terms of area, specification quality etc. and hence, possession is not taken.

The counsel for the respondent states that the complainant allottee has paid an amount of Rs.4,86,83,773/- (SOA at page 53 of the reply) and further that six months grace period is allowed to the respondent being unconditional as already held by Hon'ble Tribunal in Appeal No.299 of 2022 and date of start of project has been taken as 30.06.2014 and thus, the due date comes to 30.06.2018 and OC has been obtained on 04.06.2018 and thereafter offer of possession was made on 19.07.2018.

The counsel for the complainant states that difference in total amount paid is due to non-inclusion of TDS amount in the amount paid while the counsel for the respondent states that the same is included in SOA. Further as per



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/5059/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाइंस, गुरुग्राम, हरियाणा

Annexure P8, the club was not ready at the time of offer of possession which otherwise is required to be functional before possession.

The counsel for the complainant requests for placing on record copies of orders passed by Hon'ble Apex Court wherein it has been held that all amenities are required to be in place before offer of possession. The counsel may file the same alongwith written submissions within 2 weeks after supplying a copy to the respondent who may also file written submissions in next one week with an advance copy to the complainant.

The counsel for the respondent also requests for filing the copies of judgments pertaining to offer of possession after obtaining OC.

Matter to come up before the full bench on 25.04.2023 for final arguments.

V.1 -
Vijay Kumar Goyal
Member
17.02.2023