

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 27.11.2018
Complaint No.	124/2018 Case titled as Mr. Dushyant Sood Vs M/s Universal Buildwell Pvt. Ltd. & Another
Complainant	Mr. Dushyant Sood
Represented through	Complainant-Bhupender Pratap Singh 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 exparte 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.J-1404, 13th floor, "Universal Aura" Sector 82, Gurugram with the respondent and Apartment Buyer Agreement to this effect inter-se the parties was executed on 17.10.2011. As per clause 13 (3) of the BBA the possession of booked apartment was to be delivered within a period of 36 months + 6 months grace period which comes out to be 17.4.2015. It was a construction linked plan. Complainant/buyer has already paid an amount of Rs.41,99,514/- 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. 41,99,514/- 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. 41,99,514/- 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. : 124 of 2018
First date of hearing: 08.05.2018
Date of decision : 27.11.2018

Dushyant Sood
C1-302, The Legend, Sector 57
Gurugram- 122002

Complainant

Versus

M/s Universal Buildwell Pvt. Ltd,
8th floor, Sector 49, Sohna Road,
Gurugram -122001
Shiv Ganesh Buildcon Pvt Ltd.
102, Antriksh Bhawan, 22, Kasturba Gandhi
Marg, New Delhi- 110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Bupender Pratap Singh Complainant in person
Shri Mukul Sanwariya proxy Advocate for the respondent
Counsel for kamal dahiya

ORDER

1. A complaint was filed on 03.04.2018 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 sh. Dushyant Sood, against the promotor M/s Universal Buildwell Pvt.



Limited, on account of violation of the clause 13.3 of the apartment buyer's agreement executed on 17.10.2011 in respect of apartment number 1404, 13th floor, block/tower J in the project 'universal aura' for not handing over the possession by the due date i.e. 17.10.2014 which is an obligation of promoter under section 11(4)(a) of the Act ibid.

2. Since, the buyer's agreement has been executed on 17.10.2011 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

DTCP licence no. 51 of 2011

Nature of project: Residential group housing colony

1.	Name and location of the project	Universal Aura, Sector 82, Gurugram
2.	Apartment/unit no.	J-1404, 13 th floor
3.	DTCP license	51 of 2011
4.	Flat measuring	1179 sq. ft. of super area



5.	RERA registered/ not registered.	Not registered
6.	Date of execution of apartment buyer's agreement	17.10.2011
7.	Payment plan	Construction linked payment plan
8.	Total consideration	Rs.4709081/-
9.	Total amount paid by the complainant till date	Rs. 4199514/-
10.	Date of delivery of possession as per clause 13(3) of apartment buyer's agreement (36 Months + 180 days grace period from the date of execution of agreement)	17.04.2015
11.	Delay in handing over possession till date	3 year 7 months 10 days
12.	Penalty clause as per apartment buyer's agreement	Clause 13.4 of the agreement i.e. Rs.10/- per sq. ft per month of the super area of the said flat.

4. The details provided above have been checked on the basis of record available in the case file which have 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 17.04.2015. Neither the respondent has delivered the possession of the said unit till now to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft per month of the super area of the said flat for the period of such



delay as per clause 13.4 of apartment buyer's agreement dated 17.10.2011. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 06.06.2018. The case came up for hearing on 08.05.2018, 06.06.2018, 11.07.2018, 21.08.2018, 22.10.2018 and 27.11.2018. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainant submitted that he has purchased a unit no. J-1404 on 13th floor, measuring 1179 sq. ft. situated at universal aura at Sector 82, Gurugram.
7. The complainant submitted that as per the letter dated 06.12.2013 sent a demand notice for the increased super area 152.54 sq. ft. instead of super area 1331 sq. Ft.
8. The complainant submitted that the complainant had total amounting to Rs.41,99,514/- to the respondent which is 90% of the total consideration of the above said unit.



9. The complainant submitted that the respondent has only constructed structure on the spot and there is no other development work. The complainant has been requesting the respondent since long time, but the respondent has failed to adhere the actual and genuine request of the complainant. Since last 4 years there has been no progress on site. Also, for two years after booking on 11.11.2010 there was no movement in construction site. That at the time of the booking R1 falsely represented to the complainant that it had requisite license for the project and all approvals from the department of town and country planning and other departments and that the apartment will be delivered within 3 years of booking. However, it now transpires that the development license itself was not granted to R2 until 5.06.2011 i.e. until 7 months after R1 took the booking from the complainant and had collected Rs. 7,30,938/- towards the consideration of the said apartment. R1 thus collected the money without the development license even being granted by the competent authority. True copy of the site plan showing the date of grant license to be 5.06.2011 is annexed and marked **annexure C2**.



True copy of the printout from the web site of the department of town & country planning, Haryana showing that the development license has not been renewed after 4.06.2015 is annexed and marked **annexure C3**.

10. The complainant submitted that the initial allotment of the apartment was jointly in the name of the complainant and another allottee, Mr. Deepesh Sharma. The said allotment was transferred solely in the name of the complainant vide letter dated 7.11.2012. True copy of the said letter is annexed as **annexure C5**.
11. The complainant submitted that an account of the payments made by the complainant to R1 is appended below. True copies of receipts of payments and statement of accounts issued by R1 are annexed as **annexure C7(Colly)** and **annexure C8** respectively.



Payment dates	Amount(Rupees)
11/11/10	Rs.350000
01/02/11	Rs.380937
02/06/12	Rs.590658
06/08/12	Rs.500666

05/01/13	Rs.374831
09/04/13	Rs.374831
19/06/13	Rs.404340
31/08/13	Rs.98002
07/10/13	Rs.404340
29/11/13	Rs.331657
15/01/14	Rs.389252
Total	Rs.4199514

12. The complainant submitted that the complainant visited the respondent several times since 2015 to till date and even wrote an email dated 22.07.2017 to company asking about the status but till date no reply. At last the complainant requested to refund the amount paid by the complainant to the respondent but even the respondent has failed to refund the said amount.

13. The complainant submitted that the respondent by providing false and fabricated advertisement, thereby concealing true and material facts about the status of the project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard-earned money in their so called upcoming project, with sole dishonest intention to cheat



him and cause him wrongful loss and in this process the respondent gained wrongfully, which is purely criminal act.

14. Issues raised by the complainants are as follow:

- i. Whether the respondents acted in violation of the provisions of the Act by selling an apartment to the complainant and demanding and accepting payments for it without first securing the development license for the project?**
- ii. Whether there is inordinate delay by the respondents in handing over the apartment to the complainant?**
- iii. Whether the respondents sought the approval of the complainant before allegedly increasing the area and demanding extra monies for the same. Whether the increase in area and resultant cost was substantiated by the respondents?**
- iv. Whether the complainants have suffered mental agony and harassment on account of acts of omission and commission of the respondents?**



- v. **Whether the complainant is entitled to refund of monies along with interest and compensation in light of the aforesaid submissions?**
- vi. **What is the quantum of refund, interest and compensation to be awarded to the complainant?**

15. Relief sought:

The complainant is seeking the following relief:

- i. **Refund of monies with interest per section 18 and 19 of the Real Estate Regulation and Development Act 2016 (“Act”).**
- ii. **Exemplary damages for selling the Apartment without a development license and subsequently claiming an unsubstantiated increase in area without first seeking the consent of the complainant under section 12, 13, and 14 of the Act refer**
- iii. **Compensation for mental agony and harassment**
- iv. **Award of litigation expenses of Rs. 50,000/-**



Respondent's reply

16. The respondent submitted the complaint filed by the complainant is not maintainable and this hon'ble authority has no jurisdiction to entertain the present complaint.
17. The complaint for compensation and interest under section 12, 14, 18, and 19 of the Real Estate (Regulation And Development) Act,2016 is maintainable only before the adjudicating officer.
18. That the complaint does not have real cause of action to pursue the present complaint and the complainant does not any real cause of action to purse 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.
19. That the complainant has failed to discharge his obligations and therefore, the complainant is by his own acts and conduct stopped from filling the present complaint.
20. That the respondent company is committed to develop the real estate project named Universal Aura Sector 82 Gurgaon 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 allottee had been making default in payment as called by the respondent leading to financial arrangement for carrying on the project in a timely manner.

21. That the complete real estate industry is under pressure of delivery and availability of skilled manpower and material is at all-time low. 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. The respondent company had to pay higher renewal charges as per the higher EDC charges due to the uncontrollable delays.

22. That this hon'ble forum does not have the subject matter jurisdiction as the respondent has not violated or contravene any of the provisions of real estate act.



23. That the present case requires detailed investigation and leading of evidence is required and cannot be adjudicated in summary manner, therefore this hon'ble form lacks jurisdiction in the present complaint.
24. Further it is 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 on the respondent.
25. That due to the 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.
26. That it is submitted that the complainant out of his free will and accord and after verification purchased the flat unit no J-1404, 13 floor of Universal Aura Sector 82 Gurugram from the resale market entirely for the purpose of making an investment.



27. That the respondent has committed 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. Complainant has out of their own free will and volition and upon being satisfied with all terms and conditions of the application. It is submitted that the complainant now maliciously with ulterior motives, deliberately trying wriggle out of obligations derived from the terms of allotment letter and on this sole ground alone the present complaint is liable to be dismissed.

Issues decided

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

28. With respect to **first issue** the respondents acted in violation of the provisions of the Act by selling an apartment to the complainant and demanding and accepting payments for it without first securing the development license for the project. The development licence itself was not granted to respondent



no. 2 until 05.06.2011 i.e. until 7 months after respondent no.1 took the booking from the complainant and had collected Rs. 7.30,938/- towards consideration of the said apartment.

29. With respect to the **second issue** raised by the complainant the authority decides that as per clause 13(3) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of execution of the agreement (with a grace period of 180 Days). Therefore, the due date of handing over possession is 17.04.2015. The clause regarding the possession of the said unit is reproduced below:

"13(3) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 180 Days, from the date of execution of agreement after expiry of the said commitment period to allow for unforeseen delays in obtaining the occupation certificate etc, from DTC under the act, in respect of the project"

30. In regarding to **third issue** the respondents had not sought the approval of the complainant before allegedly increasing the area and demanding extra monies for the same as the vide latter dated 6.12.2018, R1 claimed that the super area of the



apartment had increased by 152.54 sq. ft to 1331.54 sq. ft, not sustaining the said increasing with any supporting documentation.

31. In regarding to **fourth issue** the complainant have suffered mental agony and harassment on account of acts of omission and commission of the respondents related to facilities and amenities as approved in layout plan is not accordance with the terms of agreement, as the matter should be referred to DTCP for the further investigation that the construction is accordance with the provisions of the agreement and as the delivery of possession is delayed by 3 year 7 months 10 days.
32. In regarding the **fifth issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his



business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

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

33. Accordingly, the due date of possession was 17.04. 2015. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said flat 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 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.”

As the possession of the flat was to be delivered by 17.04.2015 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 Haryana Real Estate (Regulation and Development) Act, 2016.

35. The complainant made 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.

35. The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the



promoter to comply with the provisions and fulfil obligation which is reproduced below:

Findings of the authority

37. The preliminary objections raised by the respondent regarding 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 *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.
38. The complainant booked a apartment no. J-1404, 13th floor, "Universal Aura" Sector 82, Gurugram with the respondent and apartment buyer agreement to this effect inter-se the parties was executed on 17.10.2011. As per clause 13 (3) of the BBA the possession of booked apartment was to be delivered within a period of 36 months + 6 months grace period which comes out to be 17.4.2015. It was a construction linked plan. Complainant/buyer has already paid an amount of Rs.41,99,514/- to the respondent. However, respondent has



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

39. 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 ex-parte and case was finally adjourned for final arguments on 27.11.2018.

Decision and directions of the authority

40. 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 here by issues the following directions to the respondent 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. 41,99,514/- 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. 41,99,514/- 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 failing which execution proceedings shall be initiated against the respondent ipso facto.

41. The order is pronounced.

42. 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

Date 27.11.2018

HARERA
GURUGRAM



Judgement Uploaded on 08.01.2019