

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

Complaint No. : 256 of 2018
First date of hearing: 26.06.2018
Date of Decision : 05.11.2018

Mr. Parveen Chawla,
R/o. H.No. 1025, Sector-9, Urban Estate,
Gurugram, Haryana-122001

Complainant

Versus

Umang Realtech Pvt.Ltd.,
Regd. Office: 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 Parveen Chawla Complainant in person
Shri Rishu Kant Sharma Advocate for the respondent

ORDER

1. A complaint dated 14.05.2018 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. Parveen Chawla, against the promoter Umang Realtech Pvt. Ltd., on account of violation of the clause 6.1 of the apartment buyer's agreement executed on 02.03.2015 in respect of apartment



number T-1701, 16th floor, in the project 'Monsoon Breeze' for not handing over possession on the due date i.e. 2nd March 2019 (being premature), 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", Sector-78, Gurugram
2.	Apartment/unit no.	T-1701 on 16 th floor, block/tower 'T'
3.	Apartment measuring	1300 sq. ft.
4.	RERA registered/ not registered.	Not registered (applied)
5.	Booking date	01.10.2014
6.	Date of execution of apartment buyer's agreement	02.03.2015
7.	Payment plan	Possession linked payment plan
8.	Basic sale price	Rs.86,90,000/-
9.	Total amount paid by the complainant till date	Rs.28,69,770/-
10.	Percentage of consideration amount	Approx. 40 Percent
11.	Date of delivery of possession as per clause 6.1 of apartment buyer's agreement (42 Months + 6 months grace period from the date of approval of the building plans or signing of this agreement whichever is later. [DTPC License no.: 38 of 2008] (consent to establish granted on 01.08.2012)	02.03.2019
12.	Delay in handing over possession till date	Premature
13.	Penalty clause as per apartment buyer's agreement	Clause 6.6 of the agreement i.e. Rs.5/- per sq. ft per month of the



		super area of the said flat.
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- 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. An apartment buyer's agreement dated 02.03.2015 is available on record for the aforesaid apartment according to which the possession of the same is yet to be delivered on 02.03.2019. Hence, there is no violation on the part of respondent.
- Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 26.06.2018. The case came up for hearing on 26.06.2018, 19.07.2018, 30.08.2018 , 30/10/18 and 05.11.2018. Reply has been filed by the respondent on 11/07/2018.

Facts of the complaint

- Briefly stated, the facts of the case as culled out from the complaint of complainant are that on 01.10.2014 by paying a booking amount of Rs. 663897/- vide cheques dated 01.10.2014, in the Umang Realtech Pvt. Ltd. project named "Monsoon Breeze" in phase-II, sector- 78, Gurugram.
- The complainant submitted that a discount of 3.5% on basic sale price was to be given by the respondent and it was



supposed to be adjusted with third instalments of 15% (within 180 days). On 17.10.2014, the complainant received allotment letter from the respondent. The apartment buyer's agreement was executed on 02.03.2015 wherein the developer agreed to handover possession of the flat within 42 months plus 6 months grace period from the commencement of construction upon receipt of all approvals i.e. on 02.03.2019. The complainant submitted that he has been visiting the project site and it has been noted that the construction of the project is at very low pace and there is no possibility in near future of its completion. Therefore, the respondent company has cheated and fraud the complainant.

7. The complainant further submitted that the respondent issued a demand letter of Rs.11,97,791/- towards demand of 10% of BSP + 100% of EDC/IDC. On 12.11.2014 the respondent sent the copy of flat buyers agreement to the complainant. The complainant issued cheque of Rs. 11,82,971/- after deducting TDS of Rs. 14,820/- and handed over to the respondent representative Mr. Abhishek on 10.12.2014. The respondent after this made several demands of instalments as per the payment plan and the complainant fulfilled all of them.



8. That the respondent issued revised flat buyers agreement as they wrongly charged park facing in the original agreement dated 18.10.2014. The complainant further submits that the respondent issued letter stating the reason for delay in completing the said project due to uncontrollable force majeure and shifted the complainant to I-1704, Winter Hills, sector-77, Gurugram. That the complainant sent a letter to respondent with reference to their letter dated 31.08.2017 stating breach of the terms and conditions of the agreement and requested to refund the amount already paid along with 15% interest per annum.
9. The complainant in its amended complaint stated that he visited the site of winter hills, sector-77, Gurugram on 04th August 2018. The complainant finalized the flat no. B-004 in the above proposed project. The respondent sent a confirmation mail on 11th august 2018 to the complainant stating the cost of the flat i.e. Rs 77,51,200/- and he also sent apartment buyers agreement of B-004, winter hills. The cost of the said project in clause 3.1 if the agreement is Rs. 83,334,970/- whereas it was agreed Rs.77,51,200/- in mail. The above said project does not comply with HRERA guidelines and hence, complainant intends to withdraw from the said project.



Issues raised by the complainants are as follow:

- i. Whether the respondent failed to register its project under RERA, Gurugram?
- ii. Whether the stoppage of construction is due to any justifiable reasons?
- iii. Whether the respondent failed to adjust the discount of 3.5% in the third instalment which was paid by the complainant within 180 days as agreed in the agreement?
- iv. Whether there is any remedy available to the complainant in case of Insolvency and Bankruptcy filed by Ahluwalia Contracts (india) Ltd. against the developer?

Relief sought:

The complainant is seeking the following relief:

- i. To direct the respondent to handover a ready to move in flat to the complainant in another project in Gurugram at the same cost as agreed in agreement dated 02/03/2015
- ii. To direct the respondent if he fails to comply with the above mentioned relief to refund the amount already paid i.e Rs.28,93,105/- by the complainant with 18%



per annum interest within 7 days from the date of order passed by the competent authority.

Respondent's reply

10. The respondent submitted that the present complaint filed is baseless, vexatious and is not tenable in the eyes of law there the complaint deserves to be dismissed at the threshold. It is submitted that in the present case there is no deliberate delay in completing the construction and handing over the possession of the apartment. The apartment could not be handed over only because of the reasons which are beyond the control of the respondent and hence reasonable extension of time is required in terms clause 8(a) of the agreement dated 02.03.2015.
11. However, the respondent submitted that it is the global recession which has hit the economy and is continuing particularly in the real estate sector therefore, the respondent is entitled to reasonable extension of time for completion of the apartment. There are numerous other problems in completion of the construction of the project like shortage of water in the region, shortage of bricks, shortage of labour, unexpected sudden declaration of demonetization policy by the central government, recession in the economy



etc.. All the above mentioned problems are beyond the control of the respondent.

12. The respondent further submits that the issue of Revenue Rasta had impacted the clearance of phase II of the project from Haryana State Environmental Impact Assessment Authority which created hindrances in building plans and progress of construction work at the project site since the year 2014. Even after all such hindrances the respondent made serious efforts the issue of revenue rasta in order to obtain the environmental clearance for the entire project in phase II. It is respectfully submitted that complainants till date have only paid 40% of the basic price of the flat and he has also defaulted at many instances in paying the instalments of the apartment and as on date the complainant is liable to pay Rs. 79,266/- as interest towards delayed payment of the instalments.

13. It is further submitted that the complainants had been offered to shift their booking to other projects of the respondent named winter hills ABLM towers situated in sector 77 of Gurugram is near to the completion and is expected to be completed at the beginning of the next year.



Determination of issues:

- i. Regarding the **first issue**, the respondent has applied to get its project named “Monsoon Breeze” registered as per the RERA, Act 2016.
- ii. Regarding the **second issue**, the respondent has not failed to deliver the possession of the project because as per the flat buyers agreement the due date of delivery of possession is on 02.03.2019.
- iii. Regarding the **third issue**, the respondent failed to adjust the discount of 3.5% in the 3rd instalment which was paid by the complainant and hence, it is the violation of the agreed terms and conditions of the project.
- iv. Regarding the **fourth issue**, the complainant is needs to make a separate application in order to get relief under Insolvency and Bankruptcy case.

Findings of the authority

14. The respondent admits as the concerned project is situated in Sector -78 ,Gurugram and as the nature of the project relates to real estate it has complete territorial as well as subject matter jurisdiction.
15. 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.

16. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has not failed to deliver the possession of the apartment to the complainant, as per the said agreement and the possessions due date is 02.03.2019 and hence, is pre-mature. Further, the respondent has submitted in its written reply that the project of winter hills as substitute for monsoon breeze shall be ready to move in, in the beginning of the next year.

Decision and directions of the authority

17. 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 builder has miserably failed in delivering the possession. The complainant/buyer has put up certain photographs dated 31.10.2018, taken on record, which indicate that the construction is at the very initial stage and there is no scope for delivery of possession.
- (ii) Keeping in view the genuine prayer of the complainant/buyer, the authority directs the builder-respondent to refund the deposited amount alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days from today.

18. The order is pronounced.

19. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Dated : 05.11.2018