

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 10.01.2019
Complaint No.	284/2018 Case titled as Mr. Ashok Kumar Singh Vs M/s Universal Buildwell Pvt. Ltd.
Complainant	Mr. Ashok Kumar Singh
Represented through	Shri K.P.Pandey Advocate for the complainant.
Respondent	M/s Universal Buildwell Pvt. Ltd.
Respondent Represented through	<b>None for the respondent.</b>
Last date of hearing	9.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is not registered with the authority.**

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

Complaint was filed on 17.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 13.6.2018, 30.10.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and on 15.11.2018 for non-filing of reply even after

service of notice. However despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to declare the proceedings ex-parte and to decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

The brief facts of the matter are as under :-

As per clause 13.3 of the Builder Buyer Agreement dated 28.9.2011 for unit No.1601, tower-G, in project "Universal Aura", Sector-82, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA or from the date of approval of building plans whichever is later + 6 months grace period which comes out to be **28.3.2015**. It was a construction linked plan. Complainant has already paid Rs.66,33,809/- to the respondent against a total sale consideration of Rs.62,86,164/-. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

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

Samir Kumar  
(Member)  
10.1.2019

Subhash Chander Kush  
(Member)

**BEFORE THE HARYANA REAL ESTATE REGULATORY**

**AUTHORITY, GURUGRAM**

**Complaint no. : 284 of 2018**

**First date of hearing: 23.08.2018**

**Date of decision : 10.01.2019**

Mr. Ashok Kumar Singh  
H.NO. 4124, Prestige South Ridge,  
Hoskerehalli Cross, B.S.K 3<sup>rd</sup> Stage,  
Banglore-560085

**Complainant**

Versus

1.M/s Universal Buildwell Private Limited  
2.M/s Shiv Ganesh Buildcon Private  
Limited  
Office: 102, Antriksh Bhawan, 22, Kasturba  
Gandhi Marg, New Delhi-110001

**Respondents**

**CORAM:**

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

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

**APPEARANCE:**

Shri Kailash Pandey Advocate for complainant  
None for the respondent Advocate for the respondents



**ORDER**

1. A complaint dated 17.05.2018 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. Ashok Kumar Singh against the promoters, M/s Universal Buildwell Private Limited and M/s Shiv Ganesh Buildcon Private Limited, on account of violation of the section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 17.05.2018. Notices w. r. t. hearing of the case were issued to the respondent on 13.06.2018, 31.10.2018 and 15.11.2018 for making his appearance. Besides this, a penalty of Rs. 5,000/- was imposed on 31.10.2018 and a penalty of Rs. 10,000/- was imposed on 15.11.2018. However, despite due and proper service of notices, the respondents did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondents it appears that they do not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter



on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

3. Since, the apartment buyer's agreement has been executed on 28.09.2011 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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 promoters/respondents in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

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

- **Nature of the project: residential group housing colony**
- **DTCP license no: 51 of 2011**
- **RERA registration: not registered**
- **Licence holder: Shiv Ganesh Buildcon**



1.	Name and location of the project	"Universal Aura" village Sikandarpur, Sector-82, Gurugram, Haryana
2.	Payment plan	Construction linked plan
3.	Date of apartment buyer's agreement	28.09.2011

4.	Unit no.	1601, tower G, 15 <sup>th</sup> floor as per agreement
5.	Area of unit	1587 sq. ft. as per agreement
6.	Basic sale price	Rs. 50,22,855/- as per page no. 09 of agreement
7.	Total consideration	Rs.62,86,164/- as per statement of complainant page no. 8
8.	Total amount paid by the complainant	Rs 66,33,809/-
9.	Due date of Possession as per clause 13.3 (36 months from the date of approval of building plans or execution of the apartment buyer agreement which ever is later plus 180 days grace period) <b>Note: date of approval of building plan is not available on record so due date is calculated from the execution of the agreement</b>	<b>28.03.2015</b>
10.	Delay in handing possession	3 years 9 months 13 days
11.	Delay possession charges as per clause 13.4	Rs.10 per sq. ft. of the super area for every month of delay



5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. On service of notice respondents appear through Shri Aashish Chopra, advocate on 17.07.2018 but reply was not filed by him.

Thereafter, again notice was send to respondents but despite service of notice the respondents neither appeared nor filed their reply to the authority and complaint. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, their right to file reply has been struck off and case is being proceeded ex-parte against the respondents.

**FACTS OF THE CASE:**

6. The complainant submitted that he has booked a three BHK apartment bearing no. 1601 on 15<sup>th</sup> floor, 'G' tower having tentative super area of 1587 sq. ft. (147.437 sq. metres. approx.) with one number of parking space in a project namely "Universal Aura" vide application no.185.
7. That the total sale consideration of the apartment agreed between the complainant and the respondents are as under:

S. NO.	PARTICULARS	AMOUNT
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1.	Basic price @ Rs.3165/- per sq. ft.	Rs.50,22,855/-
2.	External Development Charges (EDC) @ Rs.382/- per sq. ft.	Rs.6,06,234/-
3.	Covered car parking charges for 1 car	Rs.2,50,000/-
4.	Preferential Location Charges (PLC) @ Rs.225/- per sq. ft.	Rs.3,57,075/-
5.	Club facility/membership	Rs.50,000/-
Total sale consideration		<b>Rs.62,86,164/-</b> (Rupees Sixty two lakh eighty six thousand one hundred sixty four only)

To confirm the booking, the complainant had paid an amount of Rs.4,50,000/- on 22.10.2010 towards booking amount at the time of submitting application of booking.

8. That in continuation of this sale, "apartment buyer's agreement" dated 28.09.2011 was executed and signed between the complainant and the respondents. In the agreement, conditions of payment are specifically mentioned in para 3 of the agreement. In para 13.3 of the agreement, it is specifically agreed between the complainant and the



respondents that the possession of the apartment shall be handed over by the respondents to the complainant in 36 months from the date of approval of the building plan and/or execution of the apartment buyer's agreement whichever is later and subject to terms and conditions and limitations mentioned in the agreement. It was further agreed that the respondents shall be entitled to a period of 180 days ("grace period") after expiry of above commitment.

9. The complainant submitted that in present case, agreement was executed on 28.09.2011. The period of 36 months completes on 28.09.2014 and further grace period of 6 months completes on 28.03.2015. In the above manner, the possession of the booked apartment was supposed to be handed over to the complainant on 28.03.2015 but the same has not been handed over by the respondents to the complainant till date and there are delay of more than 37 months in handing over possession of the apartment.

10. The complainant submitted that construction work at site is totally stopped. No construction is going on at site and the



complainant had no hope to get possession of his apartment in near future.

11. The complainant submitted that in para 13.4 of the 'apartment buyer's agreement' dated 28.09.2011, it is specifically agreed that if the respondents fails to offer possession of the said apartment to the complainant by the end of grace period, then the respondents shall liable to pay compensation calculated at the rate of Rs.10/- per sq. ft. on super area to the complainant.
12. The complainant submitted that from the date of booking of the apartment, i.e. 22.10.2010 till 09.01.2017 the complainant had paid Rs.66,33,809/- to the respondents against the sale consideration of the apartment in instalments. The said amount of Rs.66,33,809/- are duly received and acknowledged by the respondents against the receipts.
13. The complainant submitted that the respondents issued statement of account to the complainant on 11.07.20177 in which all the details of the payments are specifically reflected. In the statement, the respondents admitted and acknowledged that they received an amount of Rs.66,33,809/- from the



complainant towards sale consideration of the booked apartment.

14. The complainant submitted that complainant made various correspondence with the respondents and requested the respondents to provide status of his apartment but the respondents did not bother to provide any update. Vide e-mail dated 17.01.2018 & 09.02.2018, the complainant requested to provide the current status of the apartment but got no response from the respondent.

15. That the respondents have not completed the construction work at site and the apartment booked by the complainant is still not complete. The complainant has no hope to get his booked apartment in near future as the construction work of the booked apartment is not yet started. Under these circumstances the complainant seeks refund of his entire deposited amount with interest and compensation as per provisions of RERA.



#### **ISSUES RAISED BY THE COMPLAINANTS:**

16. **The following issues have been raised by the complainant:**

1. **Whether the complainant is entitled for refund of his entire deposited amount of Rs.66,33,809/-?**
2. **Whether the complainant is entitled for interest @ 18% per annum on the deposited amount?**
3. **Whether the complainant is entitled to get penalty @ Rs.10/- per sq. fit on super area from 28.03.2015?**

**RELIEF SOUGHT BY THE COMPLAINANTS:**

17. **In view of the facts mentioned the following reliefs have been sought by the complainants:**

- i. **Direct the respondents to refund the entire deposited amount of Rs.66,33,809/- to the complainant.**
- ii. **Direct the respondents to pay interest to the complainant @ 18% per annum on the deposited amount from date of making payment till its realization.**



- iii. Direct the respondents to pay penalty to the complainant @ Rs.10 per sq. fit on super area from 28.03.2015.
- iv. Direct the respondents to compensate the complainant as per provisions of RERA for physical harassment, mental agony and financial loss.
- v. Direct the respondents to pay litigation cost to the complainant.

#### DETERMINATION OF ISSUES

18. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings are as hereunder:
19. With respect to **first, second and third issues** raised by the complainant the authority came across that as per clause 13.3 of apartment buyer's agreement, the possession of the said apartment was to be handed over within 36 months plus grace period of 6 months from the date of the execution agreement or approval of building plan whichever is later. In present case



date of approval of building plan is not available on record so due date of possession will be calculated from the date of execution of apartment buyer's agreement. The apartment buyer's agreement was executed on 28.09.2011. Therefore, the due date of possession shall be computed from 28.09.2011. The clause regarding the possession of the said unit is reproduced below:

*"13.3 Time of handing over the possession*

*The construction of the flat is likely to be completed within a period of 36 months with a grace period of 6 months from execution of the apartment buyer's agreement or from date of approval of building plan whichever is later...."*

Accordingly, the due date of possession was 28.03.2015 and the possession has been delayed by 3 years 9 months and 13 days till the date of decision. The delay compensation payable by the respondent @Rs.10/- per sq. ft. of the super area per month of delay of the unit for the period of delay beyond 36 + 6 months as per clause 13.4 of 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 others. (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.”*

20. The project is even not registered with the authority.

Therefore, as per section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, complainant is entitled to get refund of the entire amount paid by complainant to the respondent alongwith interest at the prescribed rate of 10.75% per annum.

#### **FINDINGS OF THE AUTHORITY:**

21. 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.

22. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

23. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.

24. 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 of the Act and to fulfil its obligations.

25. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional



time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.

26. Such notices were issued to the respondent on 13.06.2018, 31.10.2018 and 15.11.2018.

27. As the respondents have failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. To prove the communication of date of hearing to respondents, it is sufficient to prove that such information was available with the website and an electronic communication (e-mail) was served on the respondents.

28. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondents. Registration branch is directed to do the needful.



29. Complaint was filed on 17.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 13.6.2018, 30.10.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and on 15.11.2018 for non-filing of reply even after service of notice. However, despite due and proper service of notices, the respondents neither filed the reply nor come present before the authority. From the above stated conduct of the respondent it appears that respondents do not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to declare the proceedings ex-parte and to decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.



30. As per clause 13.3 of the apartment buyer's agreement dated 28.9.2011 for unit no.1601, tower-G, in project "Universal Aura", Sector-82, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of apartment buyer's agreement or from the date

of approval of building plans whichever is later + 6 months grace period which comes out to be 28.3.2015. It was a construction linked plan. Complainant has already paid Rs.66,33,809/- to the respondents against a total sale consideration of Rs.62,86,164/-. However, the respondents have miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

31. 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 issue the following direction to the buyer in the interest of justice and fair play:



- i. The respondents are directed to refund the entire amount paid by the complainant along with prescribed rate of interest @ 10.75% p.a. from the date of each payment till 10.01.2019 (date of disposal of complaint) to the complainant within a period of 90 days.
- ii. Since, the respondent has failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

32. The order is pronounced.

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



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 10.01.2019

Judgement Uploaded on 29.01.2019