

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 28.08.2018
Complaint No.	352/2018 Case titled as Mr. Adesh Bindal V/s M/s Umang Realtech & Anr
Complainant	Mr. Adesh Bindal
Represented through	Complainant in person.
Respondent	M/s Umang Realtech & Anr
Respondent Represented through	None for the respondent
Last date of hearing	25.7.2018

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 scraped, 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 scraped 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 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. 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

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

Complaint No. : 352 of 2018
First date of Hearing : 25.07.2018
Date of Decision : 28.08.2018

Mr. Aadesh Bindal,
R/o. A-120, Old Avas Vikar,
Saharanpur- 247001, Uttar Pradesh.

Complainant

Versus

M/s Umang Realtech Pvt. Ltd.
Address: 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:

Shri Aadesh Bindal Complainant in person
None appeared on behalf of Respondent represented through
the respondent

ORDER

1. A complaint dated 30.05.2018 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. Aadesh Bindal, against the promoter M/s Umang Realtech Pvt. Ltd., on account of violation of the clause 6.1 of apartment buyer



agreement executed on 02.09.2014 in respect of apartment described as below for not handing over possession on the due date 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	"Monsoon Breeze 78 II", Sector 78, Village Naurangpur, Gurugram, Haryana.
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/248/2018 and CR/249/2018.
5.	Apartment/unit no.	701, 7 th floor, tower 'O'.
6.	Apartment measuring	1550 sq. ft.
7.	Apartment buyer's agreement executed on	02.09.2014
8.	Total consideration amount as per agreement dated 02.09.2014	Rs.94,61,240/-
9.	Total amount paid by the complainant till date	Rs.31,73,110/-
10.	Percentage of consideration amount	Approx. 33.53 percent
11.	Date of delivery of possession as per clause 6.1 of the said agreement dated 02.09.2014. (42 months plus 180 days of grace period from the date of approval of building plans or signing of this agreement, whichever is later)	02 nd September 2018
12.	Delay in handing over possession till date	26 days
13.	Penalty clause as per apartment	Clause 6.7 of the



	buyer agreement dated 2.9.2014	agreement i.e. 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.
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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. An apartment buyer's agreement is available on record for the aforesaid apartment. The possession of the said unit was to be delivered by 02nd September 2018, as per the agreement. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft of the super area of the apartment for every month delay till the actual handing over of the possession as per clause 6.7 of apartment buyer's agreement dated 02.09.2014. Moreover, as per reply filed by the promoter in other two complaints numbered as CR/248/2018 and CR/249/2018, this project stands scrapped. 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. The case came up for hearing on 25.07.2018 & 28.08.2018.



The respondent has neither appeared on the above dates nor has submitted reply on his behalf. During proceedings dated 25.07.2018, the present matter was decided along with bunch matters in respect to the same project.

5. Briefly stated, the facts of the case as culled out from the case of complainant are that the respondent aggressively advertised its new aforesaid project launched in Sector 78, Gurugram in newspaper and hoardings. The complainant received many calls from the representatives of the company inviting him to visit the project and purchase an apartment there. Under the influence of lucrative brochure and various false assurances by the sales officers of the respondent company and agreed to purchase a flat No. 701 in 'O' tower, measuring 1550 sq. ft. in aforesaid project at Sector78 Gurugram, Haryana in year 2013.
6. The complainant has submitted that the he was made to execute printed application form with other annexures without allowing him to read the contents of the same. Along with the said application, he paid an amount of Rs.7,50,000/- vide cheque dated 24.05.2013. The complainant further submitted that the respondent company has obtained licenses for development of residential group housing colony on area of 19.856 acres of land and the company would



complete the construction within a period of 3.5 years. Further, the complainant was informed by the company that as per construction, demand would be raised and the complainant shall be liable to pay otherwise penal interest would be charged.

7. The complainant submitted that after multiple follow up by the complainant, the company sent apartment buyer agreement which contained terms and conditions in favour of the company. When complainant raised issue for changing certain terms and conditions of the agreement, the company refused and stated that these are the settled conditions of the company and cannot be changed. Thereafter, the complainant asked for the refund of the amount deposited by him, the company clearly refused and said that as per terms and conditions of the application form, the amount paid is earnest money and in case the complainant does not want to continue with the project, the earnest money stands forfeited. The complainant was trapped and had no other option to continue with the project and executed apartment buyer agreement on 02.09.2014.

8. The complainant submitted that the company vide allotment letter dated 1.09.2017 changed the said apartment allotted to the complainant and allotted another apartment no. B-001,



Winter Hills, Sector 77, Gurugram, which was declined by the complainant.

9. The complainant submitted that demands for balance instalments were raised till February 2015 stating therein that the construction of the project is in full swing and would be completed within the scheduled agreed time. Accordingly believing in the representation and assurances of the company, the complainant paid various instalments. Till date the complainant has paid an amount of Rs.31,73,110 against the total payable amount of Rs.70,48,595/-.
10. The complainant submitted that the complainant was shocked and surprised to know that there is no construction activity of any kind at project site. The respondent cheated the complainant by giving false representations and assurances. Further, the complainant has misappropriated a sum of Rs.31,73,110/- paid by the complainant in some other projects or for their personal wrongful gains and thereby causing wrongful loss to the complainant.
11. The complainant submitted that the complainant kept on demanding refund of its hard-earned money from the company along with applicable interest as there is no progress in construction on the project site and already there



is huge delay and there is no apprehension of delivery of apartment. Despite repeated requests by the complainant for refund of the amount paid, the respondent company failed to refund the said amount with interest.

12. The issues raised by the complainant are as follow:

- i. Whether the respondent company defaulted in adhering the terms of booking and apartment buyer agreement?
- ii. Whether the company failed to develop the project in prescribed timelines as provided in apartment buyer agreement?
- iii. Whether the company is required to refund the entire amount along with applicable interest due to above defaults as per RERA?
- iv. Whether the company is required to provide compensation as prescribed under RERA due to above defaults?

13. Relief sought

The complainant is seeking the following relief:

- i. Refund the entire money paid by the complainant towards the apartment i.e. Rs.31,73,110/- along with appropriate interest as per RERA.



- ii. Payment of compensation of Rs.10,00,000/- for mental harassment, agony caused and loss of opportunity for apartment.

Determination of issues:

After considering the facts submitted by the complainant and perusal of record available in the file, the issue wise findings of the authority are as under:

14. 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 02.09.2014. 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.”

15. The apartment buyer agreement was executed on 02.09.2014 and the due date of handing over possession as per the said agreement is 2nd September 2018 and accordingly the possession has been delayed by twenty-six 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.”

16. With respect to the third issue raised by the respondent, 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.

17. With respect to the fourth issue raised by the complainant, the complainant during proceeding dated 25.07.2018 made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainants regarding compensation becomes superfluous

Findings of the authority

18. 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.

19. As the possession of the apartment was to be delivered by 2nd September 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.”

20. 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.

21. 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.
22. 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 five 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.



23. 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

24. 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.31,73,110/- 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.

25. The order is pronounced.

26. 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

