

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 27.11.2018
Complaint No.	192/2018 Case titled as Ms. Lalita Gupta Vs M/s Universal Buildwell Pvt. Ltd.
Complainant	Ms. Lalita Gupta
Represented through	Shri Pyare Lal Gupta-husband of the complainant in person.
Respondent	M/S Universal Buildwell Pvt. Ltd. Trade Tower, 8 th Floor, Sector-49, Sohna Road, Gurugram, Haryana and 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 heard.

Case of the complainant is that he had booked a apartment No.102, Tower-G, 1st floor, "Universal Aura" Sector 82, Gurugram with the respondent and Apartment Buyer Agreement to this effect inter- se the parties was executed on 19.10.2011. As per clause 13 (3) of the BBA, the possession of booked apartment was to be delivered to the complainant within a period of 36 months + 6 months grace period which comes out to be 19.4.2015. It was a construction linked plan. Complainant/buyer has already paid an amount of Rs.62,20,331/- 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.

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. 62,20,331/- 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. 62,20,331/- 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

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

Complaint No. : 192 of 2018
First date of hearing : 24.04.2018
Date of Decision : 27.11.2018

Ms. Lalita Gupta
R/o- H.No. 1489, Sector 15,
Part-2, Gurugram, Haryana.

Complainant

Versus

M/s Universal Buildwell Pvt. Ltd.
Address: Universal Trade Tower,
8th floor, Sector 49, Sohna Road, Gurugram,
Haryana.

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri P.L Gupta Husband of the complainant
None for the respondent: Proceeded ex parte vide order dated
22.10.2018

ORDER

1. A complaint dated 24.04.2018 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 Ms. Lalita Gupta, 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 19.10.2011 in respect of apartment described as below for not handing over possession by the due date i.e. 19.04.2015 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: -

- Nature of the project- residential group housing colony
- DTCP license no.- 51 of 2011
- License holder- M/s Shiv Ganesh Buildcon Pvt. Ltd.

1.	Name and location of the project	"Universal Aura", Sector 82, Gurugram, Haryana.
2.	Project area	11.231 acres
3.	Flat/apartment/unit no.	102, 1 st floor, tower 'G'.
4.	Unit measuring	1587 sq. ft.
5.	RERA registered/not registered	Not registered
6.	Date of execution of apartment buyer's agreement	19.10.2011
7.	Payment plan	Construction linked payment plan
8.	Total consideration amount as per agreement dated 19.10.2011	Rs.64,60,132/-
9.	Total amount paid by the complainant till date	Rs.62,20,331/-
10.	Percentage of consideration amount	Approx. 96 percent
11.	Date of delivery of possession as per clause 13.3 of apartment buyer's agreement (36 months + 180 days from the date of approval of building plans and/or execution of the apartment buyer's agreement whichever is	19.04.2015



	later)	
12.	Delay in handing over possession till date	3 years 7 months 8 days
13.	Penalty clause as per apartment buyer's agreement dated 19.10.2011	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.

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 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 19.04.2015. Neither the respondent has delivered the possession of the said unit as on 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 19.10.2011. 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. The respondent appeared on 29.05.2018. The case came up for hearing on 29.05.2018, 11.07.2018, 21.08.2018,



27.09.2018, 22.10.2018 and 27.11.2018. The reply has been filed on behalf of the respondent which has been perused.

Facts of the complaint

5. Briefly stated, the facts of the complaint are that on 18.11.2010, the complainant booked a 3 BHK flat vide an application no. 455 in the project named "Universal Aura" developed by M/s Universal Buildwell Pvt. Ltd. in Sector 82, Gurugram, by paying Rs.4,50,000/- in advance. The complainant submitted that flat G-102 measuring 1578 sq. ft. was allotted to the complainant.
6. The complainant submitted that she visited Aura office and discussed with Sheetal, Manager of Universal Aura and she always gave the assurance to handover the flat but so far, no correspondence made by the company. They are silent for the last two years.
7. The complainant submitted that structure work is completed upto 12th floor and she has paid a total amount of Rs.62,20,331/- till date as per the demand raised. The complainant stated that she is being harassed mentally as well as financially without any reason and no fault at her hand.



Issues to be decided

8. The issue raised by the complainant is that whether the builder will hand over the flat or it will be required to return the deposited amount with interest.

Relief sought

9. The complainant is seeking the following reliefs:
- Direct the respondent to complete the construction and handover the said flat to the complainant: OR
 - Direct the respondent to return back the deposited amount along with interest if builder is unable to provide the flat.

Respondent's reply:

10. The respondent submitted that the complaint filed by the complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction.

11. The respondent submitted that the complaint for compensation and interest under section 12, 14, 18 and section 19 of the Act *ibid* is maintainable only before the



adjudicating office 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 under rule-28.

12. The respondent submitted 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.
13. The respondent submitted that the complainant has miserably failed to discharge his obligations and therefore, the complainant is by her own acts and conduct stopped from filling the present complaint. The complainant has come before this authority with unclean hands.
14. 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 had been beyond the control of the respondent and due to multifarious reasons. 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 above noted factors being carried out of control of the respondent company despite all reasonable and probable arrangements collectively led to the delay in the project and in any case the delay is not beyond condonation and neither intentional or deliberate.

15. 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 Hon'ble forum does not have the subject matter jurisdiction as the respondent have not violated or contravene 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 intention of the complainant in filing the present complaint for the sole purpose of 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 due to delay in the project occasioned because of factors beyond the control of the



respondent company amounting to force majeure conditions, the complainant is not suffering any losses worth compensating rather it is the respondent company who is suffering for not able to complete the project within the specified time limit despite being ready and willing to perform its obligation in a timely manner.

20. 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.
21. The respondent submitted that it has committed no deficiency in services or unfair trade practice, in any manner whatsoever as alleged. That the present complaint is an abuse of the process of law. It is submitted that the complainant now maliciously with ulterior motives, deliberately trying wriggle out of obligations derived from the terms of the allotment letter and on this sole ground alone the present complaint is liable to be dismissed.
22. The respondent denied that the complainant visited the “Aura” office several times and discussed with Sheetal, Manager of Universal Aura or that she always gave assurance



to handover the flat but so far no correspondence is made by the company or that they are silent for last two years. However, the respondent submitted that the structure work is completed upto 12th floor.

Determination of issues:

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the findings of the authority on the issue raised is as under:

23. With respect to the issue 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 Sale 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.”

24. Accordingly, the due date of possession was 19th April 2015 and the possession has been delayed by 3 years 7 months and 8 days 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 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.”



25. The possession of the flat was to be delivered by 19th April 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. 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 is left with no option but to order refund of the amount paid by the complainant to the respondent as per section 18 of the Act *ibid* along with prescribed rate of interest.

Findings of the authority

26. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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.

27. 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 ex-parte and the case was adjourned for final arguments on 27.11.2018. 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 deposited by the complainant along with prescribed rate of interest.

Directions of the authority

28. 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 direct the respondent to refund the entire amount of Rs.62,20,331/- paid by the complainant along with 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*.



29. The project is registerable and has not been registered by the promoters. The authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act.
30. The order is pronounced.
31. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.11.2018

Judgement uploaded on 09.01.2019

HARERA
GURUGRAM



Prepared by: Poornima Rao

Checked by: Shreya Gupta