

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

Complaint No. : 249 of 2018
First date of hearing: 06.06.2018
Date of Decision : 28.08.2018

Mr. Aditya Tyagis,
R/o. Apartment No. 287, Sector 9, Gurugram ,
Haryana-122002

Complainant

Versus

M/s Umang Real Tech Pvt. Ltd.
Regd. Office: B-72, 7th Floor, Himalaya House,
23, Kasturba Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Nirmala Ranjan Advocate for the complainant
None for the respondents Advocate for the respondent

ORDER

1. A complaint dated 11.05.2018 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 Mr. Aditya Tyagi , against the promoter, M/s Umang Realtech Pvt. Ltd., on account of violation of the clause 6.1 of the apartment buyer's agreement executed on 17.02.2014 in respect of

Vide order dated 12/03/19 and
30/10/19





apartment number 801, 8th floor, tower 'P' in the project 'Monsoon Breeze 78 II' for not handing over possession on the due date i.e. 2nd June 2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

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

Monsoon Breeze, Phase-II

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	RERA registered/ not registered	Registered
3.	HRERA registration number	116 of 2017, <i>14 of 2018</i>
4.	Status of project	Scrapped as stated in reply filed by the complainant in CR/352/2018 and CR/249/2018.
5.	Apartment/unit No.	801, 8 th floor, tower 'P'
6.	Flat measuring	1550 sq. ft.
7.	Date of execution of apartment buyer's agreement	17 th February 2014
8.	Payment plan	Construction linked payment plan
9.	Total sale price as per said agreement	Rs.96,16,250 /-
10.	Total amount paid by the complainant till date	Rs.25,70,811/- <i>31,71,327/- corrected vide order dated 30/10/19.</i>
11.	Percentage of consideration amount	Approx. 26.73 percent
12.	Date of delivery of possession as per clause 6.1 of the said agreement dated 17.02.2014. (42 months plus 180 days of grace period from the date of approval of building plans or signing of this agreement, whichever is later)	17 th February 2018
13.	Delay in handing over possession till date	6 months 11 days
14.	Penalty clause as per apartment buyer's agreement dated	Clause 6.7 of the agreement i.e. Rs.5/- per

Corrected vide order dated 12/03/19.





17.02.2014	sq. ft. of the super area of the apartment for every month of delay till the actual handing over of the possession.
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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 17th February 2018. Neither the respondent has delivered the possession of the said unit till 28.08.2018 to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft. of the super area of the apartment for every month of delay till the actual handing over of the possession as per clause 6.7 of apartment buyer's agreement dated 17.0.2014. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 06.06.2018. The case came up for hearing on 06.06.2018, 12.07.2018 and 28.08.2018. The reply filed on behalf of the respondent has been perused.



Facts of the complaint

5. Briefly stated, the facts of the case the complainant were desirous to have an apartment. The agent of the respondents approached to the complainants in respect to the project. The complainants agreed with the proposal of the respondents and got booked an apartment.
6. The respondents was supposed to handover the possession of the apartment within a period of 42 months including the grace period of 6 months.
7. When the complainants were about to get the possession all of a sudden, on 31/08/2017 the complainant received a letter from the respondents in which the respondents intimated the complainant that the respondent were not in apposition to complete the said project due to various force-majure factors and other impediments.
8. The respondents allocated the complainants to unit no. G-1804, Winter Hills, 77, Sector-77, Gurugram instead of allocating them the same unit i.e P801, Monsoon Breeze, Phase- II, Sector-78, Gurugram, Haryana without giving any prior intimation to the petitioners and without obtaining the consent of the complainant.



9. Therefore, the complainant issued a legal notice to the respondents demanding the refund of the total paid amount and compensation for the same.

10. Issues raised by the complainants are as follow:

- i. Whether the building / apartment / plot has been handed over to the petitioner?
- ii. Whether the construction of the project "Monsoon Breeze" was ever started by the respondent in Sector-78, Gurugram?
- iii. Whether the amount claimed by the petitioner from the respondent has been paid by the petitioner to the respondent as per instalments made due?
- iv. Whether they have been deliberate or otherwise, misrepresentation on the part of the developers regarding the acknowledgment/ assurance to the petitioner about the construction work being carried out in the said project?

Relief sought:

11. The complainant is seeking the following relief:





31,71,327/-

- i. Refund of the total amount paid i.e. Rs. ~~25,70,811/-~~ to the petitioners from the respondent @ 24% p.a interest.
- ii. Compensation of Rs. 10,00,000 / - from the respondents to the petitioners for causing undue harassment, mental and physical agony and for causing financial losses.
- iii. Compensation @ Rs. 5 / - per sq. ft area, for not handing over the possession of the said flat as per stipulated time and without justifiable reason for delay.

Respondent's reply:

12. The respondent admitted that the respondent is entitled for reasonable extension of time in completing the construction and handing over the possession in terms of the agreed contract in between parties.
13. The respondent submitted that the global recession hit the economy and is continuing particularly in the real estate sector. The construction of the project is dependent upon the amount of money received from the bookings made and money received in form of instalments by the allottees. The



number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings.

14. The project had been faced with an unprecedented issue wherein the plans of construction of the entire project had to be scrapped since the respondent was not in a position to construct the project due to the issue of revenue raasta which was communicated to the complainants.
15. The respondent submitted that the revenue rasta had impacted the clearance of phase II of the said project from Haryana State Environmental Impact Assessment Authority (Haryana SEIAA) which created a hindrance in building plans and progress of construction work at the project site since the year 2014.
16. The respondent set forth that the present complaint is not maintainable and liable to be dismissed.

Determination of Issues:

17. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:
 18. With respect to the first and second issue raised by the complainant, the authority came across that as per clause





6.1 read with clause 6.2 of apartment buyer agreement, the possession of the said apartment was to be handed over within 42 months plus 180 days grace period from the date of approval of building plans or signing of this agreement, whichever is later. In the present case, the building plan were sanctioned on 04.03.2013 which are not valid as on date and the apartment buyer was signed on 17.02.2014. Therefore, the due date of handing over possession shall be computed from signing of this agreement. The clause regarding the possession of the said unit is reproduced below:

"6. Possession of Apartment

6.1 Subject to other terms of this agreement including but not limited to timely payment of the total sale price, stamp duty and other charges by the buyer, force majeure conditions, and also subject to the buyer(s) having complied with all formalities or documentation as prescribed by the developer, the developer shall endeavour to handover the possession of the said apartment to the buyer within a period of 42 months from the date of approval of the building plans or signing of this agreement, whichever is later.

6.2 the buyer further agrees and understands that the developer shall additionally be entitled to a period of 180 days grace period, after the expiry of the said committed period."

19. The apartment buyer agreement was executed on 17.02.2014 and the due date of handing over possession as per the said agreement is 17th February 2018 and





accordingly the possession has been delayed by 6 months and 11 days till the date of decision. Thus, the respondent has failed to adhere with the terms of the said agreement and failed to develop the said project in prescribed timeline. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. of super area of the said apartment for every month of delay thereafter till the actual handing over of possession as per clause 6.7 of apartment buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

20. As the promoter has already scrapped this project and has not started the construction on the site even after five years from the date of booking, therefore, the promoter has failed to fulfil his obligation under section 11, the promoter is





liable under section 18(1) to return the amount received by him in respect of the said unit along with interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

21. With respect to the third issue raised by the complainant, the complainant has made payment of Rs. ^{31,71,327}25,70,211/- till date and the payments were made as per the demands raised by the respondent.

Corrected vide order dated 30/10/19



22. With respect to the fourth issue raised by the complainant, the project stands scrapped by the respondent and no construction is going on at the project site.

Inferences drawn by the authority

23. 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.
24. As the possession of the apartment was to be delivered by 17th February 2018, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other*





defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

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.

25. 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.

26. In the present complaint, the complainant is seeking refund of the entire money paid towards the apartment along with prescribed rate of interest and intends to withdraw from the project as the project stands scrapped.

27. However, the authority is of the considered opinion that since the building plan is not valid as on date and the respondent has not started the construction at site even after a lapse of six years after booking of the apartment. This project stands scrapped by the realtor and the realtor cannot force to the complainant to shift to another project. Keeping in view that the project stands scrapped, the promoter is bound to refund the amount received by him from the complainant along with interest at prescribed rate. The matter be referred to the Department of Town and country planning and police department to take legal action against the realtor for booking the project whereas the building plans were not sanctioned. The project was scrapped much earlier but the amount was paid to the promoter and now promoter is forcing the allottees to change some other project against their wishes. The counsel for the complainant is present but none has appeared on





behalf of the respondent. Accordingly, the matter was heard ex-parte.

28. The complainant also informed that the respondent threatens through goon elements engaged in the office whenever any allottee visit them. They are badly treated and threatened not to enter in the premises. This is a very sorry state of affair and this fact is to be kept in mind while allowing the registration of other projects of the same promoter. If further projects have also been registered with the authority, then the respondent shall be asked to file affidavit that it is right of the allottees to visit not only office but also site to observe the progress and also quality of construction. This type of unruly behaviour by the promoter is uncalled for and such promoters shall not be allowed to operate in case, their project have already been registered, they should be issued a show cause notice why the registration shall not be cancelled for unfair and unethical practice.



Decision and directions of the authority

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 directed to refund the amount of ^{31,71,327/-} Rs.25,70,811/- received by him from the complainant along with interest at the prescribed rate i.e. 10.45% p.a.

Corrected vide
order dated
30/10/19.

(ii) Since, the complainant has made the payment in instalments, therefore the interest for particular instalment shall be calculated from the date of its payment till the date of refund. The payment shall be made by the respondent within 90 days from today.

30. The order is pronounced.

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



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.08.2018

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Respondent

CORAM:

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**Chairman
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APPEARANCE:

Ms. Nirmala Ranjan
None for the respondents

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apartment number 801, 8th floor, tower 'P' in the project 'Monsoon Breeze 78 II' for not handing over possession on the due date i.e. 2nd June 2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

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

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11.	Percentage of consideration amount	Approx. 26.73 percent
12.	Date of delivery of possession as per clause 6.1 of the said agreement dated 17.02.2014. (42 months plus 180 days of grace period from the date of approval of building plans or signing of this agreement, whichever is later)	17 th February 2018
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14.	Penalty clause as per apartment buyer's agreement dated	Clause 6.7 of the agreement i.e. Rs.5/- per

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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 17th February 2018. Neither the respondent has delivered the possession of the said unit till 28.08.2018 to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft. of the super area of the apartment for every month of delay till the actual handing over of the possession as per clause 6.7 of apartment buyer's agreement dated 17.0.2014. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 06.06.2018. The case came up for hearing on 06.06.2018, 12.07.2018 and 28.08.2018. The reply filed on behalf of the respondent has been perused.



Facts of the complaint

5. Briefly stated, the facts of the case the complainant were desirous to have an apartment. The agent of the respondents approached to the complainants in respect to the project. The complainants agreed with the proposal of the respondents and got booked an apartment.
6. The respondents was supposed to handover the possession of the apartment within a period of 42 months including the grace period of 6 months.
7. When the complainants were about to get the possession all of a sudden, on 31/08/2017 the complainant received a letter from the respondents in which the respondents intimated the complainant that the respondent were not in apposition to complete the said project due to various force-majure factors and other impediments.
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9. Therefore, the complainant issued a legal notice to the respondents demanding the refund of the total paid amount and compensation for the same.

10. **Issues raised by the complainants are as follow:**

- i. Whether the building / apartment / plot has been handed over to the petitioner?
- ii. Whether the construction of the project "Monsoon Breeze" was ever started by the respondent in Sector-78, Gurugram?
- iii. Whether the amount claimed by the petitioner from the respondent has been paid by the petitioner to the respondent as per instalments made due?
- iv. Whether they have been deliberate or otherwise, misrepresentation on the part of the developers regarding the acknowledgment/ assurance to the petitioner about the construction work being carried out in the said project?

Relief sought:

11. The complainant is seeking the following relief:





- i. Refund of the total amount paid i.e. Rs. 25,70,811/- to the petitioners from the respondent @ 24% p.a interest.
- ii. Compensation of Rs. 10,00,000 / - from the respondents to the petitioners for causing undue harassment, mental and physical agony and for causing financial losses.
- iii. Compensation @ Rs. 5 / - per sq. ft area, for not handing over the possession of the said flat as per stipulated time and without justifiable reason for delay.

Respondent's reply:

12. The respondent admitted that the respondent is entitled for reasonable extension of time in completing the construction and handing over the possession in terms of the agreed contract in between parties.
13. The respondent submitted that the global recession hit the economy and is continuing particularly in the real estate sector. The construction of the project is dependent upon the amount of money received from the bookings made and money received in form of instalments by the allottees. The





number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings.

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15. The respondent submitted that the revenue rasta had impacted the clearance of phase II of the said project from Haryana State Environmental Impact Assessment Authority (Haryana SEIAA) which created a hindrance in building plans and progress of construction work at the project site since the year 2014.
16. The respondent set forth that the present complaint is not maintainable and liable to be dismissed.

Determination of Issues:

17. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:
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6.1 read with clause 6.2 of apartment buyer agreement, the possession of the said apartment was to be handed over within 42 months plus 180 days grace period from the date of approval of building plans or signing of this agreement, whichever is later. In the present case, the building plan were sanctioned on 04.03.2013 which are not valid as on date and the apartment buyer was signed on 17.02.2014. Therefore, the due date of handing over possession shall be computed from signing of this agreement. The clause regarding the possession of the said unit is reproduced below:

"6. Possession of Apartment

6.1 Subject to other terms of this agreement including but not limited to timely payment of the total sale price, stamp duty and other charges by the buyer, force majeure conditions, and also subject to the buyer(s) having complied with all formalities or documentation as prescribed by the developer, the developer shall endeavour to handover the possession of the said apartment to the buyer within a period of 42 months from the date of approval of the building plans or signing of this agreement, whichever is later.

6.2 the buyer further agrees and understands that the developer shall additionally be entitled to a period of 180 days grace period, after the expiry of the said committed period."

19. The apartment buyer agreement was executed on 17.02.2014 and the due date of handing over possession as per the said agreement is 17th February 2018 and





accordingly the possession has been delayed by 6 months and 11 days till the date of decision. Thus, the respondent has failed to adhere with the terms of the said agreement and failed to develop the said project in prescribed timeline. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. of super area of the said apartment for every month of delay thereafter till the actual handing over of possession as per clause 6.7 of apartment buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

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20. As the promoter has already scrapped this project and has not started the construction on the site even after five years from the date of booking, therefore, the promoter has failed to fulfil his obligation under section 11, the promoter is





liable under section 18(1) to return the amount received by him in respect of the said unit along with interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

21. With respect to the third issue raised by the complainant, the complainant has made payment of Rs. 25,70,211/- till date and the payments were made as per the demands raised by the respondent.





22. With respect to the fourth issue raised by the complainant, the project stands scrapped by the respondent and no construction is going on at the project site.

Inferences drawn by the authority

23. 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.
24. As the possession of the apartment was to be delivered by 17th February 2018, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other*





defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

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:

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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.

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agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

26. In the present complaint, the complainant is seeking refund of the entire money paid towards the apartment along with prescribed rate of interest and intends to withdraw from the project as the project stands scrapped.

27. However, the authority is of the considered opinion that since the building plan is not valid as on date and the respondent has not started the construction at site even after a lapse of six years after booking of the apartment. This project stands scrapped by the realtor and the realtor cannot force to the complainant to shift to another project. Keeping in view that the project stands scrapped, the promoter is bound to refund the amount received by him from the complainant along with interest at prescribed rate. The matter be referred to the Department of Town and country planning and police department to take legal action against the realtor for booking the project whereas the building plans were not sanctioned. The project was scrapped much earlier but the amount was paid to the promoter and now promoter is forcing the allottees to change some other project against their wishes. The counsel for the complainant is present but none has appeared on





behalf of the respondent. Accordingly, the matter was heard ex-parte.

28. The complainant also informed that the respondent threatens through goon elements engaged in the office whenever any allottee visit them. They are badly treated and threatened not to enter in the premises. This is a very sorry state of affair and this fact is to be kept in mind while allowing the registration of other projects of the same promoter. If further projects have also been registered with the authority, then the respondent shall be asked to file affidavit that it is right of the allottees to visit not only office but also site to observe the progress and also quality of construction. This type of unruly behaviour by the promoter is uncalled for and such promoters shall not be allowed to operate in case, their project have already been registered, they should be issued a show cause notice why the registration shall not be cancelled for unfair and unethical practice.



Decision and directions of the authority

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 directed to refund the amount of Rs.25,70,811/- received by him from the complainant along with interest at the prescribed rate i.e. 10.45% p.a.
- (ii) Since, the complainant has made the payment in instalments, therefore the interest for particular instalment shall be calculated from the date of its payment till the date of refund. The payment shall be made by the respondent within 90 days from today.

30. The order is pronounced.

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




(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.08.2018

Corrected Judgement on 20.03.2019

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

Complaint No. : 249 of 2018
First date of hearing: 06.06.2018
Date of Decision : 28.08.2018

Mr. Aditya Tyagis,
R/o. Apartment No. 287, Sector 9, Gurugram ,
Haryana-122002

Complainant

Versus

M/s Umang Real Tech Pvt. Ltd.
Regd. Office: B-72, 7th Floor, Himalaya House,
23, Kasturba Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Nirmala Ranjan Advocate for the complainant
None for the respondents Advocate for the respondent

ORDER

1. A complaint dated 11.05.2018 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 Mr. Aditya Tyagi , against the promoter, M/s Umang Realtech Pvt. Ltd., on account of violation of the clause 6.1 of the apartment buyer's agreement executed on 17.02.2014 in respect of



apartment number 801, 8th floor, tower 'P' in the project 'Monsoon Breeze 78 II' for not handing over possession on the due date i.e. 2nd June 2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	RERA registered/ not registered	Registered
3.	HRERA registration number	116 of 2017
4.	Status of project	Scrapped as stated in reply filed by the complainant in CR/352/2018 and CR/249/2018.
5.	Apartment/unit No.	801, 8 th floor, tower 'P'
6.	Flat measuring	1550 sq. ft.
7.	Date of execution of apartment buyer's agreement	17 th February 2014
8.	Payment plan	Construction linked payment plan
9.	Total sale price as per said agreement	Rs.96,16,250 /-
10.	Total amount paid by the complainant till date	Rs.25,70,811/-
11.	Percentage of consideration amount	Approx. 26.73 percent
12.	Date of delivery of possession as per clause 6.1 of the said agreement dated 17.02.2014. (42 months plus 180 days of grace period from the date of approval of building plans or signing of this agreement, whichever is later)	17 th February 2018
13.	Delay in handing over possession till date	6 months 11 days
14.	Penalty clause as per apartment buyer's agreement dated	Clause 6.7 of the agreement i.e. Rs.5/- per



	17.02.2014	sq. ft. of the super area of the apartment for every month of delay till the actual handing over of the possession.
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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 17th February 2018. Neither the respondent has delivered the possession of the said unit till 28.08.2018 to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft. of the super area of the apartment for every month of delay till the actual handing over of the possession as per clause 6.7 of apartment buyer's agreement dated 17.0.2014. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 06.06.2018. The case came up for hearing on 06.06.2018, 12.07.2018 and 28.08.2018. The reply filed on behalf of the respondent has been perused.



Facts of the complaint

5. Briefly stated, the facts of the case the complainant were desirous to have an apartment. The agent of the respondents approached to the complainants in respect to the project. The complainants agreed with the proposal of the respondents and got booked an apartment.
6. The respondents was supposed to handover the possession of the apartment within a period of 42 months including the grace period of 6 months.
7. When the complainants were about to get the possession all of a sudden, on 31/08/2017 the complainant received a letter from the respondents in which the respondents intimated the complainant that the respondent were not in apposition to complete the said project due to various force-majure factors and other impediments.
8. The respondents allocated the complainants to unit no. G-1804, Winter Hills, 77, Sector-77, Gurugram instead of allocating them the same unit i.e P801, Monsoon Breeze, Phase- II, Sector-78, Gurugram, Haryana without giving any prior intimation to the petitioners and without obtaining the consent of the complainant.



9. Therefore, the complainant issued a legal notice to the respondents demanding the refund of the total paid amount and compensation for the same.

10. Issues raised by the complainants are as follow:

- i. Whether the building / apartment / plot has been handed over to the petitioner?
- ii. Whether the construction of the project "Monsoon Breeze" was ever started by the respondent in Sector-78, Gurugram?
- iii. Whether the amount claimed by the petitioner from the respondent has been paid by the petitioner to the respondent as per instalments made due?
- iv. Whether they have been deliberate or otherwise, misrepresentation on the part of the developers regarding the acknowledgment/ assurance to the petitioner about the construction work being carried out in the said project?



Relief sought:

11. The complainant is seeking the following relief:

- i. Refund of the total amount paid i.e. Rs. 25,70,811/- to the petitioners from the respondent @ 24% p.a interest.
- ii. Compensation of Rs. 10,00,000 / - from the respondents to the petitioners for causing undue harassment, mental and physical agony and for causing financial losses.
- iii. Compensation @ Rs. 5 / - per sq. ft area, for not handing over the possession of the said flat as per stipulated time and without justifiable reason for delay.

Respondent's reply:

12. The respondent admitted that the respondent is entitled for reasonable extension of time in completing the construction and handing over the possession in terms of the agreed contract in between parties.
13. The respondent submitted that the global recession hit the economy and is continuing particularly in the real estate sector. The construction of the project is dependent upon the amount of money received from the bookings made and money received in form of instalments by the allottees. The



number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings.

14. The project had been faced with an unprecedented issue wherein the plans of construction of the entire project had to be scrapped since the respondent was not in a position to construct the project due to the issue of revenue raasta which was communicated to the complainants.
15. The respondent submitted that the revenue rasta had impacted the clearance of phase II of the said project from Haryana State Environmental Impact Assessment Authority (Haryana SEIAA) which created a hindrance in building plans and progress of construction work at the project site since the year 2014.
16. The respondent set forth that the present complaint is not maintainable and liable to be dismissed.

Determination of Issues:

17. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:
18. With respect to the first and second issue raised by the complainant, the authority came across that as per clause



6.1 read with clause 6.2 of apartment buyer agreement, the possession of the said apartment was to be handed over within 42 months plus 180 days grace period from the date of approval of building plans or signing of this agreement, whichever is later. In the present case, the building plan were sanctioned on 04.03.2013 which are not valid as on date and the apartment buyer was signed on 17.02.2014. Therefore, the due date of handing over possession shall be computed from signing of this agreement. The clause regarding the possession of the said unit is reproduced below:

“6. Possession of Apartment

6.1 Subject to other terms of this agreement including but not limited to timely payment of the total sale price, stamp duty and other charges by the buyer, force majeure conditions, and also subject to the buyer(s) having complied with all formalities or documentation as prescribed by the developer, the developer shall endeavour to handover the possession of the said apartment to the buyer within a period of 42 months from the date of approval of the building plans or signing of this agreement, whichever is later.

6.2 the buyer further agrees and understands that the developer shall additionally be entitled to a period of 180 days grace period, after the expiry of the said committed period.”

19. The apartment buyer agreement was executed on 17.02.2014 and the due date of handing over possession as per the said agreement is 17th February 2018 and



accordingly the possession has been delayed by 6 months and 11 days till the date of decision. Thus, the respondent has failed to adhere with the terms of the said agreement and failed to develop the said project in prescribed timeline. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. of super area of the said apartment for every month of delay thereafter till the actual handing over of possession as per clause 6.7 of apartment buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”



20. As the promoter has already scrapped this project and has not started the construction on the site even after five years from the date of booking, therefore, the promoter has failed to fulfil his obligation under section 11, the promoter is

liable under section 18(1) to return the amount received by him in respect of the said unit along with interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

21. With respect to the third issue raised by the complainant, the complainant has made payment of Rs. 25,70,211/- till date and the payments were made as per the demands raised by the respondent.



22. With respect to the fourth issue raised by the complainant, the project stands scrapped by the respondent and no construction is going on at the project site.

Inferences drawn by the authority

23. 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.
24. As the possession of the apartment was to be delivered by 17th February 2018, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other*



defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

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.

25. 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.

26. In the present complaint, the complainant is seeking refund of the entire money paid towards the apartment along with prescribed rate of interest and intends to withdraw from the project as the project stands scrapped.

27. However, the authority is of the considered opinion that since the building plan is not valid as on date and the respondent has not started the construction at site even after a lapse of six years after booking of the apartment. This project stands scrapped by the realtor and the realtor cannot force to the complainant to shift to another project. Keeping in view that the project stands scrapped, the promoter is bound to refund the amount received by him from the complainant along with interest at prescribed rate. The matter be referred to the Department of Town and country planning and police department to take legal action against the realtor for booking the project whereas the building plans were not sanctioned. The project was scrapped much earlier but the amount was paid to the promoter and now promoter is forcing the allottees to change some other project against their wishes. The counsel for the complainant is present but none has appeared on



behalf of the respondent. Accordingly, the matter was heard ex-parte.

28. The complainant also informed that the respondent threatens through goon elements engaged in the office whenever any allottee visit them. They are badly treated and threatened not to enter in the premises. This is a very sorry state of affair and this fact is to be kept in mind while allowing the registration of other projects of the same promoter. If further projects have also been registered with the authority, then the respondent shall be asked to file affidavit that it is right of the allottees to visit not only office but also site to observe the progress and also quality of construction. This type of unruly behaviour by the promoter is uncalled for and such promoters shall not be allowed to operate in case, their project have already been registered, they should be issued a show cause notice why the registration shall not be cancelled for unfair and unethical practice.



Decision and directions of the authority

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 directed to refund the amount of Rs.25,70,811/- received by him from the complainant along with interest at the prescribed rate i.e. 10.45% p.a.
- (ii) Since, the complainant has made the payment in instalments, therefore the interest for particular instalment shall be calculated from the date of its payment till the date of refund. The payment shall be made by the respondent within 90 days from today.

30. The order is pronounced.

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



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.08.2018

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 28.08.2018
Complaint No.	249/2018 Case titled as Mr. Aditya Tyagi & Another V/s M/s Umang Realtech Pvt. Ltd. & Another
Complainant	Mr. Aditya Tyagi & Another
Represented through	Ms Nirmala Ranjan, Advocat for the complainant.
Respondent	M/s Umang Realtech Pvt. Ltd. & Another
Respondent Represented through	None for the respondent
Last date of hearing	12.7.2018

Proceedings

The project is registered.

None has appeared on behalf of the respondent.

This is a very peculiar case where even the building plan has not been sanctioned and nothing has been done on the site even after a lapse of six years after booking of the flat. This project stands scarpd by the realtor and the realtor cannot force to the complainant to shift to another project. The respondent was given six opportunities to provide details of the project although reply has been filed by the respondent on 11.7.2018. Reply has been considered by the authority. Keeping in view that the project stands scarpd, the promoter is bound to refund the amount received by him from the

complainant alongwith interest at the prescribed rate. The complainant made payment in instalment, accordingly the interest for particular instalment shall be calculated from the date of payment till the date of refund. The payment shall be made by the respondent within **90** days from today.

The matter be referred to the Department of Town and Country Planning and police department to take legal action against the realtor for booking the project whereas the building plans were not sanctioned. The project was scrapped much earlier but the amount was paid by the promoter and now promoter is forcing the allottees to change some other project against their wishes. The counsel for the complainant is present but none has appeared on behalf of the respondent. Accordingly, the matter was heard exparte.

The complainant also informed that the respondent sent goon elements engaged in the office whenever any allottee visit them. They are badly treated and threatened not to enter in the premises. This is a very sorry state of affair and this fact is to be kept in mind while allowing the registration of other projects of the same promoter. If further projects have also been registered with the authority then the respondent shall be asked to file affidavit that it is the right of the allottees to visit not only office but also site to observe the progress and also quality of construction. This type of unruly behavior by the promotor is uncalled for and such promoters shall not be allowed to operate any case, their project have already been registered, they should be issued a show cause notice why the registration shall not be cancelled for unfair and unethical practice. Registry is directed to do the

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

needful. The complaint is disposed of accordingly. Order is pronounced.

Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
28.08.2018