PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 10.07.2018
Complaint No.	26/18 case titled as Mr. Mahinder Singh Dahiya V/s M/s Universal Buildwell Pvt. Ltd.
Complainant	Shri Mahinder Singh Dahiya
Represented through	Shri Sukhbir Yadav, Advocate
Respondent	M/s Universal Buildwell Pvt. Ltd.
Represented through	Shri Mukesh Kumar, Legal representative on behalf of the respondent alongwith Shri Sushil Yadav, Advocate.

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 counsel of the complainant has filed power of attorney. He has also filed Written arguments.

Today the case was fixed for arguments. The respondent was directed to apply for occupancy certificate within a period of 30 days after completion of all the formalities and the Director, Town and Country, Haryana, Panchkula is directed to look into the matter with regard to issue of Occupation Certificate within 60 days. In case of failure of respondent to apply for OC within the above mentioned time, they will be liable for penal action as per provisions of the Act.

The original license for this project stands in the name of Vatika Land Base Pvt.Ltd. and the counsel for the respondent was not able to reply as to how Universal Buildwel Pvt.Ltd. came into the picture in this project. Whether the agreement entered into by them with the allottees bears the approval of the Director, Town and Country Planning. They might have

illegally sold the property but as on now the Builder Buyer Agreement stands between the allottees and the Universal Buildwelll Pvt.Ltd. Accordingly they come within the definition of Promoter alongwith Vatika Land Base Pvt.Ltd. as the license stands issued in the name of VATIKA, the directions regarding Appling for Occupation Certificate and renewal of licence are applicable to the original licencee and in case of non compliance, the Vatika Land Base Pvt.Ltd. will also face the penal consequences. Copy of this order be sent to Vatika Land Base Pvt.Ltd.. Complaint is disposed of accordingly. Details orders will follow . File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
10.7.2018

Verma

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. : 26 of 2018
Date of Institution : 05.03.2018
Date of Decision : 10.07.2018

Mr. Mahinder Singh Dhaiya
R/o. H.No. 1230, Sector 9A,
Urban Estate, Gurugram, Haryana-122001 **Complainant**

Versus

M/s Universal Buildwell Pvt. Ltd.
(Through its directors)
Regd. Office: 102, Antriksh Bhawan,
22, Kasturba Gandhi Marg,
Connaught Place, New Delhi **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:
Shri Mahinder Singh Dahiya Complainant in person
Shri Sukhbir Yadav Advocate for the complainant
Shri Sushil Yadav Advocate for the respondent
Shri Mukesh Kumar Legal Representative on behalf of the respondent.

ORDER

Complaint

1. A complaint dated 05.03.2018 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. Mahinder

Singh Dahiya, against the promoter, M/s Universal Buildwell Pvt. Ltd., on account of violation of clause B.(6) of the Builder Buyer Agreement executed on 03.06.2009 in respect of Shop No. 338 at 3rd Floor described as below for not handing over possession on the due date i.e by 1st April 2010 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 Business Park, Village Badshahpur, Sector-66, Gurugram
2.	Commercial Unit No.		Shop No. 338 (500 Sq. Ft.) 3rd floor.
3.	Registered / Not Registered		**Not Registered**
4.	Date of Booking		07.08.2006
5.	Date of Execution of BBA		03.06.2009
6.	Total consideration as per BBA executed on 03.06.2009		Rs.13,75,000/-
7.	Additional amounts paid by the complainant are as follow:		Rs.33,81,214/-
	i.	Towards cost of interiors	Rs.15,00,000/-
	ii.	Towards enhanced EDC charges	Rs.1,07,500/-
	iii.	Towards License renewal fees	Rs.24,500/-
	iv.	Towards enhanced sale consideration	Rs.12,75,000/-
	v.	Towards lease work charges	Rs.2,76,406/-
	vi.	Towards brokerage charges	Rs.1,89,608/-
	vii.	Towards lease registration charges	Rs.8,200/-
8.	Total amount paid by the		Rs.47,56,214/-

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	complainant till date	
9.	Date of delivery of possession as per Builder Buyer Agreement	Clause B.6 of BBA, the due date of possession is by 1st April 2010.
10.	Delay for number of months/ years till the execution of Lease Agreement dated 20.01.2015	From 01.04.2010 to 20.1.2015: 4 years 9 months 20 days.
11.	Committed return payable by the respondent in terms of clause A.2.(b) of the BBA.	Rs.20,500/- i.e. @ Rs.41/- per sq. ft. super area being sold, every calendar month to the allottee during the construction period i.e. 31st March 2010 or in the event of delay in completion of project, upto the date of handing over of completed unit to the allottee.
12.	Committed Return paid till	June 2014
13.	Lease deed executed on	20.01.2015
14.	Conveyance Deed executed on	04.12.2015
15.	Cause of delay in delivery of possession	Only symbolic possession was given through conveyance deed executed by the promoter without obtaining occupation certificate.

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. A builder buyer agreement is available on record for the aforesaid commercial space according to which the possession of the said unit was to be

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delivered to the complainant by 1st April 2010 and the respondent has failed to deliver the possession of the said unit by the aforesaid time whereas the promoter has leased out this unit to M/s Jaarvis Technologies Pvt. Ltd. on 20.01.2015 as per clause P.(h) of the BBA.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 02.05.2018. The case came up for hearing on 12.04.2018, 02.05.2018, 22.05.2018 & 10.07.2018. The reply has been filed on behalf of the respondent on 16.05.2018. The respondent was asked on the date of hearing i.e. 22.05.2018 to file an affidavit regarding the status of the project and the same was filed on 04.06.2018 and thereafter the matter was adjourned for final orders on 10.07.2018. The complainant filed the rejoinder to rebut the reply filed by the respondent in which the complainant reaffirmed the contentions given in the complaint.

5. Briefly stated, the facts of the case as culled out from the case of complainant are that in August 2006, the complainant booked a Shop No. 338 at 3rd floor measuring 500 sq. ft. in the project Universal Business Park, Village Badshahpur, Sector 66, Gurugram for a total consideration of Rs.13,75,000/- @ Rs.2,750/- per sq. ft. of super area. The complainant made the

full and final payment of Rs.13,75,000/- vide cheque dated 23.09.2006 and the payment of aforesaid amount was acknowledged by the respondent while executing BBA. The complainant submitted that as per agreement, it was agreed that for next twenty months (till the construction was going on) the respondent would pay a sum of Rs.20,500/- to the complainant and after the completion of construction, which would have been after 20 months i.e. 30.04.2008, the respondent assured the complainant that it would lease out the said space at a minimum rent of Rs.41/- per month; and in case they fail to do so, the respondent company would pay rent @ Rs.41/- per month for next thirty six months. Further, the respondent vide letter dated 02.08.2006 raised demand of Rs.15,00,000/- towards the cost of interiors in the shop area and the same was paid by the complainant. The builder buyer agreement was executed on 3rd June 2009 and as per Clause B.6 of the BBA, the due date of handing over possession was by 1st April 2010. The complainant submitted that the term of the said agreement was in variance with the original terms since the date of completion was changed from 30.04.2008 to 31.03.2010.

Respondent company further raised a demand of Rs.1,07,500/- vide demand note dated 07.05.2013 on account of enhanced EDC charges by HUDA which was paid by the complainant. The

complainant submitted that if the construction had been completed in time and possession was given by the due date then the said charges would not have been payable to HUDA. Also, the respondent company illegally charged License Renewal fees of Rs.24,500/- from the complainant.

The complainant submitted that instead of handing over the possession to the complainant, the respondent leased out the said shop to a third party. The respondent vide its letter dated 22.01.2015 informed that the said shop was leased out to M/s Jaarvis Technologies Pvt. Ltd. vide lease agreement dated 20.01.2015. The unit was leased out by the promoter to third party, M/s Jaarwis Technologies Pvt. Ltd., @ Rs.75 per sq. ft. per month rental for a lock-in period of 50 months from the date of lease deed i.e. 20.01.2015. The complainant submitted that all the formalities with respect to the said lease were done by the respondent and the rent was being routed through the respondent. The complainant also submitted that the tenant has deducted TDS, however, no TDS certificate was provided to the complainant by the respondent company. The respondent raised further demand of Rs.17,41,014/- vide letter dated 22.01.2015 towards enhanced sale consideration, lease work charges and brokerage charges which the respondent was not entitled to claim. The complainant paid the said amount and the

respondent company issued a 'No Dues Certificate' on 27.03.2015. The complainant submitted that the said brokerage charges demanded by the respondent are illegal in terms of clause P.(b) of the agreement which is reproduced as under:

> *"P. leasing Arrangement*
> ***(b)*** *the developer shall arrange for the execution and registration of the lease deed but charges and expenses for the same shall be borne by the allottee/ proposed lessee as may be negotiated & agreed. It is further agreed by the allottee that at the time of first lease the commission paid to the laison agents as fee for leasing out the area will be paid by the developer. This liability will be limited to amount equivalent to two months rental. Any commission over and above this amount will be borne by the allottee on a pro-rata basis."*

Vide letter dated 10.08.2015 the respondent company also illegally deducted an amount of Rs.8,200/- towards lease registration charges @ Rs.16.4 per sq. ft. which actually was to be borne by the lessee company.

On 04.12.2015, the conveyance deed for shop no. 338 at 3rd floor was executed in favour of the buyer by the promoter with one M/s Blaze Promoters Pvt. Ltd. as a confirming party whereby only symbolic possession was handed over to the complainant and as on date no physical possession has been handed over to the complainant.

Vide letter dated 28.04.2017 the respondent company informed the complainant that the tenant M/s Jaarwis Technologies Pvt. Ltd. has vacated the shop in question and the respondent has not

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handed over the possession to the complainant as on date in terms of clause P.(e) of BBA. The clause P.(e) is reproduced as under:

> *"**P. Lease Arrangement***
> ***(e)** on the expiry of the lease and/or on the termination of lease, whichever is earlier, subject to the clause (h) below, the allottee shall take over the actual physical possession of the flat from the lessee and developer shall have no responsibility, of any nature whatsoever."*

Respondent's Reply:

6. The facts stated by the respondent in their reply are as follow:

The respondent submitted that the complainant has already taken the symbolic possession of his unit which was handed over by the respondent through conveyance deed dated 04.12.2015. Therefore, this Hon'ble Authority does not have the jurisdiction in this matter. The respondent also submitted that the present case requires detailed investigation and leading of evidence is required and cannot be adjudicated in a summary manner, therefore, this Hon'ble forum lacks jurisdiction in the present matter.

The respondent submitted that the complainant out of his free will and accord booked the unit no. 338 measuring 500 sq. ft. situated on 3rd floor in the Universal Business Park in village Badshahpur, Sector 66, Gurugram, Haryana along with undivided and indivisible proportionate commercial space

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which presently forms a divided part of the larger commercial office space.

The respondent under para 4 of the reply admitted that it is matter of record that as per agreement, it was agreed that for next twenty months (till the construction was going on) the respondent would pay a sum of Rs.20,000/- to the complainant and after the completion of construction, which would have been after 20 months i.e. 30.04.2008, the respondent assured the complainant that it would lease out the said space at a minimum rent of Rs.41/- per month; and in case they fail to do so, the respondent company would pay rent @ Rs.41/- per month for next thirty six months. The respondent admitted the fact that the BBA was executed between the parties on 03.06.2009 but denied the fact that the term of the agreement was in variance with the original terms in as much as the date of completion was changed from 30.04.2008 to 31.03.2010. The respondent denied the fact that the respondent did not complete the construction and handover possession of the said shop and kept on delaying the same on one account or the other. However, the respondent has further submitted that respondent was continuously paying the committed return till the complainant gave authority to execute first lease agreement to the respondent vide letters dated 01.10.2014 & 14.10.2014.

The respondent submitted that the complainant himself authorised the respondent to lease out the premises vide letter dated 14.10.2014 and as per clause P.(h) of the BBA, the complainant has opted for leasing arrangement whereby the developer undertakes to put the said shop on lease and to effectuate the same. The clause P.(h) is reproduced as under:

> *"**P. (h) Return on completion of the project and letting out of space.***
> *That on the completion of the project, the space would be let out by the developer at his own cost to a recognized lessee which would bring at a minimum rental of Rs.41 per sq. ft. per month less income tax at source. In the event of the developer being unable to finalize the lease arrangements, it shall pay the Minimum Guaranteed Return/Rent at Rs.41 per sq. ft. to the purchaser as Minimum Guaranteed Return/Rent for the first 36 months after the date of completion of the project or till the date the said flat/ is put on lease or the liability of the developer to pay assured return to the allottee every month will cease/stop on handing over the physical possession to the allottee, whichever is earlier. However, if for any reason, the developer is able to tie-up lease agreement at lower then Rs.41/- per sq. ft. per month, in that case the developer shall be bound to pay minimum rent of Rs.41/- per sq. ft. per month to the purchaser as minimum guaranteed rent for the period of 36 months after the completion of the building and after completion of 3 years actual rent would be paid subjected to lease paying rent to the developer. If the lease rent exceeds Rs.41/- per sq. ft. per month, the allottee shall pay to the developer such additional consideration will be calculated at 50% of Rs.150/- per sq. ft. for every 1rupee increase in the lease rental...."*

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The respondent denied the fact that all the formalities with respect of the said lease were done by the respondent

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company and the rent was being routed/paid through respondent company or the tenant (M/s Jaarvis Technologies Pvt. Ltd.) has deducted TDS from the lease money. The respondent submitted that the additional amount of Rs.17,41,014/- charged on account of enhanced sale consideration, lease work charges and brokerage charges are justifiable as the demand was raised in terms of clause P.(h) of the BBA dated 03.06.2014 and letter dated 01.10.2014 and 14.10.2014.

The respondent submitted that vide conveyance deed dated 04.12.2015, symbolic possession of the said unit has been taken by the complainant which cannot be subdivided.

The respondent submitted that vide letter dated 28.04.2017 the respondent informed the complainant that the tenant M/s Jaarwis Technologies Pvt. Ltd. has vacated the shop in question. The respondent submitted that the aforesaid illegal termination of lease by the lessee was beyond the control of respondent but still the respondent company is compensating the complainant as agreed mutually between them vide letter dated 21.10.2014 that the respondent company will not charge maintenance till further leasing out or physical possession of the unit.

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Arguments advanced on behalf of the parties

7. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The complainant submitted that as per the agreement, the respondent has to pay Rs20,500/- @ Rs.41 per sq. ft. per month till the date of possession in terms of clause A.2.b of BBA and thereafter the space would be let-out by the developer as per clause P.(h) of BBA. Also, the respondent executed conveyance deed by giving only symbolic possession and no physical possession has been handed over till date. The complainant submitted that as per clause F. of BBA, the developer shall sell the flat by executing and registering the conveyance deed and the said unit shall be free from all encumbrances. The complainant also contended that total sale consideration shown in conveyance deed is Rs.40,25,000/- @ Rs.8050/- per sq. ft. super area but as per the agreement total cost of the said unit is Rs.13,75,000/- @ 2,750/- per sq. ft. of super area. As per clause P.(a) BBA, after execution of conveyance deed the rent would be paid directly to the allottee but the same was not performed by the respondent and kept the right of collecting rent with themselves. The complainant submitted that the respondent charged Rs.1,89,608/- as brokerage charges and the same is illegal in terms of clause P.(b) of the BBA and the respondent never provided the detail of broker to whom this brokerage was given.

Further, the complainant submitted that as per clause P.(e) of the agreement, on the expiry of the lease and/or on the termination of the lease, whichever is earlier, the allottee shall take actual physical possession of the shop from the lessee and the developer will not be responsible in any way or manner whatsoever. The complainant contended that the commercial space is in custody of respondent hence he need to pay rent @ Rs.41 per sq. ft. from the date the tenant checked out the office space to expiry of 36 months from the date of conveyance deed. Also, the respondent took double benefit on the money of complainant, firstly respondent charged Rs.15,00,000/- towards the cost of interior and thereafter leased out the said area @ Rs.75/- per sq. ft. and extract another Rs.12,75,000/- on the name of additional consideration. The complainant further submitted that he will take physical possession only when occupation certificate is received in respect of the said project.

The respondent contended that the said complex is complete in all respect and they are willing to give physical possession on obtaining occupation certificate from the concerned authority. Although symbolic possession was handed over vide conveyance deed executed on 04.12.2015.

The respondent also filed an affidavit on 04.06.2018 affirming that the said project had been completed on 09.12.2011 in all respects according to the sanctioned plan.

8. As per Clause B.6 of the BBA, the due date of handing over possession was by 1st April 2010. The clause regarding the possession of the said unit is reproduced below:

> *"**Clause B.6***
> *The complex shall be ready for possession by 1st April 2010. All the possessions (Symbolic/Actual), subject to the payment of entire consideration along with any other dues payable by the Allottee to the developer, shall be handed over within 15 days from the date of receipt of payment.*
> *In the event of Allottee's failure to take over the possession, the developer shall charge Rs.15/- per sq. ft., super area per month from the allottee till the date of such possession taken by allottee, in addition to the payment of monthly maintenance charges as described in para 11 of this agreement."*

9. As the possession of the shop was to be delivered by 1st April 2010 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) & (b) 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*

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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.

***(b)** be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."*

10. The complainant makes 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 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."

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Decision and directions of the authority

11. In the present complaint, the complainant is seeking the immediate handover of the possession of the said unit. The complainant is also seeking refund of additional amount paid i.e. Rs.19,81,214/- by the complainant beyond the total cost of the unit as per the agreement. The additional amount paid by the complainant are as follows:

Sr.no.	Payment towards	Amount
i.	Enhanced EDC charges	Rs.1,07,500/-
ii.	License renewal fees	Rs.24,500/-
iii.	Enhanced sale consideration	Rs.12,75,000/-
iv.	Lease work charges	Rs.2,76,406/-
v.	Brokerage charges	Rs.1,89,608/-
vi.	Lease registration charges	Rs.8,200/-
	Total	Rs.19,81,214/-

- The complainant is seeking the use and occupation of the said shop from the respondent from June 2016 since the respondent has not paid any amount towards rental/assured return after June 2016.
- The complainant is also seeking refund of the amount out of the cost of shop charged on super area on pro-rata basis along with interest at the rate of 18% per annum from the date of payment till refund.

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- The complainant is also claiming TDS Certificate to be issued by the respondent.

12. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that the complainant is entitled for the possession of the said unit as soon as the respondent obtains occupation certificate from the concerned authority and also in terms of clause P.(e) of BBA. Further the amount of Rs.1,07,500/- charged by the respondent on account of enhanced EDC charges are justified in terms of clause B.8.(g) of the builder buyer agreement. The amount of Rs.24,500/- charged toward license renewal fees is unjustified as it is sole prerogative of the promoter to get the license renewed at his own level. Similarly, the amount of Rs.8,200/- charged towards the lease registration is also not justified as it is the duty of the lessee i.e. M/s Jaarwis Technologies Pvt. Ltd., to pay the lease registration charges and get the lease registered. The complainant alleged that respondent has charged Rs.12,75,000/- towards enhanced sale consideration for renting out the dwelling unit on monthly rent of Rs.75 /- per sq. ft. higher then assured rent of Rs.41/- per sq. ft. and as per clause P.(h) of builder buyer agreement, respondent was under obligation for first lease guarantee of 36 months from the date of completion and till date dwelling unit is under possession of

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respondent. Keeping in view the aforesaid facts this authority concludes that allottee was entitled for first lease guarantee of 36 months from respondent. Moreover, the allottee had paid enhanced sale consideration in lieu of increased monthly rent. In this case allottee gets the benefit of increased rent up to 12 months and thereafter lessee vacated the premises. On evacuation of premises / breach of lease agreement, rights of allottee accrued against the respondent as per BBA, therefore complainant is entitled for refund of 2/3 of enhanced sale consideration i.e. Rs.8,50,000/-.The amount of Rs.2,76,406/- charged towards the lease work charges is illegal as there is no clause in the BBA in terms of which the respondent can claim the aforesaid amount. The brokerage charges of Rs.1,89,608/- (four and a half months rental) is not justified in terms of clause P.(b) of the agreement as it is liability of the developer to pay 2 months rental and any commission over and above this amount will be borne by the allottee on a pro-rata basis. Therefore, the respondent shall be liable to return excess amount of Rs.1,21,875/- illegally charged from the complainant on account of brokerage charges. Out of total sum of Rs.19,81,214/-, the respondent is liable to return a sum of Rs.12,80,981/-.

The complainant is not entitled to use and occupation charges because as per clause P.(e) of the BBA, on expiry of lease or

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termination of the lease, whichever is earlier, the allottee shall take over the actual physical possession of the shop from the lessee and the developer shall have no responsibility, of any nature whatsoever. Also, the complainant is not entitled to refund of the amount out of the cost of shop charged towards super area on pro-rata basis along with interest because as per clause A.2.b of the BBA, the sale consideration was based on super area basis i.e. @ Rs.2750/- per sq. ft. of super area. Further No TDS Certificate can be issued as the respondent is denying the fact that tenant was deducting TDS and submitted that no TDS Certificates have been provided by the respondent to the complainant.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

13. 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.

14. Thus, the Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

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(i) The respondent is directed to give the physical possession of the said flat to the complainant after obtaining occupation certificate from the concerned authority.

(ii) The respondent is directed to return the amount of Rs.24,500/- paid towards license renewal fees.

(iii) The respondent is directed to refund the amount of Rs.8,50,000/- towards enhanced sale consideration.

(iv) The respondent is directed to return the amount of Rs.8,200/- towards lease registration charges.

(v) The respondent is directed to refund the brokerage charges of Rs.1,21,875/- illegally charged from the complainant.

(vi) The respondent is also directed to return lease work charges amounting to Rs.2,76,406/- which is nowhere mentioned in the BBA.

Thus, the respondent is liable to refund a total sum of Rs.12,80,981/- against the claimed amount of Rs.19,81,214/- by the complainant.

15. The respondent claimed to have applied for occupation certificate on 25.07.2017 but haven't received the occupation certificate till date. The original license for this project stands in the name of M/s Vatika Landbase Pvt. Ltd. and the counsel for

the respondent was not able to reply as to how M/s Universal Buildwell Pvt. Ltd. came into the picture in this project. Moreover, the builder buyer agreement is executed between the respondent company and the allottees. Accordingly, the respondent comes within the definition of promoter along with the M/s Vatika Landbase Pvt. Ltd. Therefore, the Director, Town and Country Planning, Haryana is directed to look into the matter whether the application for OC was complete in all respect as incomplete application is no application. The DTCP, Haryana is also directed to look into the fact whether it recognises M/s Universal Buildwell Pvt. Ltd. as a developer and has allowed the respondent to use the said license to develop the commercial colony in question. Thus, the authority takes suo motu cognizance under section 3 of the Act ibid that the project is registerable but has not been registered by the promoters and for that separate proceedings will be initiated against the respondent. Therefore, the registration branch is directed to take the necessary action.

16. The Director, Town and Country Planning, Haryana is also directed to take legal action against the promoters/licensee and developer to have leased out space without obtaining occupation certificate.

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17. The order is pronounced.

18. 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

10/7/2018