

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 22.11.2018
Complaint No.	104/2018 Case titled as Mr. Sachin Kumar V/S M/S Shiv Ganesh Buildcon Pvt. Ltd. & Others
Complainant	Mr. Sachin Kumar
Represented through	Shri V.P.Munjal, Advocate for the complainant.
Respondent	M/s Shiv Ganesh Buildcon Pvt. Ltd. Office 102, Antriksh Bhawan, 22 Kasturba Gandhi Marg, Connaught Place, New Delhi and others
Respondent Represented through	Respondent exparte vide order dated 29.10.2018
Last date of hearing	29.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Case of the complainant is that he had booked a unit No.203, Tower-G, 2nd Floor in project "Universal Aura", Sector-82, Gurugram, with the respondent and Builder Buyer Agreement to this effect was executed inter-se the parties on 29.9.2011. 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 29.3.2015. It was a construction linked plan. Complainant/buyer has already paid an amount of Rs.45,57,724 /- to

the respondent. However, respondent has failed in fulfilling his obligation as on date.

On the previous dates of hearing i.e. 19.04.2018, 08.05.2018, none was present on behalf of the respondent. On 06.06.2018, Mr. Sushil Yadav, advocate appeared on behalf of the respondent and the matter was adjournment to 11.07.2018 for arguments. On 11.07.2018, Mr. Mukesh Kumar, authorized representative of the respondent put his appearance and bailable warrants against Shri Raman Puri, Managing Director of the respondent/company was ordered to be issued for his appearance on 21.08.2018 and a costs 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 addition to certain other directions. On the next three dates i.e. 27.09.2018, 22.10.2018 and 29.10.2018, none was appeared on behalf of the respondent nor any communication has been received from the respondent. Accordingly, vide order dated 29.10.2018, 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.45,57,724 /- 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.45,57,724/- 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.

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

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
22.11.2018

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

Complaint No. : 104 of 2018
Date of Institution : 21.03.2018
Date of Decision : 22.11.2018

Mr. Sachin Kumar R/o 1000,2nd floor,
Sector 14, Gurugram 122001

Versus

Complainant

1. M/s Shiv Ganesh Buildcon Pvt. Ltd.
Office 102, Antriksh Bhawan, 22
Kasturba Gandhi Marg, Connaught
Place, New Delhi-110001
2. M/s Universal Buildwell Pvt. Ltd.
Office Universal Trade Tower, 8th Floor,
Sector-49, Signa Road,
Gurugram-122018
- 3 Raman Puri
59B, C-5, Sainik Farm, Neb Sarai
New Delhi- 110062
- 4 Vikram Puri
59B, C-5, Sainik Farm, Neb Sarai
New Delhi- 110062
- 5 Varun Puri
59B, C-5, Sainik Farm, Neb Sarai
New Delhi- 110062



Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Mr. Sachin Kumar
Shri. V.P. Munjal
Shri Mukul Sanwariya
advocate proxy council for
Shri Kamal Dahiya

Complainant in person
Advocate for the complainant

Advocate for the respondent

ORDER

1. A complaint dated 21.03.2018 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. Sachin Kumar against the promoter M/s Shiv Ganesh Buildcon Pvt. Ltd. and M/s Universal Buildwell Pvt. Ltd. And others on account of violation of clause 13(3) of the builder-buyer agreement executed on 29.09.2011 for unit no. 203, Tower G, 2nd Floor in the project "Universal Aura" for not giving possession on the due date 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: -

DTCP licence no. 51 of 2011

Nature of project: Residential group housing



1.	Name and location of the project	Universal Aura, Sector-82 Gurugram
2.	Unit No.	203, Tower G, 2 nd Floor
3.	Payment plan	Construction linked plan
4.	Licence no. DTCP	51 of 2011
5.	Basic Sale Price	Rs. 36,13,635/-
6.	Date of execution of agreement	29.09.2011
7.	Total amount paid by the complainant	Rs. 45,57,724/-
9.	Date of delivery of possession. As per Clause 13.3- 36 months from date of execution of agreement + 180 days grace period	29.03.2015
10.	Delay of number of months/ years	3 years 7 months 24 days
11.	Penalty Clause as per builder buyer agreement dated 29.09.2011	Clause 13.4- Rs. 10/- per sq. ft. per month
12.	Cause of delay in delivery of possession	Force majeure

3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for unit No. 203, tower G, 2nd floor according to which the possession of the aforesaid unit was to be delivered by 29.3.2015. 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 19.04.2018. The case came up for hearing on 08.05.2018, 06.06.2018, 11.07.2018 and 21.08.2018. The reply has been filed on behalf of the respondent on 25.05.2018.

FACTS OF THE CASE

5. The complainant submitted that associates of Shiv Ganesh Buildcon Pvt. Ltd., i.e., Universal Buildwell Pvt. Ltd. had launched a residential project named "Universal Aura" in Sector 82, Gurugram in the year 2010. The complainant had booked a 2BHK unit approx. area 1179 sq ft. by depositing Rs.3,50,000/- as booking amount by cheque no. 016454(ICICI Bank) vide application no.196 dated 23-10-2010 and the payment done via the construction linked plan with Universal Buildwell Pvt Ltd, with its office at Universal Trade Tower, 8th floor, sohna road, Gurugram-122018 in its residential project



"Universal Aura" Sector 82, Gurugram. The unit no. 203, floor 2nd, tower G, was allotted to the complainant vide provisional allotment letter dated 29.03.2011. The excavation/ construction work started at site in August 2011.

6. The complainant submitted that he has been paying the amount as per payment schedule provided by the builder and as per the demand letters of the builder. The complainant has made a total payment of ₹45,57,724/- (including Service Tax) as against the total cost of ₹51,74,250/- (excluding Service Tax). The builder buyer's Agreement was signed and submitted in the office of the builder in September 2011. The builder vide letter dated 10.12.2013 intimated the complainant about the increase in super area of apartment from 1179 sq.ft. to 1331.93 sq.ft. and demanded Rs 3,47,649/- on account of increase in super area.

7. The complainant submitted that as per provision in the builder pbuyers agreement clause 10.2 the builder could have claimed this payment only after the completion of the project/occupation certificate from the competent authority. The amount on account of increase in super area had been paid



by the complainant. As per clause 13.3 of the builder buyer agreement the possession was to be handed over within a period of 36 months from the date of approval of building plans or execution of agreement whichever is later with a further grace period of 6 months. The construction work is stalled at site since 3 years. The building plan was approved by the competent authority dated 17/05/2012 and expired on 16/05/2017.

8. The complainant submitted that as per clause 13.3 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 29.06.2014. The clause regarding possession of the said unit is reproduced below:

“ 13 POSSESSION

13.3the company proposes to handover the possession of the said apartment to the allottee(s) within a period of 36 months from date of approval of building plans and/or execution of the apartment buyer agreement whichever is later and subject to terms and conditions and limitations mentioned in the apartment buyer agreement. 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 commitment period to allow for unforeseen delays in obtaining the occupation certificate, from DTCP under the Act,in respect of the project.



ISSUES RAISED BY THE COMPLAINANT

- i. No intimation regarding stoppage of work at site has ever been made by the builder, even no reply no reminder sent through email regarding delay in possession or construction status.
- ii. License and building plans had expired on 04.06.2015 and 16.05.2017 respectively.
- iii. The construction work of few towers is left halfway.
- iv. The infrastructural work have not been started at site.
- v. The payment on account of increased super area take by builder in advance is violation of builder buyer agreement.
- vi. The project is not registered with RERA, Gurugram.



Relief sought by the complainant

- i. The total amount paid by Rs. 45,57,724/- to the builder should be got refunded to complainant along with 24% interest.

REPLY BY THE RESPONDENTS

The respondent has raised various preliminary objections and submissions challenging the jurisdiction of this hon'ble authority. They are as follow:

9. The respondent states in his reply that the complaint for compensation and interest under section 12,14,18 and 19 of the RERA Act is maintainable before the adjudicating officer and not before the Hon'ble Authority. Thus, the hon'ble authority does not have the jurisdiction of this complaint. The respondent states that they have conducted the business in the bonafide manner and the delay occasioned had been beyond the control of the respondent and due to multifarious reasons. The respondent states that he had to pay higher renewal charges as per higher EDC charges due to uncontrollable delays. The respondent submits that the complainant out of his free purchased the unit no. 203 on 2nd floor after the detailed investigation about the project and survey of the company.
10. The respondent submitted that the complainant does not have any real cause of action to pursue the present complainant.



The complainant has filed the present complaint only to harass and to extort money from the respondent builder and gain wrongfully.

11. The respondent submitted that respondent company is very much committed to develop the real estate project named Universal Aura sector 82 Gurugram and the construction work is going on. Though the project is going behind schedule of delivery, however the respondent have throughout conducted the business in a bonafide manner and the delay occasioned has been beyond the control of the respondent and due to multifarious reason. That there had been labour and material shortage affecting the time schedule and further, various allottees had been making defaults in payments as called by the respondent leading to financial arrangements for carrying on the project

12. The respondent submitted that the cost of man and material has only increased manifold and respondent is suffering and had to pay higher renewal charges as per the higher EDC charges due to the uncontrollable delays. And due to delay in giving the possession complainant is not suffering any losses



worth compensating rather it is respondent company who is suffering for not able to complete the project within specified time limit despite being ready and willing to performance its obligations in a timely manner.

Determination of the issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

12. With respect to **first issue**, no evidence is made to substantiate the assertion. As such, the burden of proof not discharging and issues cannot be determined.
13. With respect of **second issue** it can be proved by admission of the respondent in his reply that the concerned license no. have got expire due to delay in completion of the work because of the force majeure by the time provided to get the project completion.
14. With respect of **third and fourth issues** it is admitted by the respondent that there had been labour and material shortage affecting the time schedule and further, various allottees had



been making defaults in payments as called by the respondent leading to financial arrangements for carrying on the project

15. With respect to **fifth issue** payment on account of increase in super area has been taken by the builder much in advance in violation of the builder buyer agreement clause 10(2):

The final super area of the said agreement shall be determined only after completion of construction of the project. After accounting for changes, if any, on the date of possession, the final and confined areas shall be incorporated in the conveyance deed. Therefore, the builder is within the contractual right to vary the super area.

16. With respect to **sixth issue** the project of the respondent is not registered as required by provision of the RERA Act. Accordingly, the builder comes within the ambit of penalty provision u/s 59. Licence granted by the DTCP is also expired on 16.05.2017.

Accordingly, the due date of possession was 29.3.2015. As far as the penalty clause (13.4) in case of delay in possession is concerned which is Rs. 10/sq. ft. of the super area per month, is held to be one sided as also held in para 181 of the judgment in *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.”

18. As the possession of the flat was to be delivered by 29.3.2015 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

19. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

It has been 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:



20. 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.

21. As per obligations on the promoter under section 18(1) proviso, in case the allottee wishes to withdraw from the project, the promoter is obligated to refund the amount paid by the complainant along with interest at the prescribed rate as the promoter has not fulfilled his obligation.

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

Finding and direction of the authority

22. 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.



23. 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 complainant had booked a unit No.203, tower-G, 2nd floor in project "Universal Aura", Sector-82, Gurugram, with the respondent and builder buyer agreement to this effect was executed inter- se the parties on 29.9.2011. 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 29.3.2015. It was a construction linked plan. Complainant/buyer has already paid an amount of Rs.45,57,724 /- to the respondent. However, respondent has failed in fulfilling his obligation as on date.
- ii. On the previous dates of hearing i.e. 19.04.2018, 08.05.2018, none was present on behalf of the



respondent. On 06.06.2018, Mr. Sushil Yadav, advocate appeared on behalf of the respondent and the matter was adjournment to 11.07.2018 for arguments. On 11.07.2018, Mr. Mukesh Kumar, authorized representative of the respondent put his appearance and bailable warrants against Shri Raman Puri, managing director of the respondent/company was ordered to be issued for his appearance on 21.08.2018 and a costs 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 addition to certain other directions. On the next three dates i.e. 27.09.2018, 22.10.2018 and



29.10.2018, none was appeared on behalf of the respondent nor any communication has been received from the respondent. Accordingly, vide order dated 29.10.2018, respondent was ordered to be proceeded ex-parte.

Decision and directions of the authority

24. 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 respondents in the interest of justice and fair play :

- i. 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.45,57,724 /- deposited by the complainant/buyer along with prescribed rate of interest i.e. 10.75% per annum.



- ii. Accordingly, it is directed that the respondent to refund the entire amount of Rs.45,57,724/- paid by the complainant along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order.

25. The order is pronounced.

26. Case 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: 22.11.2018

HARERA
GURUGRAM



Judgement Uploaded on 08.01.2019