

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

Complaint No. : 471 of 2018
Date of First Hearing : 23.08.2018
Date of Decision : 19.09.2018

Mr. Tejinder Singh and Baljit Kaur, R/o F-33,
Vishnu garden, Tilak Nagar, New Delhi-
110018.

Complainants

Versus

M/s Umang Realtech Pvt Ltd, having its
registered office at: first floor, the great
eastern centre, 70, Nehru Place, New Delhi-
110019

Respondents

M/s Siyona Construction Pvt Ltd, having its
registered office at: 910, Ansal Bhawan,16,
Kasturba Gandhi marg, New Delhi.

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Baljit kaur- complainant 2
with Ms. Priyanka Agarwal
Shri Rishu Kant Sharma

Advocate for the complainant

Advocate for the respondent



ORDER

1. A complaint dated 21.06.2018 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 complainants Tejinder Singh and Baljit Kaur, against the promoter M/s Umang realtech Pvt Ltd and Anr. for violation of clause 6.1 of the apartment buyer's agreement dated 28.02.2014 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	"Monsoon Breeze 78 II", Sector-78, Gurugram
2	Area of the project	19.856 acres
3	DTCP license no.	77 of 2012
4	Nature	Group housing project
5	Unit no.	301, 3 rd floor, tower-0
6	Unit area	1550 sq. ft.
7	Date of booking	28.05.2013
8	Payment plan	Construction linked plan
9	Registered/ not registered	Registered (116 of 2017) and (14 of 2018)
10	Date of agreement	28.02.2014
11	Total consideration	Rs 95,77,500/-
12	Total amount paid by the complainant	Rs 31,71,327/-
13	Due date of possession	28.02.2018 (clause 6 of apartment buyer agreement i.e. 42 months plus 180 days grace period)



3. The details provided above have been checked on the basis of

record available in the case file which have been provided by the complainants and the respondents. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 28.02.2018. 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. per month of the said flat for the period of such delay as per clause 6.7 of apartment buyer's agreement dated 28.02.2014. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents appeared on 27.06.2018. The case came up for hearing on 27.06.2018, 18.07.2018, 06.09.2018 and 19.09.2018. The reply filed on behalf of the respondents on 26.06.2018 has been perused.

Facts of the complaint

5. The complainant booked a flat dated 28.05.2013 in "Monsoon Breeze II, in Sector-78, Gurugram developed by respondent 1 and owned by respondent 2. On 18.07.2013, the respondent allotted unit no. O-301 in the said project to the complainant.



6. Apartment buyer's agreement was executed on 28.02.2018. On 01.09.2017, the respondents shifted the said flat from earlier allotted project of Monsoon Breeze Phase 2, Sector-78, Gurugram to Winter Hills, Sector-77, Gurugram without any prior permission and sent a new allotment letter for unit B-003 in the new project.
7. The complainants visited the project site many times to know the status of the project and it is very shocking for the complainants that the project is not going since last 3 years. Complainants requested for refund of money paid but the respondent denied the same. Construction work has been stopped at the project site since January 2015.
8. **Issues raised by the complainants are as follow:**
 - i. Whether the promoter signed the agreement for handing over possession within 48 months from date of agreement, and after spending 5 years the project is incomplete?
 - ii. Whether there is any reasonable justification for stopping the construction?
 - iii. Whether the respondent without any prior consent shifted the flat to Winter hills, Sector-77.
 - iv. Whether exemplary costs be imposed for deliberately not completing the project?



9. **Relief sought**

The complainants are seeking compensation over paid amount at 15% interest amounting to Rs 21,19,197.6 and refund of paid amount of Rs 31,71,327/-. (Total refund of Rs. 52,91,827/-)

Reply by respondent

10. It is submitted that respondent 1 is entitled for reasonable extension of time in completing the construction and handing over possession in terms of the agreed contract between parties.
11. Respondent no. 1 submitted that the delay in handing over the possession was caused on account of reasons beyond the control of respondent i.e. force majeure conditions such as non-booking of all apartments affected the construction, lack of adequate sources, shortage of labour, rising manpower shortage of water, demonetization and approvals and procedural difficulties.
12. It is submitted that the project had been faced with an unprecedented issue wherein the plans of construction of the entire project had to be scrapped since respondent 1 is not in a position to construct the referred project due to the issue of



revenue rasta which had been communicated to the complainants.

13. The respondent submitted that issue of revenue rasta from Haryana SEIAA has impacted phase II of the project, therefore offer to shift the flat in other project was given to the complainants.
14. It is submitted that the allegations in the present complaint cannot be decided summarily and hence the instant complaint is out of jurisdiction of this hon'ble authority.
15. Respondent 1 is bonafidely attempting to complete the project construction in a time bound manner considering the interests of its customers.
16. Respondent 1 submitted that issue of compensation cannot be granted by this hon'ble authority.

Determination of Issues

17. The respondent has failed to fulfil his obligations as per section 11(4) of the Act, by not handing over possession as per the agreement. Moreover, the construction has been stopped at the project site since January 2015.
18. There is no reasonable justification for the delay caused in handing over of possession and for stoppage of construction at project site since January 2015.



19. The respondent wrongly shifted the flat from the original project to Winter Hills in Sector 77, Gurugram without any prior permission or consent.
20. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said apartment 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."

21. The complainants 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."

22. The complainants make 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."

Decision and directions of the authority

23. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.

24. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

25. 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:




26. In view of the reply of the respondent in para 3 and 4, the respondent was effectively forced to abandon its plan to construct the said project. Accordingly, in view of the project being scrapped, the complainants shall be refunded the entire amount i.e. Rs 31,71,327/- along with prescribed rate of interest @ 10.45% p.a. from the date the respondent received the money from the complainants till date of actual realization
27. As per the provisions of rule 16, of the Haryana Real Estate (Regulation and Development Rules, 2016) the amount along with applicable interest shall be payable by promoter to the allottee within a period of 90 days from date of order.
28. The order is pronounced.
29. Case file be consigned to the registry.
30. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member




(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated :19.09.2018s



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

ROCEEDINGS OF THE DAY

Day and Date	Wednesday and 19.09.2018
Complaint No.	471/2018 Case titled as Tejinder Singh & Anr. V/s M/s Umang Realtech Pvt. Ltd.& Anr.
Complainant	Tejinder Singh & Anr.
Represented through	Baljeet Kaur-complainant No.2 in person With Ms. Priyanka Agarwal.
Respondent	M/s Umang Realtech Pvt. Ltd.& Anr.
Respondent Represented through	Shri Rishu Kant Sharma, Advocate for the respondent.
Last date of hearing	23.8.2018
Proceeding Recorded by	

Proceedings

The project is not registered.

The complainant has filed an amended complaint today.

In view of the reply of the respondent in para nos.3 and 4, the respondent was effectively forced to abandon its plan to construct the said project. Accordingly, in view of the project being scrapped, the complainant shall be refunded the entire amount alongwith prescribed rate of interest. The attention of the respondent is invited to the explanation in Section 2 (za) to the definition of interest which is reproduced as under:-

“Interest” means the rate of interest payable by the promoter or the allottee, as the case may be.

Explanation: for the purpose of this clause ---



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

- (i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
- (ii) The interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

As per provisions of rule 16, the amount alongwith applicable interest shall be payable by promoter to the allottee within a period of 90 days from the date on which such refund becomes due i.e. from the date of order today. The complaint stands disposed of accordingly. Detailed order will follow. File be consigned to the registry.

[Redacted]
Sanjiv Kumar
(Member)

[Redacted]
Dr. K.K. Khandelwal
(Chairman)
19.09.2018

[Redacted]
Subhash Chander Kush
(Member)