

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

Complaint No. : 165 of 2018

First date of hearing: 16.05.2018

Date of Decision : 29.10.2018

1. Dheeraj Talwar

2. Rupal Talwar

R/o U20, House no. 19 and 20

DLF Phase 3, Gurugram

Versus

...Complainants

M/s Umang Realtech Pvt Ltd,

B 72, 7th 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:

Dheeraj Talwar and Rupal Talwar Complainants in person

Talwar

Shri Arpit Dwedi

Advocate for the respondent



ORDER

1. A complaint dated 17.04.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation And

Development) Rules, 2017 by the complainant, Mr. Dheeraj Talwar and Rupal Talawr, 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	"Winter Hills 77", Sector 77 Gurugram
2.	Registered/unregistered	Registered
3.	HARERA registration no.	NO.RC/REP/HARERA/GGM/2018/10
4.	HARERA registration certificate valid upto	31.12.2019
5.	Unit no.	1404, tower-E,13 th floor
6.	DTCP licence no.	67 of 2011
5.	Apartment buyer's agreement	28.08.2012
6.	Total consideration	Rs. 90,33,125/-
7.	Total amount paid by the complainant	Rs. 89,37,686/-
8.	Payment plan	Construction Linked plan
9.	Committed date of possession as per affidavit submitted by the respondent	June 2019
10.	Date of delivery of possession	Clause 7.1 to complete the construction and apply for the OC by 31.12.2015+ 6months grace period i.e. 30.06.2016
11.	Delay in handing over possession till date	2 years 4 months
12.	Penalty clause as per apartment buyer's agreement dated	Clause 7.9 of the agreement i.e. Rs.5/- per sq. ft per month of



	28.08.2012	the super area of the said flat.
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3. As per the details provided above, which have been checked as per record of the case file. An apartment buyer agreement is available on record for unit no. 1404, tower-E, 13th 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 16.05.2018. The case came up for hearing on 16.05.2018, 14.06.2018, 10.07.2018, 09.08.2018, 27.09.2018, 22.10.2018 and 29.10.2018. The reply has been filed on behalf of the respondent on 31.05.2018.

Facts of the case



The complainants submitted that the real estate selling agent of the respondent company contacted the complainants on phone about the launch of a multi-storey housing project in Sector-77, Gurgaon, and thereafter personally visited at the residence of the complainants on 13.05.2012 along with the brochure of the aforesaid housing project named as "Winter Hills".

6. The complainants submitted that they booked one flat on 13th May 2012 in the said housing project for which the complainants handed over a cheque vide dated 13.05.2012 for Rs. 7,85,000/- in favour of the respondent, as advance deposit, to the aforesaid real estate selling agent.
7. The complainants submitted that thereupon, the respondent issued their allotment letter no. WHG-494 dated 29.05.2012 pertaining to booking of apartment no. 1404 in tower E, Winter Hills, Sector-77, Gurgaon, to the complainants. The respondent demanded the payments from the complainants and accordingly, the complainants have throughout made the total payment of Rs. 89,37,686/- to the respondent, much more than the basic sale price of Rs. 76,51,350/- of the apartment.
8. The complainants submitted that the respondent company fraudulently stopped their construction of the said housing project in the midway long time back. Also, respondent already recovered and received payments even against those items such as club membership charges, firefighting equipment charges, external development charges as on 05.11.2012 itself from the complainants for which the respondent has not spent even a single penny. Furthermore, the respondent even did not start the construction of



second floor of the said housing project and there is no likelihood of it being completed in the near future.

9. The complainants submitted that the respondent has also failed to obtain all the required licenses, approvals, sanctions etc. pertaining to the said housing project from the concerned competent authorities. The respondent has not at all performed his duties, obligations, responsibilities and functions sincerely and properly.
10. The complainants submitted that the respondent has already first recovered and received the colossal amount of Rs. 19,71,945/- from the complainants and thereafter, the respondent drafted the apartment buyer's agreement as late as on 28.08.2012 whereby the complainants had no choice at all but to helplessly sign the agreement.
11. The complainants submitted that their entire lifetime hard-earned money, loans with heavy EMIs, selling of our precious jewellerys, disposing of our fixed deposits, LIC policy, etc. only in order to get the apartment but all our hopes crashed by the respondent. The respondent very clearly committed in clause 7.1 of the apartment buyer's agreement that they would complete the construction latest by 31.12.2015 and there are absolutely no signs of their completion in the near future.



12. The complainants submitted that they made endless request and reminders to the responsible officials of the respondent personally, as well as through several e-mails but all in vain. It is further mentioning that the respondent absolutely did not give any reply to the numerous e-mails of the complainants.

13. The complainants submitted that of late, the respondent has, sent e-mail dated 24.03.2018 wherein he has given, just to gain yet more time from the complainants and other buyers which they have already been doing so for the last many years. The complainants have duly taken up the matter against the respondent company with CM Grievance Redressal Cell.

14. The complainants submitted that even the news about stoppage of construction at Winter Hills Sector-77, by the respondent company has also appeared in the leading Times of India newspaper on 26.12.2017. The fact about the total stoppage of construction by the respondent has also appeared in the famous Dainik Jagran newspaper on 27th December 2017 and the respondent even did not bother to obey the directions of DTP Planning, Gurgaon.

15. The complainants submitted that on 13.03.2018, the complainants, who visited the site of the said housing project, were in a state of shock that no construction activity, at the site and no labourer,



no machinery and no material were lying at the site for further construction.

16. Issues raised by the complainants

- i. Whether the respondent has violated the provisions of apartment buyer's agreement by not completing the construction of their housing project within their committed period?
- ii. Whether it is fair, reasonable, logical and justified to recover payments against club membership charges, external electrification charges, firefighting, equipment charges, external electrification charges, external development charges, car parking charges etc. at that time more especially when the respondent did not even start the construction of second floor of the housing project?

17. Relief sought

- I. Refund of the total amount of Rs. 89,37,686/-
- II. Interest @15% p.a. on Rs. 89,37,686/- till 31.03.2018 = Rs. 60,86,619/- from the respondents as per interest calculation sheet .
- III. Compensation of Rs. 25,00,000/- to the complainants.



Reply

18. That the content of brief facts is denied except for matter of record.

Preliminarily objections

19. The 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. In the present case there is no deliberate or wilful delay in completing the construction and handing over the possession of the apartment. The possession could not be handed over only because of the reasons which are beyond the control of the respondent and hence a reasonable extension of time is required in terms of clause 8(a) of the contract.

20. 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 7.2.

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.



iii. Non- timely payment of instalments by the buyers

21. The respondent submitted that he has duly communicated the progress of the construction to the complainants. Also, stated that he transparently disclosed each and every stage of the construction as well as the various difficulties facing by them to its customers, including time to time meetings with the association of customers of the subject project.

22. The respondent submitted the following facts which proves that he is doing its best for completion of the project:

i. Respondent recently obtained a bank loan with an intention to complete the project rapidly.

ii. Respondent had applied for registration dated 27.07.2017 before the RERA, Panchkula, Haryana.

However, due to shifting of the RERA authority office from Panchkula to Gurugram, a fresh application as per directions of the concerned officials had to be filed for registration of the subject project.

iii. Respondent assures that the construction and development of the subject project would be completed by January 2019 and possession will be offered soon



thereafter after grant of occupancy certificate by the concerned authorities.

23. Respondent submitted that the total amount collected from all the allottees of the subject project amounts to approximately Rs. 403.64 crores. Out of said amount, a sum of Rs. 166.02 crores has been incurred as cost for procuring the land for subject project and a sum of Rs. 171.53 crores has been expended towards construction and development of the subject project. Further, amount of Rs. 33.26 crores has been incurred as finance charges and approximately Rs. 6.92 crores has been expended on administrative charges. Additionally, a sum of Rs. 7.93 crores has been incurred as marketing and selling expenses. A sum of Rs. 46.93 crores has been incurred as paid as EDC and IDC charges to the concerned authorities. In total, respondent has incurred total cost of Rs. 432.61 crores in the construction and development of subject project.



24. 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 7.9 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.

Reply on merits

25. The respondent stated that the complainants herein have made a payment of Rs. 89,37,686/- against a total sale consideration as per apartment buyer agreement amount of Rs. 90,33,125/-. The respondent submitted that the complainants herein had been issued a demand letter dated 12.01.2017 by the respondent requesting for payment of amount of Rs. 74,349/- towards payment of Haryana VAT which is a statutory payment. However, till date an instalment amount to Rs. 18,587/- of the aforementioned demand letters remain due and unpaid which constitute a part of the complainants.
26. The respondent submitted that he has to deliver the subject project including the subject apartment to all its respective allottees within a short span of time and therefore, is making



all earnest efforts to ensure that the subject apartment and the project stands completed and ready for possession by January 2019 in terms of the construction schedule.

27. Determination on issues

- i. In regard to the **first issue** raised by the complainants, that as per clause 7.1 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 30.06.2016. The clause regarding possession of the said unit is reproduced below:

"7.1 POSSESSION OF APARTMENT

Notwithstanding the provision mentioned in the application form in respect of date of possession, the company subject to force majeure, undertakes to complete the construction and apply for the completion certificate by 31st December 2015, subject to a grace period of 6 months, and as and when the completion certificate is received, possession of the said apartment to the buyer shall be offered, which the buyer has noted and confirmed"

Accordingly, the due date of possession was 30.06.2016.

Therefore, there is delay of 2 years 4 months in handing over the possession.

Complainants are seeking for an interest of 15 % delay in handing over possession. However, the respondent will be liable. However, respondent company committed a default in



doing the same and thus, they are liable to pay delayed interest under section 18(1) proviso and rule 15 HRERA to pay to the complainants interest, at the prescribed rate of 10.45%, for every month of delay till 30.06.2019.

- ii. In regard to the **second issue** raised by the complainants, as per clause 3.2 of the said agreement and clause 3.3. of the agreement includes club membership charges, external electrification charges, firefighting equipment charges, external electrification charges, external development charges, car parking charges etc.

28. 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.



Decision and direction of authority

29. 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. Respondent has submitted an affidavit stating therein that the project is registered and due date for delivery of possession is **30.6.2019**. As per para no.5 of the affidavit dated 23.10.2018, it has been mentioned that they are quite serious about the execution of the project as more than 850 labourers are working at the site. However, complainants are entitled for interest for delayed possession at the prescribed rate of interest @ 10.45% per annum as per provisions of section 18 (1) of the Real Estate (Regulation And Development) Act, 2016. As per clause 7.1 of the builder buyer agreement dated 28.8.2012, the due date of possession with grace period of six months comes out to be 30.6.2016.

- ii. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made



before 10th of subsequent month till handing over the possession.

30. Case file be consigned to the registry.

31. Order is pronounced.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 29.10.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Monday and 29.10.2018
Complaint No.	165/2018 case titled as Mr. Dheeraj Talwar & Another V/s M/s Umang Realtech Pvt. Ltd
Complainant	Mr. Dheeraj Talwar & another
Represented through	Complainant in person
Respondent	M/s Umang Realtech Pvt. Ltd.
Respondent Represented through	Shri Arpit Dwedi, Advocate for the respondent.
Last date of hearing	22.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Builder/respondent has submitted an affidavit stating therein that the project is registered and due date for delivery of possession is **30.6.2019**. As per para no.5 of the affidavit dated 23.10.2018, it has been mentioned that they are quite serious about the execution of the project as more than 850 labourers are working at the site. However, complainant is entitled for interest for delayed possession at the prescribed rate of interest @ 10.45% per annum as per provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. As per clause 7.1 of the Builder Buyer Agreement dated 28.8.2012, the due date of possession with grace period of six months comes out to be 30.6.2016.

The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession.

The complaint stands disposed of. Detailed order shall follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)