

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 25.02.2021
% **Pronounced on : 09.04.2021**

+ **BAIL APPLN. 64/2021**

DHIRENDER GABA Petitioner

Through: **Mr. Yash Anand, Advocate.**

Versus

STATE (NCT OF DELHI) Respondent

Through: **Ms. Rajni Gupta, APP for the State.**

Mr. Adesh Jaikrishan, Advocate for the complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. By way of this order, I shall dispose of the present petition filed under Section 438 Cr.P.C. on behalf of the petitioner for grant of anticipatory bail in case FIR No. 578/2020 dated 21.08.2020 under Sections 420/406/34 IPC registered at Police Station R. K. Puram.

2. Briefly stated, the facts of the case are that a complaint from Mrs. Renu Sayal was received at police station R.K. Puram against (1) Mr. Shiva Narayan Gupta (Director), (2) Mr.

Dhirender Gaba, Director (present petitioner), (3) Mr. Naveen Gaba (Director), (4) Ms. Manorma (Director) and all other directors during 2014-2019 of Fairwealth Housing Private Ltd. UG3, Somdutt Chamber -2, Bhikaji Cama Place, New Delhi-110066, alleging therein that the alleged persons on or about January 2014 launched a project titled 'Fairwealth Breeze Homes' Bhiwadi in which they were offering residential apartment for sale. After reading the advertisement during the month of January 2014, complainant visited the office of alleged company at Bhikaji and during the meeting alleged persons assured the complainant that the project of the company has all necessary approvals. Alleged persons induced the complainant to invest in their project by showing various Agreement to Sell purportedly entered between land owners and directors of 'Fairwealth Breeze Homes'.

3. It is alleged that due to the trust developed, the complainant on 01-02-2014 booked a residential apartment space measuring 1,000 Sq ft. (Super area) in the 'Fairwealth Breeze Homes' project. Complainant filled up the application / provisional registration form and paid Rs 2 Lakhs upfront as booking amount for the proposed project and subsequently letter was issued by the alleged company in which residential apartment No 1005, Tower B-2, on 10 Floor, was allotted to the complainant.

4. It is further alleged that complainant paid all the installments on time, as was stipulated in the Price List & Payment Plan Form. Thus, so far, in total, complainant has paid a sum of Rs 14,68,808/- to the alleged persons / company. Complainant regularly approached the alleged persons and enquired about the delay of construction of super structure of the project as promised at the time of booking i.e. 24 month, but no appropriate reply was given by the alleged persons and whenever complainant requested alleged persons to execute allotment letter / Agreement of allotment / Builder Buyer Agreement, the alleged persons always sought time for the same. The alleged persons failed to complete the project within promised time and all the directors are now not traceable and have absconded. The alleged persons have cheated amount of Rs 14,68,808/- from the complainant.

5. Complainant also provided the copy of receipt of payment made to the alleged persons, application form for booking of residential apartment in Fairwealth Breeze Homes and copy of Builder Buyer Agreement.

6. During the course of enquiry, on scrutiny of Builder Buyer Agreement, in clause No 8. Possession of the Apartment, 8.1 Schedule for possession of the said Apartment, it was agreed by

the alleged company that the promoter assures to handover the possession of the Apartment along with ready and complete common areas with all specifications, amenities and facilities of the Project. In this regard, a case vide FIR No. 578/20 dated 21.08.2020 u/s 420/406/34 IPC was registered at PS R. K. Puram, New Delhi.

7. It is submitted by the Ld. counsel for the petitioner that the FIR has been registered after a delay of two years without any cognizable offence having been committed by the petitioner. It is submitted that the complainant had approached Gurgaon office of Fairwealth Housing Private Ltd. and agreed to invest in the said project and paid Rs. 2 Lakh in advance and thereafter made several payments on different intervals. It is further submitted that the petitioner has resigned from the directorship of the company on 28.09.2019. It is further submitted that as per the information received from Fairwealth Housing Pvt. Ltd., RERA has extended the project completion date and the flats could not be constructed due to pandemic situation. It is further submitted that the dispute is of civil nature and no custodial interrogation is required and all the documents are in the possession of the complainant and the local police. It is further submitted that no cause of action has taken place in Delhi jurisdiction and as per the Builder Buyer Agreement, entire transaction has taken place at Alwar, Rajasthan, therefore, the complaint ought to have been

registered at Rajasthan. It is further submitted by the Ld. counsel for the petitioner that 70% of the project is already complete and one year extension till 31.12.2021 has been granted for completing the project. It is further submitted that the petitioner has already joined the investigation and no useful purpose would be served by sending him into custody.

8. On the other hand, Ld. APP for the State alongwith counsel for the complainant has vehemently opposed the bail application. It is submitted by the Ld. APP that the allegations against the petitioner are grave and serious in nature. It is further submitted that during the course of investigation notice was served upon the petitioner who was interrogated and was directed to provide relevant information and documents but he was failed to produce the documents and even did not turn up to join the investigation. It is further submitted that when he failed to turn up search for the petitioner was made but he was found to be absconding, therefore, NBWs were obtained against him. It is further submitted by the Ld. APP that during the course of investigation replies were received from other directors of the company who showed their ignorance about the booking of the flat by the complainant. It is further submitted by the Ld. APP that even one of the director namely Shiv Narayan Gupta informed the IO that even he is the victim of fraud and cheating committed by the Promoter and Managing Director of M/s

Fairwealth Housing Private Ltd. i.e. the present petitioner who has siphoned off huge amount of investors. It is further submitted by the Ld. APP that the petitioner has diverted the funds in some other projects and is not completing the project in question. It is further submitted that the petitioner has cheated the investors to the tune of Rs. 200 Crores and thereafter he has resigned and then absconded.

9. The counsel for the petitioner has argued that the Court at Delhi has no jurisdiction to try the case so, no FIR could have been registered as no part of cause of action arose at Delhi jurisdiction. Ld. APP while denying his contention has pointed out towards the Builder Buyer Agreement and submitted that the agreement took place at Delhi and the registered address of the company as mentioned in the Builder Buyer Agreement is Bikaji Cama Place, New Delhi-110066, therefore, in these circumstances it cannot be said that no part of cause of action arose at Delhi or that the Delhi Court has no jurisdiction.

10. In the instant case, though the petitioner has joined the investigation only once but he did not co-operate and thereafter on being called again he has failed to join the investigation and absconded as a result of which NBWs were issued against him.

11. The petitioner has even issued three cheques to the complainant in order to clear the cheated amount but two of those

cheques got dishonoured because the account of the petitioner was already closed and the third cheque was wrongly dated which clearly shows the malafide intention of the petitioner.

12. It was also argued by the Ld. counsel for the petitioner that RERA has extended the date for completion of the project till 31.12.2021 but nothing has been placed on record by the petitioner to show that any construction activity is going on in the said project and what steps are being taken to complete the project. Therefore, in these circumstances, looking into the allegations and the fact that the petitioner is not joining the investigation, no ground for bail is made out, the bail application is, therefore, dismissed.

13. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

APRIL 09, 2021

Sumant