

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

**Complaint no.** : 3651 of 2019  
**First date of hearing** : 19.12.2019  
**Date of decision** : 19.02.2020

1. Shri. Inder Singh Bansal  
2. Smt. Kailash Bansal  
**Both RR/O:-** House No.- B-60,  
East of Kailash, New Delhi-65

**Complainants**

Versus

M/s Ultra Home Construction Pvt. Ltd.  
**Regd. Office:-** C-56/40, Sector-62,  
Noida(UP)

**Respondent**

**CORAM:**

Shri. Samir Kumar  
Shri. Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Gaurav Bhardwaj  
None

Advocate for the complainants  
On behalf of the respondent

**EX-PARTE ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the builder buyer unit agreement executed inter-se them.



2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"Amrapali Commercial Complex Cum Corporate Hub", Sector-2, IMT Manesar, Gurugram
2.	Project area	No details available
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	No details available
5.	Name of licensee	No details available
6.	RERA Registered/ not registered	<b>Unregistered</b>
7.	HRERA registration valid up to	No details available
8.	Unit no.	205, 2 <sup>nd</sup> Floor, Tower-J
9.	Unit measuring (super area)	533.17 sq. ft.
10.	Dates of execution of MOU and builder buyer agreement	07.01.2008 and 11.01.2008 respectively
11.	Total sales consideration	Rs. 19,62,065/- (at Page 19 of the agreement)
12.	Total amount paid by the complainants	Rs. 19,62,065/- (as per receipts attached with the complaint on pg. 31 & 32)
13.	Due date of delivery of possession as per Committed Return Plan of clause 2 of the agreement-upto December 2008 along with 3 months	31.03.2009

14.	Date of offer of possession to the complainants	Not offered so far
15.	Specific reliefs sought	<p>i. Direct the respondent to make the payment of interest on the delayed possession upon the deposited sum amounting to Rs. 19,62,065/- at prescribed rate from the date of receipt of payments.</p> <p>ii. Direct the respondent to handover the possession of the said unit.</p>

3. As per clause 2 of the builder buyer agreement and clause 12 of MOU, the possession was to be handed over by December 2008 plus 3 months which comes out to be 31.03.2009. Clause 2 of the builder buyer agreement is reproduced herein below:

**"2. SALE CONSIDERATION**

**Committed Return Plan**

*The said Space will be completed and handed over by December 2008 + 3 months....."*

4. The possession of the subject apartment has not been offered till date by the respondent. The complainants seeks delay interest as per section 18 of the Act. The complainants reserve their right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainants. Hence, this complaint for the reliefs as stated above.



5. Before filing the complaint, the complainants sent the copies of the complaint and the documents to the respondent on the given address. Proof of service has been filed on the record. Notices w.r.t. filing of complaint were also issued to the respondent for making his appearance. However, despite due and proper service of notices, the respondent failed to put appearance and file the reply before the authority. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance or by adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainants in their complaint.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions of the complainants during hearing.
7. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
8. Arguments have been heard.
9. The Authority is of the view that the Act is to protect the rights of the stake-holders i.e. the promoter, allottees and the real

estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

10. On consideration of the circumstances, the evidence and other record, submissions made by the complainants and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 2 of the builder buyer unit agreement executed between the parties on 11.01.2008, possession of the booked unit was to be delivered by December 2008 + 3 months. As such the due date of delivery of possession comes out to be 31.03.2009. According to the complainants possession of the unit in question has not been delivered to them by the respondent so far. Hence, the project is an on-going project and is squarely covered under the provisions of the Act.
11. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the builder buyer unit agreement dated 11.01.2008 to hand over the possession within the stipulated period even after receipt of entire consideration from the complainants. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established.

12. As such the complainants are entitled for delayed possession charges @10.20% p.a. w.e.f. 31.03.2009 till the physical offer of possession of the allotted unit after receipt of occupation certificate as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
13. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:
- The respondent shall pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 31.03.2009 till the physical offer of possession of the allotted unit after receipt of occupation certificate within a period of 90 days from the date of this order and thereafter monthly payment of interest shall be paid by the 10th of each subsequent month.
  - The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.
14. Complaint stands disposed of.
15. File be consigned to registry.

(Sami Kumar)  
Member

(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.02.2020

Judgement uploaded on 11.03.2020.