

PROCEEDINGS OF THE DAY

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| Day and Date | Thursday and 20.12.2018 |
| Complaint No. | 834/2018 Case titled as Naveen Vaid And Another V/S Umang Realtech Private Limited |
| Complainant | Naveen Vaid And Another |
| Represented through | Complainant in person with Shri Sandeep Aneja, Advocate. |
| Respondent | Umang Realtech Private Limited |
| Respondent Represented through | Shri Rishu Kumar Sharma, Advocate for the respondent. |
| Last date of hearing | |
| Proceeding Recorded by | Naresh Kumari |

Proceedings

Project is registered with the authority.

Arguments heard.

As per clauses 6.1 and 6.2 of the Space Buyer Agreement executed inter- se the parties on 18.12.2013 for unit/flat No.702, Tower-O, 7th floor, Monsoon Breeze II, Sector-78, Gurugram (now shifted to G1201, Winter Hills, Sector-77, Gurugram as per allotment letter 31.8.2017) possession was to be delivered within a period of 42 months + 180 days grace period which comes out to be 18.12.2017. Complainant/buyer has already paid an amount of Rs.35 Lakhs to the respondent. However, respondent has failed in fulfilling his obligation as on date, as such, as per section 18 (1) of the Real Estate

(Regulation & Development) Act, 2016, complainant is entitled to get the deposited amount paid by him to the respondent.

Keeping in view the dismal state of affairs w.r.t. work at the project site and the facts and circumstances of the case, the authority find no option but to order refund the amount deposited by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from this order.

Accordingly, the respondent is directed to refund the entire amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from this order.

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

Samir Kumar
(Member)
20.12.2018

Subhash Chander Kush
(Member)
20.12.2018

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

Complaint no. : 834 of 2018
First date of hearing : 20.11.2018
Date of decision : 20.12.2018

Mr. Naveen Vaid
Ms. Sapna Vaid
H.no. 212, second floor, Sector 15, Part I,
Gurugram-122001

Complainants

Versus

M/s Umang Realtech Pvt Ltd
Registered office B-72, 7th Floor Himalaya
House 23, Kasturba Gandhi Marg,
New Delhi

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sandeep Aneja Advocate for the complainant
Shri Rishu Kumar Sharma Advocate for the respondent

ORDER

1. A complaint dated 12.09.2018 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. Naveen Vaid and Ms. Sapna Vaid against the promoter M/s Umang Realtech Pvt Ltd, on account of violation of the clause 16(i) of retail space buyer's agreement executed on 18.12.2013 in respect of retail space described as below for not handing over possession on the due date i.e.18.12.2017, which is an obligation under section 11(4)(a) of the Act ibid.

3. Since, the buyer's agreement has been executed on 18.12.2013 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.

2. The particulars of the complaint are as under: -



***DTCP licence no. 38 of 2008 dated 02.03.2013 and 77 of 2012 dated 01.08.2018**

***Nature of project: group housing colony**

***RERA registration no. 116 of 2017 dated 28.08.2017 and 14 of 2018 dated 16.01.2018**

***RERA registration valid upto 31.12.2020**

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|-----|--|---|
| 1. | Name and location of the project | Monsoon Breeze 78 II Sector 78, Gurugram. |
| 2. | Unit no. | 702, tower-O, 7 th floor, now shifted to G-1201, winter hills, Sector 77 Gurugram as per allotment letter dated 31.08.2017 |
| 3. | Unit admeasuring | 1550 sq. ft. |
| 4. | Date of agreement | 18.12.2013 |
| 5. | Date of booking | 13.08.2013 |
| 6. | Basic sale price | Rs. 84,86,250/- |
| 7. | Total sale consideration | Rs. 1,03,52,500/- |
| 8. | Total amount paid by the complainant | Rs.35,00,000/-as per statement of complainants |
| 9. | Payment plan | Construction linked |
| 10. | Date of delivery of possession. Clause 6.1 & 6.2 (42 months + 180 days grace period from the date of approval of building plans or the | 18.12.2017 |



| | | |
|-----|--|--|
| | signing of agreement whichever is later. | |
| 11. | Delay in handing over possession till date | 1 year 2 days |
| 12. | Penalty clause as per apartment buyer's agreement dated 09.04.2014 | Clause 6.7 of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat. |

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. 702, tower-O, 7th 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 20.12.2018. The case came up for hearing on 20.12.2018. The reply has been filed on behalf of the respondent.



FACTS OF THE CASE

5. The complainants submitted that believing in the representations and advertisements made by the respondent no.1, complainant booked a unit in the said project by submitting an application dated 13-09-2013. Copies of the brochure and application submitted by the complainant are annexed as annexure A-1 and A-2 respectively. It was assured to complainants at the time of booking that the time would be essence of delivery and the said unit would be delivered to the complainants within a span of 42 months.
6. The complainants submitted that they agreed to purchase the said unit and also made the initial payment of Rs. 5 lakhs and Rs. 3,75,000/- on 14.9.2013 on the basis of the representations given by the respondent. That the said payments were made by the complainants by way of cheques dated 13.09.2013 drawn on Indian Bank, Gurugram and the said amount was duly credited in the account of the respondent.



Copies of the receipt regarding the payment made to the developer.

7. The complainants submitted that after making the initial payments, the allotment letter was issued to the complainants by the respondent on its behalf as well as on behalf of respondent. That the said letter was issued on 22.9.2013 wherein the complainants were allotted an Unit no. 0702 measuring 1550 sq. ft. at the basic sale price of Rs. 5,475/- per square feet.
8. The complainants submitted that after making the initial payment on 14.09.2013 the complainants were again asked by the respondent to make the payment and on the demand of the respondent complainants made further payment of Rs. 5,00,000/- (five lakhs) and Rs.3,57,198/- lakhs to the respondent vide cheque dated 28.10.2013. The said amount was duly credited in the account of the respondent.



9. The complainants submitted that after making the payments of almost Rs. 17,50,000/- the respondent went ahead and got buyer's agreement signed from the complainants and the said buyer's agreement was signed by the complainants and in the said buyer's agreement it was clearly averred and mentioned that the complainants have been allotted unit no. 0702 and the rate of the allotment was also mentioned and the total sale price of the said unit was fixed at Rs. 1,03,52,500/-. That as per the terms and conditions of the said buyer's agreement it was agreed by the respondent that they would give the possession of the said unit to the complainants within 42 months and the same was clearly written in clause 6.1 of the said agreement.

10. The complainants submitted that after signing of the buyer's agreement the complainants received a demand letter from the respondent dated 25.1.2014 in which the respondent informed the complainants that excavation work in the said project has started by them and they further demanded



Rs.8,92,346/-(amount outstanding 17498/-, basic price amount Rs.8,48,625/- and service tax Rs 26,223/-). A copy of the demand letter is annexed as annexure A8. The complainants made payment of Rs. 4,33,050/- vide receipt no. 684 dated 25.2.2014 and Rs.4,33,050/- vide receipt no.729 dated 8.3.2014 which are annexureA9 and A10 respectively. Further payment of Rs 4,374/-was made vide receipt bearing no. 795 and Rs 4,372/- vide receipt no. 796, the said payment was on made regarding the service tax.

11. The complainants submitted that in spite of making the payment as per the demand raised by the respondent, the complainants acquired the notice and knowledge that the respondent are not raising the construction at the site in question. The respondent in tandem with each other kept on demanding money from the complainants. The respondent further raised the demand of Rs. 8,01,452/- vide demand letter dated 13.01.2015 in which outstanding amount was shown as



Nil. A copy of the demand letter is annexure A13. In view of the demand raised by the respondents a sum of Rs. 3,96,719/- was deposited vide receipt no. 1100 dated 02.02.2015 and further Rs. 3,96,719/- vide receipt no. 1101 dated 3/2/2015 which are annexure A14 and A15 respectively. Further a sum Rs. 8,016/- was deposited on account of service tax vide receipt no. 1247 and 1248 dated 28.02.2015 amounting Rs. 4008/- each.

12. The complainants submitted that the complainants have till date paid a sum of Rs. 35 lacs (but due to oversight and in advertence amount of Rs 45 lakh was got mentioned in the legal notice served to the respondent) to the respondent but the respondent has failed to deliver the possession of the said unit and have failed to complete the said project and has intentionally and wilfully violated the terms and conditions of allotment as well as the buyers agreement.

13. The complainants submitted that the complainants were dismayed to receive a letter from the respondent on 31.8.2017



wherein it was informed to the complainants that the said project in which the complainants had booked the unit has been shelved and that the respondent no.1 asked the complainants to accept an alternate unit in the project by the name of Winter Hills, Sector 77, Gurugram.

14. The complainants submitted that the complainants do not want to continue with respondent and they have asked respondent to refund back the amount along with interest and compensation as their hard earned money have been used by respondent and respondent have cheated the complainants by not completing the said project on time even though they have received huge amount of consideration.

15. The complainants submitted that the complainants had booked the said property/ unit for their personal use as they are living in rented accommodation and due to non-delivery of said unit, the complainants also suffered monetary loss and they are continuing to pay the rent of the property plus they



have also suffered the monetary losses as they have paid a sum of more than Rs.35 lacs way back in 2015 and till date they have not got any interest on the said amount also.

16. The complainants submitted that a legal notice dated 19.05.2018 was served on respondent asking for the refund of the amount and in said notice the fraud played by respondent was clearly averred.
17. The complainants submitted that reply to the legal notice was received from the respondent wherein in the said reply false and bogus pleas have been taken by the respondent that in the said reply the respondent has admitted that the said project has become stagnant and no construction activity is carried out in the said project. That in the said reply the respondent again laid and emphasized that complainants should shift to some other project and take a unit in other project and plain reading of the same clearly proves that the project in which the complainants have booked their unit has been shelved as the



respondents by their own conduct proved that no construction is being carried out in Monsoon Breeze Phase-II.

18. The complainants submitted that respondent has wilfully and intentionally delayed the delivery of the project and wilfully and intentionally received the money from the complainants with sole motive to cause financial loss to them and financial gains to themselves. Hence, the complainants are filing the present complaint before this hon'ble authority on which the issues are to be decided.

ISSUES RAISED BY THE COMPLAINANT

The following issues has been raised by the complainant

- i. **Whether or not the respondent has violated the terms and conditions of the builder buyer's agreement thereby delaying possession of the booked unit?**



- ii. **Whether or not the complainant is entitled for a refund of the money invested by him in the said project?**
- iii. **Whether the complainants have been cheated by respondent by allotting unit in a wrong tower?**

RELIEF SOUGHT

The following reliefs have been prayed for:

- i. **The complainants are entitled for the refund of Rs.35 Lakhs paid by them to the respondents.**
- ii. **The complainants are entitled for the interest on the amount paid by them to the respondents.**
- iii. **Complainants are also entitled for the penalty imposed upon the respondents for not delivering the said project on time.**



- iv. The respondents need to be booked for criminal offences regarding the breach of agreement or any other relief.**

REPLY BY THE RESPONDENT:

19. The respondent submitted that the present complaint is filed without any cause of action and only on experimental basis. It is submitted that the present complaint is pre-mature as per clause 6.1 and 6.2 of the buyer's agreement due date of possession is 17.06.2018 plus grace period of 180 days.
20. The respondent submitted that the relationship of the complainants and respondent is defined and decided by the buyer's agreement executed between both parties. It is submitted that an specific clause for referring disputes to arbitration is included in the said agreement vide clause 13.9 of the agreement.
21. The respondent submitted that 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 6.4 of the buyer's agreement.

22. The respondent submitted that he has offered the booking in another project G-1201, winter hills, sector 77 Gurugram as per allotment letter dated 31.08.2017 was offered to complainants since the subject project has run into some impediments created due to certain unforeseen circumstances which are completely beyond the control of the respondent and thus, constitute force majeure event in the terms of clause 6.4 of the agreement. Thus, the complainant was offered to shift the booking of the apartment of similar specification in the project. It is an admitted fact that the complainant had given the consent to such transfer of booking. It is denied on the date of such meeting, issue arose on the terms of payment.
23. The respondent submitted that not only is the instant complaint premature, but the complainant has agreed to shift



the booking i.e. Winter Hills 77 Gurugram is located at a very short distance. Further, the said project is nearing completion of construction and development activity at the said project would be completed by January 2019 which is much before the stipulated time for offering of possession under the subject project.

24. The respondent submitted that he is entitled for reasonable extension of time in completing the construction and handing over possession in terms of the agreed contract in between parties.

Following important aspects are relevant which are submitted for the kind consideration of this hon'ble authority;

- i. Unexpected sudden declaration of demonetization policy by the central government, affected the construction work of respondent in serious way for many months..
- 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.

25. The respondent has submitted that initially construction at site progressed well but unfortunately due to unavoidable circumstances as detailed in foregoing paragraphs but management is endeavouring its best to complete the remaining construction and is in process of engaging various other contractors to complete the project very soon.
26. The respondent submitted that the answering respondent is a customer-oriented organization and is also willing to offer to the complainants, in their best tradition i.e. an option to transfer their booking in another project of our client in Winter Hills Project, Sector 77, Gurugram which is now in the advanced stage of construction and can be handed over the possession to the customers very soon.
27. 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 6.7 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.

28. The respondent submitted that allegations in the present complaint cannot be decided summarily and hence instant complaint is out of the jurisdiction of this hon'ble authority.

29. The respondent answering opposite party is bonafidely attempting to complete the project construction in a time bound manner considering the interests of its customers.

DETERMINATION ON ISSUES

30. Issue wise determination are as follows:



31. With respect to the **first issue** raised by the complainants, it is observed that as per clause 6.1 and 6.2 of the flat buyers agreement dated 18.12.2013 the possession of the said unit is supposed to be delivered within 42 months + grace period of 180 days from the date of signing of the said agreement or commencement of construction whichever is later. In the present case, the agreement date is later than the date of commencement of construction. Thus, the due date shall be computed from 18.12.2013 and the possession date comes out to be 18.12.2017. Thus, the clause regarding the possession of the said unit is reproduced below:

“6.1 Schedule for the possession of the said unit

The developer based on its present plans and estimates and subject to all just exceptions/force majeure/ statutory prohibitions/court’s order etc., contemplates to complete the construction of the said building/said unit within a period of 42 months from the date of execution of this agreement or approval of various building plans which ever is later.”

“6.2



The developer shall be entitled to a period of 180 days as grace period....

Accordingly, the due date of possession was 18.12.2017 and the possession has been delayed by one year two days till the date of decision. If the promoter fails to offer possession by the due date, then the complainant will be entitled to delayed possession charges.

32. With respect to the **second issue** raised by the complainants, keeping in view the dismal state of affairs w.r.t. work at the project site and the facts and circumstances of the case, the authority find no option but to order refund the amount deposited by the complainant/buyer along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from this order.

33. With respect to **third issue** raised by complainants, on 22.09.2013, the allotment letter issue to the



complainants. They were allotted 702, tower-0, 7th floor in the project Monson Breeze phase-II but on 31.08.2018 another allotment letter was issued and they were allotted G-1201, Winter Hills, Sector 77 Gurugram. Therefore, the complainants have been cheated by respondent by allotting unit in a wrong tower and it's a fault on the part of the respondent.

FINDINGS OF THE AUTHORITY: जयते

34. 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.



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

36. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

37. As per clauses 6.1 and 6.2 of the space buyer agreement executed inter- se the parties on 18.12.2013 for unit/flat no.702, tower-O, 7th floor, Monsoon Breeze II, Sector-78, Gurugram (now shifted to G1201, Winter Hills, Sector-77, Gurugram as per allotment letter 31.8.2017) possession was to be delivered within a period of 42 months + 180 days grace period which comes out to be 18.12.2017. Complainant/buyer has already paid an amount of Rs.35 Lakhs to the respondent.

However, respondent has failed in fulfilling his obligation as on date, as such, as per section 18 (1) of the Real Estate (Regulation And Development) Act, 2016, complainant is



entitled to get the deposited amount paid by him to the respondent.

38. Keeping in view the dismal state of affairs w.r.t. work at the project site and the facts and circumstances of the case, the authority find no option but to order refund the amount deposited by the complainant/buyer along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from this order. सत्यमेव जयते

DECISION AND DIRECTION OF AUTHORITY

39. 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 respondent is directed to refund the entire amount paid by the complainants along with



prescribed rate of interest @ 10.75% p.a. from the date of each payment till 20.12.2018 (date of disposal of complaint) to the complainant within a period of 90 days.

38. Case file be consigned to the registry.

39. Order is pronounced.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



Dated: 20.12.2018