




PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 10.07.2018
Complaint No.	21/18 case titled as Mr. Dinesh Arora V/s M/s Emaar MGF Land Ltd.
Complainant	Mr.Dinesh Arora
Represented through	Shri Vaibhav Suri, Advocate on behalf of the complainant.
Respondent	M/s Universal Buildwal Pvt. Ltd.
Represented through	Shri Mukesh Kumar, Legal representative with Shri Sushil Yadav, Advocate on behalf of the respondent.


The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation and Development), Act,2016.

The said project is not registered with the HARERA. The legal representative of the company along with Shri Sushil Yadav, counsel of the respondent made the statement that their application for registration under RERA has been rejected by the interim RERA Authority, Panchkula. Despite a lapse of months they have not applied in the prescribed format with the HARERA so far. The respondent company continues to violate provisions of Section 3 which warrants not only imposition of penalty but also criminal prosecution. The respondent company is directed to submit their application for registration of their project with Harera, Gurugram within 15 days.



It was informed by the counsel for the respondent that the progress of the project is around 10%. Keeping in view the status of the project, the complainant intends to withdraw from the project and made this application/complaint for compliance of the obligations by the promoter under Section 18 (i) of the Act. The complaint is disposed of accordingly with the directions to the respondent that he shall pay the deposited amount alongwith prescribed rate of interest to the complainant from the date the amount was deposited with the promoter, within 45 days from today Detail orders will follow. File be consigned to the Registry.

  
Sanvir Kumar  
(Member)

  
Subhash Chander Kush  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
10.7.2017

Verma

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

**Complaint No. : 21 of 2018**  
**Date of Institution : 28.02.2018**  
**Date of Decision : 10.07.2018**

Mr. Dinesh Arora, R/o J-164, UGF, RBI  
Enclave, Paschim Vihar, New Delhi-110063

**Complainant**

**Versus**

M/s Universal Buildwell Pvt Ltd, Office at- 102,  
Antriksh Bhawan, 22, Kasturba Gandhi Marg,  
Connaught Place, New Delhi- 110001

**Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Vaibhav Suri Advocate for the complainant  
Shri Sushil Yadav along with Advocate for the respondent  
Shri Mukesh Kumar, legal  
representative

**ORDER**

1. A complaint dated 28.02.2018 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 (Mrs. Dinesh Arora) against



promoter (M/s Universal Buildwell Pvt Ltd.) on account of violation of clause 15 (a)(i) of buyer's agreement executed on 09.08.2010 for unit no. G-72A and G-72B in project "Universal Square" for not giving possession on due date which is an obligation under section 11 (4) (a) of the act ibid.

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

1.	Name and location of the project	Universal Square in sector 59, Golf course extension road, Gurgaon
2.	Shop no.	G-72A and G-72B
3.	Booking amount paid by the buyer to the builder/promoter	Rs. 8,40,500
4.	Total consideration amount as per agreement dated 09.08.2010	Rs.97,13,275
5.	Total amount paid by the complainant towards the aforesaid two retail spaces/shops	Rs. 48,28,581/-
6.	Percentage of consideration amount	Approx. 50 Percent
7.	Date of delivery of possession from the date of builder as per buyer agreement	36 Months from date of execution of the agreement i.e. 09.08.2013
8.	Delay for number of months/ years upto date 10.07.2018	5 years
9.	Penalty Clause as per builder buyer agreement dated 09.08.2010	Sub clause (v) of Clause 15 i.e. Rs.15/- per square ft per month
10.	Cause of delay in delivery of	No valid reason explained



	possession as per the assertion of the builder.
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3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for Unit No. G-72A and G-72B, sector 59 Gurugram in the project Universal Square according to which the possession of the aforesaid unit was to be delivered by 09.08.2013. The respondent company has not delivered the possession till 10.07.2018. The promoter has not fulfilled his committed liability as on date. Neither they have delivered the possession of the shops as on date to the purchaser nor has paid any compensation i.e. @ Rs. 10 Sq. ft of the super area said unit per month for the period of the such delay as per builder buyer agreement dated 09.08.2010.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 07.06.2018. The case came up for hearing on 12.04.18, 01.05.18, 15.05.18, 06.06.18 and 10.07.18. The respondent has filed his reply on dated 07.06.2018 which has been perused. He has given a vague and evasive reply. It was contended that the parties are bound by the terms and conditions of the agreement and present complaint is premature as the time period



agreed under the agreement for delivery of possession of unit has still not lapsed.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations as per the Real Estate (regulation and Development) Act, 2016.

6. The learned counsel for the respondent informed the authority that the progress of the project is around 10%

7. As per agreement for sale, clause no. 15 the possession of the flat was to be handed over within 36 months from the date of execution of buyer agreement. The clause regarding the possession of the said flat is reproduced below:

*"15. Possession*

*(a)(i) Time of handing over the possession*

*That the possession of the office space/shop in the commercial complex shall be delivered and handed over to the Allottee(s), within thirty six (36) months of the execution of this agreement or sanctioning of building plans whichever is later, subject to the Allottee(s) having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee(s) under this agreement having been paid in time to the developer. The developer shall give notice to the allottee(s), offering in writing, to the allottee to take possession of the office spaces/shop for his occupation and use....."*



8. As per date of execution of buyer agreement, the due date of possession was 09.08.2013. and as far as grant of statutory approvals are concerned, the term has been drafted mischievously and is completely one sided. As per para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors.** (W.P 2737 of 2017), 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."*

9. As the possession of the flat was to be delivered by 26.09.2015 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana 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."*

10. The complainant has made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

*"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."*

It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act 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.*





11. Keeping in view the present status of the project and intervening circumstances, the complainant wishes to **withdraw** from the project and as per section 18(1) of the Act, complainants have made a demand to the promoter to return the amount received by him in respect of the flat allotted to them with prescribed interest. The promoter has failed to return the amount received by him along with the prescribed interest which is an obligation on the promoter as per section 18(1). Complainant reserves their right to seek compensation from the promoter for which he/she shall make separate application to the adjudicating officer, if required. Section 18(1) is reproduced below:

**18 (1) Return of amount and compensation -**

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.*

12. 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.

13. The prayer of the complainant is considered and allowed by the authority and the respondent is directed to refund the amount deposited by the complainant Rs. 48,28,581 along with prescribed interest of 10.45% p.a. from the date the respondent has received the amount from the complainant within 45 days of the date of this order.

14. The authority takes Suo moto cognizance that the project is registerable and has not been registered by the promoters. The authority has decided to take Suo-moto cognizance for not getting the project registered & for that separate proceeding will be initiated against the respondent. The respondent is further directed to submit their application for registration of their project with Harera, Gurugram within 15 days.

15. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the




promoter leaving aside compensation which is to be decided by the Adjudicating Officer.

16. The order is pronounced.
17. Case file be consigned to the registry.

  
(Samir Kumar)  
Member



  
(Subhash Chander Kush)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

