

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

Complaint No. : 226 of 2018
First date of hearing : 05.06.2018
Date of Decision : 27.11.2018

Mr. Kanwal Singh Mann.

Address: EW 1203, Ireo, The Grand Arch,
Sector- 58, Gurugram.

Complainant

Versus

M/s Universal Buildwell Pvt. Ltd.

Address: Mr. Varun Puri.

Universal Trade Tower,

8th floor, sector 49, Sohna Road, Gurugram,
Haryana – 122018.

Respondent

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Mr. Kanwaldeep Singh Mann: Complainant in person

None for the respondent: Proceeded ex parte on 22.10.2018

ORDER

1. A complaint dated 04.05.2018 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. Kanwal Deep Singh Mann, against the



promoter M/s Universal Buildwell Pvt. Ltd., on account of violation of the clause 13.3 of apartment buyer's agreement executed on 08.12.2011 in respect of apartment no. 1101, 11th floor, tower b of the project 'universal aura' located at sector 82, Gurugram for not handing over possession on the due date i.e. by 08.06.2015 which is an obligation of the promoter 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	"Universal Aura", Sector 82, Gurugram, Haryana.
2.	Flat/apartment/unit no.	1101, 11 th floor, tower 'B'.
3.	Nature of real estate project	Group housing colony
4.	DTCP license no.	51 of 2011
5.	Admeasuring super area of the allotted unit	1968 sq. ft.
6.	RERA registered/unregistered	Unregistered
7.	Date of execution of apartment buyer's agreement	08.12.2011
8.	Payment Plan	Construction linked payment plan
9.	Total consideration amount as per agreement dated 08.12.2011	Rs. 82,63,712/-
10.	Total amount paid by the complainant till date	Rs. 73,06,846/-



11.	Percentage of consideration amount	Approx. 82%
12.	Due date of delivery of possession as per clause 13.3 of apartment buyer's agreement dated 08.12.2011 (36 months + 180 days from the date of approval of building plans and/or execution of the apartment buyer's agreement whichever is later)	08.06.2015
13.	Delay in handing over possession till date	3 years approx.
14.	Penalty clause as per apartment buyer's agreement dated 08.12.2011	As per Clause 13.4 of the agreement i.e. Rs.10/- per sq. ft. of the super area for every month till the actual date fixed by the company for handing over of possession is payable as 'Delay Compensation'.

3. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent.

An apartment buyer's agreement dated 08.12.2011 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 08.06.2015. Neither the respondent has delivered the possession of the subject unit till date to the complainant nor they



have paid any compensation @ Rs.10/- per sq. ft. of the super area for every month till the actual date fixed by the company for handing over of the possession as per clause 13.4 of apartment buyer's agreement dated 08.12.2011. Therefore, the promoter has not fulfilled his obligation which is in violation of section 11(4) of the Act *ibid*.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 05.06.2018, 11.07.2018 and 21.08.2018 only. The case came up for hearing on 05.06.2018. The reply has been filed on behalf of the respondent on 01.06.2018 alongwith an application seeking rejection of the complaint on the ground of jurisdiction, which has been perused. The complainant filed the rejoinder on 06.06.2018 to rebut the contentions raised by the respondent in their reply to the complaint.



5. From last two dates of hearing i.e. 27.09.2018 and 22.10.2018 none appeared on behalf of the respondent, hence the respondent was proceeded ex parte vide order dated 22.10.2018.

Facts of the complaint

6. Briefly stated, facts relevant for the disposal of present complaint as that on 02.11.2010, the complainant booked a 3 BHK apartment vide an application form, in the project namely "universal aura" developed by M/s Universal Buildwell Pvt. Ltd. in Sector 82, Gurugram, by paying Rs.4,50,000/- in advance which was duly acknowledged by the respondent vide receipt no. 001944 dated 31.12.2010.

7. In pursuance to the said booking of the complainant, respondent issued provisional allotment letter dated 26.03.2011 vide which they allotted unit no. B-1101 on 11th floor of the project in favour of complainant. Thereafter on 08.12.2011, apartment



buyer's agreement was executed between the parties for the allotted unit.

8. The total cost of the unit was Rs. 82,63,712/- excluding service tax as against which the complainant has made a total payment of Rs. 73,06,846/- on various dates under the construction linked plan, as per the demand note of the respondent. The last payment was made by the complainant on 27.08.2014. It was alleged by the complainant that the respondent has revised the total cost of the unit from Rs. 81,81,965/- to 82,63,712/- in December, 2013 against the 'change of super area'.

9. It was further alleged by the complainant that construction activity was left standstill since the year 2014 and the respondent has failed to deliver the possession of the unit by 08.06.2015 despite repeated visits/ follow ups of the complainant. In addition to it, the respondent has charged interest cost of Rs. 1,68,580/- and Rs. 12,569/- for delayed



payment of 5th to 8th instalment. Due to aforesaid acts of the respondent the complainant has suffered potential loss and mental harassment. Left with no other option, the complainant was constrained to file the present complaint.

Issues to be decided:

- 1) Whether the builder is interested to complete the project as per the terms of apartment buyer's agreement?
- 2) Whether the builder should pay interest @ 24% p.a. from the date of payment made to the builder till the date of disposal as they have charged penal interest at the same rate of interest, for delayed payment on two occasions for Rs. 1,68,580/- and Rs. 12,569/- respectively?
- 3) Whether the respondent is liable to pay compensation against the potential loss and mental harassment?



Reliefs sought-

10. The complainant is seeking the following reliefs:

- i. Refund of INR 73,06,846 paid to the builder till date as given at page 114 of the complaint.
- ii. 24% interest against the total amount paid to the builder from the date of the relevant deposits till the date of dispersal.
- iii. INR 50 lakhs as damages and compensation against the potential loss and mental harassment myself and my family have gone through for years and still waiting for the promised flat.

Respondent's Reply:

11. The respondent in their reply raised preliminary objection that complaint filed by the complainant is not maintainable and this regulatory authority has no jurisdiction to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction.
12. The respondent contended that the complaint for compensation and interest under section 12, 14, 18 and 19 of the Act ibid is maintainable only before



the adjudicating officer under rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said act not before this regulatory authority under rule-28 of the act.

13. The respondent further contended that the complainant does not disclose any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass and to extort money from the respondent builder and gain wrongfully.

14. The respondent contended that the complainant has miserably failed to discharge his obligations and therefore, the complainant is by his own acts and conduct stopped from filing the present complaint. The complainant has come before this authority with unclean hands.

15. The respondent submitted that the respondent company is committed to develop the real estate project named "universal aura", sector 82,



Gurugram and the construction work is going on. Though the said project is going behind schedule of delivery, however the respondent has throughout conducted the business in a bonfide manner and the delay occasioned due to force majeure circumstances which are beyond the control of the respondent. That there had been labour and material shortages affecting the time schedule and further, various allottees had been making defaults in payments as called by the respondent leading to financial constraints disrupting the execution of the project in a timely manner. Further the overall industrial climate of the real estate sector had been abysmally low and the industry as whole is suffering because of the same. The respondent submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all time low and thereby the respondent cannot be penalised for the delay being occasioned in any case the respondent company does not gain anything by delaying the project and



is rather committed to deliver the project in the best standards of quality and performance. On the other hand even the respondent company due to uncontrollable delay in delivering the project is suffering because it has to pay the huge license fees as for renewal of the licenses. Also, that the price of the flats in the project had already been fixed in the year 2010-2011 as per policy on basis of the estimated costs but the costs of men and material has also increased manifold and the respondent company is suffering immense loss of margins due to the delay so occasioned without there being any compensation to the respondent company. More so the respondent company had to pay higher renewal charges as per the higher EDC charges due to the uncontrollable delays.



16. The respondent submitted that this forum does not have the subject matter jurisdiction as the respondent have not violated or contravened any of the provision of the said act of the rules made there under.

17. The respondent submitted that the present case requires detailed investigations and leading of evidence and the same cannot be adjudicated in a summary manner, therefore this Hon'ble forum lacks jurisdiction in the present complaint.
18. Further the respondent submitted that the sole purpose and intention of the complainant for filing the present complaint is extorting money and the complainant has levied baseless allegations without stating as to how he is being aggrieved by the respondent.
19. The respondent submitted that the complainant out of his own free will and accord purchased the unit no. G-102, 1st floor in "universal aura" Sector 82, Gurugram, Haryana after a detailed investigation and survey about project status and company. There is no deficiency in services on the part of respondent and the complaint is liable to be dismissed on this ground alone



20. Rejoinder to the reply of respondent filed by the complainant denying each and every averments made by the respondent.

Determination of issues: -

21. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are given below:

22. With respect to the **issue no. 1, 2 and 3** raised by the complainant, as per clause 13.3 of apartment buyer's agreement, the possession of the apartment was to be handed over within a period of 36 months (plus grace period of 180 days) from the date of approval of building plans and/or execution of the apartment buyer's agreement whichever is later. The clause regarding the possession of the said apartment is reproduced below:



"13. POSSESSION AND HOLDING CHARGES

.....subject to force majeure, as defined herein and further subject to the allottee having complied with all its obligations under the terms and conditions of this agreement and the allottee not being in

default under any part of this agreement including but not limited to the timely payment of the total sales consideration, stamp duty and other charges and also subject to the allottee having complied with all formalities or documentation as prescribed by the company, the company proposes to handover the possession of the said apartment to the allottee within a period of 36 months from the date of approval of the building plans and/or execution of the apartment buyer agreement ("committed period"). The allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days ("grace period"), after the expiry of the said committed period to allow for unforeseen delays in obtaining the occupation certificate etc., from the DTCP under the act, in respect of the project."

23. Accordingly, the due date of possession was 08.06.2015 (approx.) and the possession has been delayed by 3 years (approx.) till the date of decision. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. of the super area for every month till the actual date fixed by the company for handing over of possession as per clause 13.4 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. It has also been observed in para 181 of **Neelkamal Realtors**



Suburban Pvt Ltd v. UOI and Ors. (W.P 2737 of 2017), wherein the Bombay High Court 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."

24. As the possession of the flat was to be delivered by 08.06.2015 as per the clause referred above, 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.

25. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) to pay to the complainant interest, at the prescribed rate i.e. 10.75% p.a., for every month of delay under section 18(1) of the Act *ibid.* Henceforth, the said issues so raised by the



complainant are decided by the authority in succeeding para no. 29 and 30 of this order.

26. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

27. The application regarding rejection of complaint challenging the 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 **Simni 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.

28. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire



Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

29. On the previous date of hearing i.e. 22.10.2018, none was present on behalf of the respondent and the respondent was ordered to be proceeded exparte and the case was adjourned for final arguments on 27.11.2018. Cost of Rs. 10,000/- was imposed on the respondent for non-appearance of Mr. Raman Puri, M.D. vide order dated 11.07.2018. On 21.08.2018 Mr. Mukul Sanwariya, proxy counsel on behalf of Mr. Kamal Dahiya, advocate for the respondent appeared and it was ordered to issue show cause notice to the respondent as to why the amount deposited by the complainant with the respondent may not be ordered to be refunded to the complainant for failure to deliver the possession in addition to certain other directions.



30. On next two dates of hearing i.e. 27.09.2018 and 22.10.2018, neither anybody appeared on behalf of the respondent nor any communication has been received from the respondent. Accordingly, vide order dated 22.10.2018, respondent was proceeded exparte.

Decision and directions of the authority

31. Keeping in view the dismal state of affairs with regard to the status of project and non-appearance of the respondent despite service, the authority left with no option but to order refund of the amount paid by the complainant to the respondent alongwith prescribed rate of interest.

32. Accordingly, it is hereby directed that the respondent to refund the entire amount of Rs. 73,06,846/- paid by the complainant alongwith prescribed rate of interest i.e. 10.75% p.a. within a period of 90 days from the date of issuance of this order failing which execution proceedings shall be initiated against the respondent ipso facto.




33. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.

34. The order is pronounced.

35. Case file be consigned to the registry.

36. Copy of this order be endorsed to the Registration branch.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated: 27.11.2018



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 27.11.2018
Complaint No.	226/2018 case titled as Mr. Kanwaldeep Singh Mann Vs. M/s Universal Buildwell Pvt. Ltd. & another
Complainant	Mr. Kanwaldeep Singh Mann
Represented through	Complainant in person
Respondent	M/s Universal Buildwell Pvt. Ltd. Universal Trade Tower, 8 th Floor, Sector-49, Sohna Road, Gurugram, Haryana & another
Respondent Represented through	Respondent proceeded ex parte vide order dated 22.10.2018
Last date of hearing	22.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments advanced on behalf of complainant heard.

Case of the complainant is that he had booked a flat/unit No.1101, Tower-B, 11th floor, "Universal Aura" Sector 82, Gurugram with the respondent and Apartment Buyer Agreement to this effect was executed inter-se the parties on 8.12.2011. As per clause 13 (3) of the BBA the possession of booked unit was to be delivered within a period of 36 months + 6 months grace period which comes out to be 8.6.2015. It was a construction linked plan. Complainant/buyer has already paid an amount of Rs.73,06,846/- to the respondent. However, respondent has failed in fulfilling

his obligation as on date to deliver the possession of the unit to the complainant.

On the previous date of hearing i.e. 22.10.2018, none was present on behalf of the respondent and the respondent was ordered to be proceeded against exparte and case was finally adjourned for final arguments on 27.11.2018. Cost of Rs.10,000/- was imposed on the respondent for non-appearance of Mr Raman Puri, MD, vide order dated 11.07.2018. On 21.08.2018 Mr. Mukul Sanwariya, advocate proxy on behalf of Mr. Kamal Dahiya, counsel for the respondent appeared and it was ordered to issue show cause notice to the respondent as to why the amount deposited by the complainant with the respondent may not be ordered to be refunded to the complainant for failure to deliver the possession in addition to certain other directions. On the next two dates i.e. 27.09.2018 and 22.10.2018, none was appeared on behalf of the respondent nor any communication has been received from the respondent. Accordingly, vide order dated 22.10.2018, respondent was ordered to be proceeded ex-parte.

Keeping in view the dismal state of affairs with regard to status of the project and non-appearance of the respondent despite service, the authority is left with no option but to order refund of the amount of Rs. Rs.73,06,846 /- deposited by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% per annum.

Accordingly, it is directed that the respondent to refund the entire amount of Rs. Rs.73,06,846 /- paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the

issuance of this order failing which execution proceedings shall be initiated against the respondent *ipso facto*.

Complaint is disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
27.11.2018

Subhash Chander Kush
(Member)
27.11.2018