

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 28.08.2018
Complaint No.	228/2018 Case titled as Mrs. Madalsa Rani. V/s M/s Umang Realtech Pvt. Ltd
Complainant	Mrs. Madalsa Rani
Represented through	Shri Deepak Saini, Advocate for the respondent
Respondent	M/s Umang Realtech Pvt. Ltd
Respondent Represented through	<b>None for the respondent</b>
Last date of hearing	11.7.2017

**Proceedings**

**The project is not registered.**

It was brought to the notice of the authority that the project is registerable but so far it has not been registered which is in violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent has been asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings should not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act *ibid*, where under the penalty amount may extend upto 10% of the estimated costs of the Project.

**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 scarped 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 scarped, 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 scarped 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 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

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

**Complaint No. : 228 of 2018**  
**First date of hearing : 05.06.2018**  
:  
**Date of Decision : 28.08.2018**

Mrs. Madalsa Rani, H.No. 773 opp. Salwan  
School, sector 5, gurugram

**...Complainant**

Versus

M/s Umang Realtech Pvt Ltd, B 72, 7<sup>th</sup> floor,  
Himalya 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:**

Shri Deepak Sain Advocate for the complainant  
None of the respondent Advocate for the respondent

**ORDER**

1. A complaint dated 07.05.2018 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, Mrs. Madalsa Rani)against the promoter M/s Umang Realtech Pvt Ltd .



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

1.	Name and location of the project	Monsoon Breeze II Sector 78
2.	Unit no.	202, tower-T, 2 <sup>nd</sup> Floor
3.	DTCP Licence no.	77 of 2012
4.	Date of agreement	09.04.2014
5.	Total consideration	Rs. 52,93,500/-
6.	Total amount paid by the complainant	Rs. 40,61,630/-
7.	Payment plan	Instalment Linked plan
8.	Date of delivery of possession.	Clause 6.1 & 6.2 (42 month + 180 days grace period. i.e. 09.04.2018 from the signing of agreement
9.	Delay in handing over possession till date	4 months
10.	Penalty clause as per apartment buyer's agreement dated 09.04.2014	Clause 6.7 of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat.

3. As per the details provided above, which have been checked as per record of the case file. A apartment buyer agreement is available on record for Unit No. 202, tower-T, 2<sup>nd</sup> Floor. The promoter has failed to deliver the possession of the said unit to the complainants. 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 for appearance. Accordingly, the respondent appeared on 5.06.2018. The case came up for hearing on 5.06.2018, 11.07.2018 and 28.08.2018. The reply has been filed on behalf of the respondent on 11.07.2018.

#### FACTS OF THE CASE

5. That the complainant booked a flat in the project named Monsson Breeze II Sector 78, Gurugram in the year 2012 with the builder Umang Realtech Pvt Ltd. Delivery time was 42 months from signing of flat buyer's agreement dated 09.4.2014 with grace period of 180 days., The complainant paid total amount of Rs. 40,61,630/ in different instalment as per the demand by the builder. But there was no construction at the site. No construction of project, so refund claimed.
6. That the project was not completed even 5% but paid 60% of the cost of the project. The builder is not ready to refund the amount and shifting the complainant to another project in Sector 77 which was costlier and not situated in the good location.



7. That the complainant asked the builder to send the BBA so that he can understand the terms of payment for the second project which is not suitable, and it is also not on time. The complainant asked the builder to change the terms of payment or refund the entire amount with the interest charges.
8. That the builder refused to change the terms of payment for the second project and the complainant asked for the refund with the interest charges and builder is not giving any response regarding the refund.
9. As per clause 23 of the builder-buyer agreement, the Company proposed to hand over the possession of the said unit by 9.4.2018. The clause regarding possession of the said unit is reproduced below:

*“ 23 POSSESSION*

*23 ..... the physical possession of the said unit is proposed to be delivered by the company to the allottee within 36 months from date of execution of the agreement, the allottee further agrees that the company shall additionally be entitled to a period of 6 months grace period after expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company.....”*



## ISSUES RAISED BY THE COMPLAINANT

- I. Whether the developer/ builder Umang Realtech Pvt Ltd has failed to give the flats in Monsoon Breeze Phase II Sector 78 Gurugram as per the builder buyer agreement. And rather forcing us to shift the agreement to another project. We request to be refunded with the interest and penalty.

## RELIEF SOUGHT

- I. We should not be forced to shift from originally booked project flat no. T 202 Monsoon Breeze Phase II Sector 78 Gurugram.
- II. Since the Builder is unable to give Possession as per the terms mentioned in the BBA. The amount of money deposited should be refunded with the interest.

## REPLY

11. That the content of brief facts is denied except for matter of record.
12. It is denied that as per the terms of apartment buyer agreement dated 09.04.2014, the respondent was obligated to deliver the possession of the apartment within 42 months from the date of the agreement and with the grace period of





180 days. Therefore, the due date for handing over possession of the subject apartment is 14<sup>th</sup> May 2018. As the complaint is premature and deserve to be dismissed.

13. Respondent has offered the booking in another project Winter Hills 77, which is situated in Sector 77 Gurugram was offered to complainant since the subject project has run into some impediments created due to certain unforeseen circumstances which are completely beyond the control of the respondent and thus, constitute force majeure event in the terms of clause 6.4 of the agreement. Thus, the complainant was offered to shift the booking of the apartment of similar specification in the project. It is an admitted fact that the complainant had given the consent to such transfer of booking. It is denied on the date of such meeting, issue arose on the terms of payment.

14. It is submitted that not only is the instant complaint premature, but the complainant has agreed to shift the booking i.e. Winter Hills 77 Gurugram is located at a very short distance. Further, the said project is nearing completion of construction and development activity at the said project would be completed by January 2019 which is much before the stipulated time for offering of possession under the subject project.



15. Respondent is entitled for reasonable extension of time in completing the construction and handing over possession in terms of the agreed contract in between parties.

16. The Respondent is entitled to reasonable extension of time for completion of apartment because the delay in handing over the possession was caused on account of the reasons falls in Clause 6.1.

Following Important aspects are relevant which are submitted for the kind consideration of this Hon'ble Authority;

- i. Non-booking of all apartments seriously affected the construction.
- ii. Other various challenges being faced by the Respondent, i.e. Lack of adequate sources of finance, shortage of labour, Rising manpower and material costs, Approvals and procedural difficulties.

17. The Respondent has submitted that the subject project had been faced with an unprecedented issue wherein the plans of construction of entire project had to be scrapped since the answering Respondent is not in a position to construct the referred project due to the issue of revenue rasta which has been communicated to the complainant.



18. The Respondent had submitted that the issue of revenue rasta had impacted the clearance of Phase II of the subject Project from Haryana State Environment Impact Assessment Authority which created a hindrance in building plans and progress of construction work at the Project Site since the year 2014. However, in spite of such roadblocks and hindrances, answering Respondent, being a customer-oriented organization and fully committed to welfare of its valued customers and abiding by the terms of respective apartment buyer agreements, made serious efforts to resolve the issue of revenue rasta in order to obtain environment clearance for the entire Phase-II of subject Project.
19. The Respondent submitted that the answering Respondent is a customer-oriented organization and is also willing to offer to the Complainants, in their best tradition i.e. an option to transfer their booking in another project of Our Client in Winter Hills Project, Sector 77, Gurugram which is now in the advanced stage of construction and can be handed over the possession to the customers very soon.
20. The respondent submitted that as per the Apartment Buyer Agreement which is binding between the Complainants and the Respondent, both have agreed upon their respective



liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the Respondent on account of delay is specified in the Clause 6.7 of the said Agreement and as such the Complainants cannot claim reliefs which are beyond the compensation agreed upon by them. In this view of the matter, the captioned complaint is not maintainable in law and liable to be dismissed.

21. The respondent submitted that allegations in the present complaint cannot be decided summarily and hence instant complaint is out of the jurisdiction of this Hon'ble Commission.
22. The respondent answering opposite party is bonafide attempting to complete the project construction in a time bound manner considering the interests of its customers.

#### **DETERMINATION ON ISSUES**

23. In regard to the issue raised by the complainant, as 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.*

24. Accordingly, the due date of possession was 09.04.2018. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area of the said flat as per clause 6.7 of apartment buyer’s 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.”*



25. As the possession of the flat was to be delivered by 09.04.2018 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) 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.”*

26. 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.*

27. 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.*

28. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

29. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion 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 scarped 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 11.07.2018. Reply has been considered by the authority. Keeping in view that the project stands scrapped. 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 ex-parte. 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 DIRECTION OF AUTHORITY

30. 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 promoter is bound to refund the amount received by him from the complainant along with 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.

31. Copy of order be endorsed to the project registration branch HARERA.



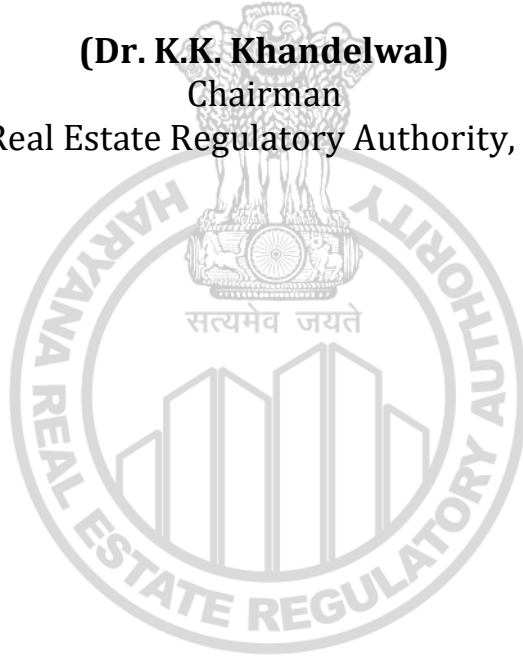
32. Case file be consigned to the registry.

33. Order is pronounced.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram



HARERA  
GURUGRAM

