

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 15.01.2019
Complaint No.	899/2018 Case Titled As Narendra Sheoran V/S Umang Realtech Private Limited
Complainant	Narendra Sheoran
Represented through	Complainant in person
Respondent	Umang Realtech Private Limited
Respondent Represented through	Shri Yash Varma Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

Keeping in view the fact that only 10% construction has taken place and there is no possibility of handing over unit in near future. The intention of allottee is to withdraw from the project after expiry of due date of possession on 25.11.2018. The allottee is entitled for refund of the amount deposited by him alongwith prescribed rate of interest i.e. 10.75% per annum.

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 & 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 amount of Rs.33,66,072/- received by him from the complainants along with interest at the prescribed rate i.e. 10.75% p.a.
- ii) Since the complainant has made the payment in instalments, therefore the interest for particular instalment shall be calculated from the date of its payment till the date of refund. The payment shall be made by the respondent within 90 days from today.

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

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
15.01.2019

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

Complaint No. : 899 of 2018
First date of hearing: 15.01.2019
Date of Decision : 15.01.2019

Mr. Narendra Sheoran,
R/o. B-301, Ramkrishan CGHS, Plot-12, Sector-
23, Dwarka, New Delhi-110077

Complainant

Versus

M/s Umang Real Tech Pvt. Ltd.
Regd. Office: D-64, 2nd floor, Defence Colony,
New Delhi-110024

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Narendra Sheoran Complainant in person
Shri Yash Verma Advocate for the respondent

ORDER

1. A complaint dated 12.09.2018 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. Narendra Sheoran, against the promoter M/s. Umang Real Tech Pvt. Ltd in respect of apartment/unit described below in the project



'Monsoon Breeze 78 II, Sector-78, Gurugram on account of violation of the section 11(4)(a) of the Act ibid for not developing the project within stipulated period.

2. Since, the apartment buyer agreement has been executed on 24.11.2014 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: -

1.	Name and location of the project	"Monsoon Breeze 78 II", Sector- 78, Gurugram
2.	RERA registered/ un registered.	Registered
3.	RERA registration no.	14 of 2018 dated 16.01.2018
4.	Revised completion date	31.12.2020
5.	Apartment no.	1503, tower P, 14 th floor
6.	Apartment area measuring	1550 sq.ft.
7.	Date apartment buyer agreement	24.11.2014
8.	Total sales consideration as per the agreement dated 25.11.2014	Rs. 1,01,20,000/-
9.	Total amount paid by the complainant till date	Rs. 33,66,072/-
10.	Date of delivery of possession Clause 6.1- 42 months from the date of approval of the building plans or signing of the agreement, whichever is later	25.11.2018 Note: Date taken from the signing of the agreement, since nothing



	6.2- 180 days grace period	is attached regarding the building plan
11.	Delay in handing over possession	1 month 21 days
12.	Penalty clause as per clause 6.6	Rs.5/- sq.ft. of the super area for every month of delay thereafter until the actual handing over of possession to the buyer.

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 agreement dated 24.11.2014 is available on record for the aforesaid apartment. Therefore, the promoter has not fulfilled his committed liability till date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on . The case came up for hearing on 15.01.2019 . The reply was filed by the respondent on 17.10.2018 which has been perused by the authority.

Facts of the complaint

6. Briefly stated, the facts of the case of the complaint that the complainant booked a flat on 01.06.2013 based on an advertisement, by paying the booking amount demanded by the respondent.



7. All the demands of the promoter towards the instalments and alleged commencement were paid in full and timely by the complainant to the promoter.
8. After a deliberate delay of over one year from date of issue of allotment letter on 18.07.2013 to the complainant, the complainant was sent the apartment buyer agreement in duplicate signatures on 25.09.2014. The same were duly signed by the complainant and returned in the following month. Thereafter one executed copy was returned by the promoter on 29.11.2014 to the complainant. Thus November 2014 became the new date of reckoning for commencement of construction whereas instalments had started to be taken since June 2013 by the promoter.
9. In September 2017, the complainant visited the site of the said project to personally reconfirm the status, to his utter shock the complainant found that there was no construction after the stilt which also were up to only a few floors.
10. The complainant visited to inspect the alternate site which he was offered for shifting but he found that the construction there too was at standstill.



11. **Issues raised by the complainants are as follow:**

- i. **Whether the respondent has delayed in providing possession to the complainant?**

OR

- ii. **Whether the respondent is liable to refund the entire amount paid by the complainant i.e Rs. 33,66,072/- along with interest at 15% per annum ?**

12. **Relief sought:**

The complainant is seeking the following relief:

- i. **Direct the respondent to refund the entire paid amount to the complainant an amount of Rs. 33,66,072/- with interest 15% per annum compounded from the date of payment of cash instalment to date.**

Respondent's reply

13. The respondent company has contended in its reply that the respondent is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate sector.

14. The respondent submitted that the complaint is filed without any cause of action and only on experimental basis and the



present complaint is pre mature since as per clause 6.1 and 6.2 of the apartment buyer agreement, due date of possession is 25th May, 2018, plus a grace period of 180 days.

15. The respondent submitted that since there is arbitration clause in the agreement, the hon'ble authority should direct the complainant to resort to arbitration and so the present complaint is liable to be dismissed.

16. The respondent submitted that the complainant is an abuse of process of law. The main grievance in the complaint is that there is delay in delivery of possession. In the present case there is no deliberate or willful delay in completing construction and handing over possession of the apartment. 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 agreement.

17. It is further submitted by the respondent that the real estate sector is facing global recession as it hit the economy badly and is continuing particularly in the real estate sector. The global recession largely affected the real estate sector. The construction of the project is dependent upon the amount of money received from the bookings made and money received



henceforth in form of installments by the allottees. During the prolonged effect of global recession the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the at the time of launch of project.

18. The respondent submitted that the present complaint is liable to be dismissed on the ground of suppression of material facts and documents. Its is a settled position of law that a party approaching a court or a forum is duty bound to do so with clean hands and disclose true material facts and a party which fails to do is so entitled to any relief from a court or a forum. The complainant had unabashedly made a blatant attempt to mislead the hon'ble authority by making an averment that the project is nowhere near completion.
19. The respondent submitted that the complainant has prayed for relief for refund of the amount paid which have to be claimed in a suit for recovery after paying ad volurem court fee. In order to avoid the payment of court fee, the complainant has filed the present complaint of a civil nature in this hon'ble authority. The present complaint requires elaborate evidence as it involves complicated questions of facts and law which cannot be adjudicated upon under the summary jurisdiction of this hon'ble authority.



20. The respondent submitted that the respondent is trying his best to complete the construction and the respondent has nothing to gain by deliberately delaying the delivery of the project and such delay only act to the detriment of the goodwill of the respondent.

Determination of issues:

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

21. With respect to the **first issue** raised by the complainant, the authority came across that the respondent has delayed in providing the possession and completion of project. The due date of possession is 25.11.2018. As the promoter has failed to fulfil his obligation under section 11(4)(a), 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 under section 18(1).
22. With respect to the **second issue** raised by the complainant only 10% construction has taken place and there is no possibility of handing over unit in near future.



23. 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.

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:

37. 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.

24. 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

25. The respondent admitted the fact that the project Monsoon Breeze 78 II is situated in sector-78, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is



situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction

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.
27. Keeping in view the fact that only 10% construction has taken place and there is no possibility of handing over unit in near future. The intention of allottee is to withdraw from the project after expiry of due date of possession on 25.11.2018.

Decision and 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 issues



the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to refund the amount of Rs. 33,66,072/-received by him from the complainant along with interest at the prescribed rate i.e 10.75%p.a.
- (ii) Since the complainant has made the payment in instalments, therefore the interest for particular instalment shall be calculated from the date of its payment till the date of refund. The payment shall be made by the respondent within 90 days from today.

29. The order is pronounced.

30. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date:15.01.2019

Judgement Uploaded on 21.01.2019