

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 15.01.2019
Complaint No.	739/2018 Case Titled As Sanjeev Samuel Chouhan V/S Umang Realtech Private Ltd
Complainant	Sanjeev Samuel Chouhan
Represented through	Shri Manish Yadav Advocate for the complainant.
Respondent	Umang Realtech Private Ltd
Respondent Represented through	Shri Yash Varma Advocate for the respondent.
Last date of hearing	18.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Arguments heard.

As per the BBA dated 12.5.2015 the possession of said unit is to be delivered within 42 months + grace period of 180 days from the date of signing of the said agreement or commencement of construction which ever is later. The due date for possession comes out to be 12.5.2019 if benefit of 180 days of grace period is also given to the respondent. Keeping in view the submission of the respondent that project had to be scrapped then due date of possession loses its significance. The LC was appointed to intimate the progress of the project. As on now only 10% work has been found done on site. The project cannot be delivered by due date. Although now construction of this tower has began and new date of handing over possession/date of

completion has been declared to be 30.12.2020 as per registration. As the construction as on now is negligible at site, accordingly the complainant shall be at liberty to demand refund of the amount deposited alongwith prescribed rate of interest i.e. 10.75% by them after expiry of due date of possession, once they intend to withdraw from the project. The respondent is hereby directed to make the payment once a request is received from the complainant after due date of possession is over i.e. 12.5.2019 within a period of 90 days from the date of demand. In case complainant intends to continue with the project, he shall be given interest at the prescribed rate for every month of delay before 10<sup>th</sup> of subsequent month.

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.** 739 of 2018  
**Date of First Hearing** 18.12.2018  
**Date of Decision** 15.01.2019

Mr. Sanjeev Samuel Chouhan & Others  
R/o House No299, Arunodaya Apartment,  
Vikas Puri, F-Block, New Delhi-110018

**Complainants**

Versus

M/s Umang Realtech Pvt Ltd,  
Regd. Office : D-64, 2<sup>nd</sup> Floor, Defence  
Colony, New Delhi-110001

**Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Manish Yadav Advocate for the complainants  
Shri Yash Varma Advocate for the respondent

**ORDER**

1. A complaint dated 21.08.2018 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 complainants Mr. Sanjeev Samuel Chouhan & Others, against the promoter M/s Umang



Realtech Pvt Ltd . in respect of unit described below in the project 'Monsoon Breeze 11', 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 12.05.2015 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 are as under: -

1.	Name and location of the project	Monsoon Breeze II Sector 78, Gurugram
2.	Nature of real estate project	Group housing colony
3.	DTCP license no	38 of 2008 (12.514 Acres) 77 of 2012 (7.342 Acres)
4.	Unit no.	1003,10 <sup>th</sup> floor, tower N
5.	RERA registration status	Registered
6.	RERA registration no	116 of 2017
7.	Date of apartment buyer agreement	12.05.2015



8.	Total consideration	Rs. 1,05,40,000/-
9.	Total amount paid by the complainant	Rs. 39,86,781/-
10.	Payment plan	Possession linked payment plan
11.	Date of delivery of possession. (As per Clause 6.1 of ABA : 42 months from the date of approval of building plans or date of execution of ABA whichever is later + 180 days grace period)	<b>12.05.2019</b> <b>Date of approval of building plan- 04.03.2013</b> <b>Note: Due date calculated from date of signing of the agreement since the date of signing of the agreement is later.</b>
12.	Delay	<b>Premature</b>
13.	Penalty clause (As per clause 6.7 of ABA)	Rs 5 per sq. ft of the super area for every month of delay

3. The details provided above have been checked as per record of the case file. A builder buyer agreement is available on record for Unit No. 1003, tower-N, 10<sup>th</sup> 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 18.12.2018. The case came up for hearing on 18.12.2018 and 15.01.2018. The reply has been filed on behalf of the respondent on 02.11.2018.

## 5. FACTS OF THE CASE

6. Briefly stating the facts of the complaint, the complainants submitted that the respondent on 5<sup>th</sup> April issued allotment letter to the complainant and as per the said allotment letter the complainant was allotted a 3 BHK apartment bearing no N-1003, admeasuring 1550 sq.ft in the project named "Monsoon Breeze Phase II", Sec 78, Gurugram.
7. The complainants on 16.04.2015 made the payment of Rs. 7,80,000/- and on 27.04.2015 Rs. 1,00,000/- was paid to the respondent on 01.05.2015.
8. On 12.05.2015 apartment buyer agreement for the total consideration of Rs. 1,05,40,000/- including EDC, IDC, parking charges, club Membership, PLC etc was executed between the complainant and the respondent, term and condition of the apartment buyer agreement.



9. From the date of booking till today, complainant has paid Rs. 39,86,781/-. The complainant received the letter dated 02.09.2017 from the respondent in which the respondent made reference to various fake factors like uncontrollable force majeure etc. conditions enabling them in completing the project and as per the said letter complainant was unilaterally without any consent of the complainant allotted an alternate unit bearing no. d-001, in their other project namely "Winter Hills" , Sector-77, Gurugram.

10. The complainant continuously communicated with the respondent through various channel like emails, letters, telephonically, personally visiting the office and meeting the officials of the respondent

**11. Issues raised by the complainants**

- I. **Whether the respondent is liable to pay Rs. 39,86,781/- paid to the respondent by the complainants against the unit booked along with interest at the rate of 18% per annum?**



## 12. Relief Sought

I. To direct the respondent to refund the total consideration of Rs. 39,86,781/- along with interest at the rate of 18% per annum.

## 13. Respondent's Reply

14. The preliminary objections raised by the respondent is that the complaint is filed without any cause of action and only on experimental basis as it is premature. It is submitted that as per clause 6.1 and 6.2 of apartment buyer agreement, due date for possession is 12<sup>th</sup> November, 2018 plus a grace period of 180 days.

15. The respondent submitted that since there is arbitration clause in the agreement hon'ble authority should direct the complainants to resort to arbitration and so the present complaint is liable to be dismissed. The relationship of the complainants and the respondent is defined and decided by the apartment buyer's agreement executed between both parties.

16. The respondent submitted that the present complaint is an abuse of process of law. The main grievance in the complaint is that there is delay in delivery of possession.





It is submitted that in the present case there is no deliberate or wilful 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. 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. It is submitted that the construction of project of the respondent is dependent upon the amount of money being received from the bookings made and money received henceforth in form of instalments by the allottees.

17. It is submitted that, reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalments or cancelled the bookings in the project, which resulted in less cash flow to the respondent henceforth causing delay in the construction work of the project.



**18.** In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession:

- (i) There was extreme shortage of water in the region which affected the construction works.
- (ii) There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.
- (iii) Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non availability of cash-in hand affected the availability of labours.
- (iv) Recession in economy also resulted in availability of labour and raw-materials becoming scarce.
- (v) There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).



19. The respondent submitted that the respondent had duly communicated to the complainants herein informing about the status of project and reiterated its stand to honour the terms and conditions of the apartment buyer agreement in case of any delay, notwithstanding the difficulties faced by the respondent so as to safeguard the interests of the complainants. It is an admitted position that the project is under way and not abandoned by the Answering Respondent and the money deposited by the complainants has been utilized in the construction activities and ultimately withdrawal from the project will cause unsustainable harm to other consumers as well. It is further submitted that the construction at the project site is in progress and at present several labourers are working at the site and is willing to complete the project shortly and will offer possession

20. The respondent submitted that the complainants had unabashedly made a blatant attempt to mislead this hon'ble authority by making an averment that the subject project is nowhere near completion. Initially Construction at site progressed well but unfortunately due to unavoidable circumstances beyond the control of the



opposite party, as detailed in foregoing paragraphs, there has been some stagnation at site due to poor market conditions for real estate industry but management is endeavouring its best -to complete the remaining construction and is engaging various other contractors to complete the project very soon.

21. The respondent submitted that as per the terms of apartment buyer agreement dated 11.04.2015, the respondent was obligated to deliver the possession of the apartment within 42 months from the date of the agreement and with the grace period of 180 days. Therefore, the due date for handing over possession of the subject apartment is 11.04.2019. As the complaint is premature and deserve to be dismissed.

22. **Determination of issues**

23. After considering the facts submitted by the complainants and the respondent and perusal of record on file, the authority decides the issues raised by the complainants as under :

24. With respect to the **first issue** the LC was appointed to intimate the progress of the project. As on now only



10% work has been found done on site. As the construction as now is negligible at site, accordingly the complainant will be allowed refund along with prescribed rate of interest.

25. 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.*



**26. Findings of the authority**

27. The respondent admitted the fact that the project Monsoon breeze 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.

28. **Jurisdiction of the authority-** The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.



29. The delay compensation payable by the respondent @ Rs. 5/-per sq.ft. per month for the period of delay as per clause 6.7 of the apartment buyer 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.”*

30. The authority is of the view that the Local Commissioner was appointed to intimate the progress of the project. As now only 10% work has been found done on site and the project cannot be delivered by due date. Although now construction of this tower has began and new date of handing over possession/date of completion has been declared to be 30.12.2020 as per registration. As the construction as on now is negligible at site,



accordingly the complainant will be at liberty to demand refund the deposited amount along with prescribed rate of interest by them after expiry of due date of possession, once they intend to withdraw from the project.

### Decision and direction of authority

31. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent has declared a new date of handling over possession/date of completion as per registration i.e 30.12.2020.
- (ii) The respondent is hereby directed to refund the amount paid by the complainants, once a request is received from the complainants after due date of possession is over i.e. 12.05.2019 within a period of 90 days from the date of demand.
- (iii) In case complainants intends to continue with the project, he shall be given interest at the prescribed rate for every month of delay before 10<sup>th</sup> of every subsequent month.





32. The complaint is disposed of accordingly.
33. The order is pronounced.
34. Case file be consigned to the registry. Copy of this order be endorsed to the 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

HARERA  
GURUGRAM

