

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	274/2018 Case titled as Mr. Vijay Kuar Pasricha Vs. M/s Umang Realtech Pvt. Ltd.
Complainant	Mr. Vijay Kuar Pasricha
Represented through	Complainant in person with Shri Sushil Yadav, Advocate.
Respondent	M/s Umang Realtech Pvt. Ltd.
Respondent Represented through	Shri Gaurav Verma authorized representative on behalf of the respondent-company with Shri Arpit Dwivedi, Advocate.
Last date of hearing	4.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

As per clause 6.1 of the Builder Buyer Agreement dated 26.9.2014 for unit No.T-301, 3rd floor, Monsoon Breeze-II, Sector 78, Gurugram possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans or execution of BBA whichever is later + 6 months grace period which comes out to be **26.9.2018**. It was a construction linked plan. However, the respondent has miserably failed to deliver the unit in time. Complainant has already paid Rs.49,47,725/- to the respondent against a total sale consideration of Rs.61,71,000/-.

Local Commissioner was appointed vide order dated 4.12.2018. As per his report dated 4.1.2019 which was read in the court before the public, only 10% work has been done, 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. : 274 of 2018
Date of first hearing: 27.06.2018
Date of decision : 10.01.2019

Mr. Vijay Kumar Parischa
R/o 1008, Ward No. 7, Mehrauli, New
Delhi- 110030

Complainant

Versus

M/s Umang Realtech Pvt. Ltd.
Regd. Office 1st Floor, The Great Eastern
Center 70, Nehru Place, New Delhi- 110019

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Vijay Kumar Parischa Complainant in person

Shri Sushil Yadav
Shri Gaurav Verma

Advocate for the complainant
Authorize representative on
behalf of the respondent
company

Shri Rishu Kant Sharma and
Shri Arpit Dwivedi

Advocate for the respondent



ORDER

1. A complaint dated 15.05.2018 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. Vijay Kumar Parischa against the promoter M/s Umang Realtech Pvt. Ltd. on account of violation of clause 6.1 of the builder-buyer's agreement executed on 26.09.2014 for unit no. 301, tower-T in the project "Monsoon Breeze II" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

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

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

***DTCP licence no.: 77 of 2012 valid upto 31.07.2018**

***The owner and the developer have entered into a collaboration agreement dated 12.03.2013, for development of group housing colony**

1.	Name and location of the project	Monsoon Breeze II, Sector-78, Gurugram
2.	Project area	12.514 acres
3.	Unit No.	T-301, 3 rd floor
4.	Unit area	1300 sq. ft.



5.	Registered or unregistered	Registered 14 of 2018 dated 16.01.2018 valid upto 31.12.2020
6.	Payment plan	Time linked plan
7.	Date of execution of builder buyer's agreement	26.09.2014
8.	Total Sale Price	Rs. 61,71,000/-
9.	Total amount paid by the complainant	Rs. 49,47,725/-
10	Percentage of consideration amount	80% approx.
11	Date of delivery of possession. (Clause 6.1-42 months from the approval of building plan or execution agreement whichever is later + grace period of 180 days)	26.09.2018 (48 months from execution of agreement) *Date of sanction of building plan approval is not known As per the complainant due date of possession is 26.03.2018
12	Delay of handing of possession	3 months and 15 days
13	Penalty Clause as per builder buyer agreement dated	Rs. 5/- per sq. ft. per month of the super area
14	Cause of delay in delivery of possession	Forced majeure



3. As per the details provided above, which have been checked as per record of the case file, a builder buyer agreement is available on record for unit no. T-301, 3rd floor according to which the possession of the aforesaid unit was to be delivered by 26.09.2018. The promoter has failed to deliver the

possession of the said unit to the complainant by the due date as per builder buyer's agreement dated 26.09.2014. 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 19.07.2018. The case came up for hearing on 27.06.2018, 19.07.2018, 30.08.2018, 04.12.2018 and 10.01.2019.

FACTS OF COMPLAINT

5. The complainant booked a flat admeasuring 1300 sq. ft. in the said project relying on the advertisement given by the respondent in various leading newspapers for a total sale consideration of Rs. 61,71,000/- including BSP, car parking, IFMS, club membership, PLC, etc. Subsequently, the complainant has made a payment of Rs. 49,47,725/- to the respondent. That as per clause 6.1 of the builder buyers' agreement, the respondent agreed to deliver the possession of the flat within 42 months from the date of signing of the



builder buyers' agreement dated 26.09.2014 with an extended period of 6 months.

6. The complainant regularly visited the site but was surprised to see that the construction work was not in progress. Despite making 85-90% payments, the respondent has failed to deliver the possession of the allotted flat within the stipulated time i.e. by 26.09.2018.
7. That due to this omission on the part of the respondent, the complainant has been suffering from disruption on living arrangement, mental torture, agony also continues to incur severe financial losses.
8. That clause 6.7 of the builder buyers' agreement provides that in the event of delay in handing over possession, the developer will give compensation of Rs. 5/- per sq. ft per month of the super area of the flat. However, this amount is very nominal and unjust only to exploit the complainant. The clauses incorporated in the agreement are one-sided.
9. The complainant has requested the respondent on various occasions to either deliver the possession of the flat or to



refund the amount paid by him along with interest @ 15% p.a.
but the respondent has failed to do so.

10. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the flat in question or to refund the amount along with interest @ 15% per annum on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

11. The complaint have taken loan amounting Rs.3100000 /-(Rs thirty one lacs only) from Housing Development Finance Corporation for which remitting amount per month. The complainant had taken loan from HDFC and after investigating properly from the bank sanctioned the loan. The complainant visited the site but are shocked to see that no construction was going on and complainant are paying so much amount to the bank on account of EMI of loan availed by the complainant.



12. ISSUES RAISED BY THE COMPLAINANT

- i. Whether the respondent /firm is not completing the construction and It could be seen here that the respondent has incorporated the clause is one sided buyer agreement which is unjustified?
- ii. Whether that flat has not been handed over to the petitioner till today and there is no reasonable justification for the delay?
- iii. Whether the interest cost being demanded by the respondent/developer is very higher i.e.15% which is unjustified and not reasonable?

13. RELIEF SOUGHT BY THE COMPLAINANT:

In view of the above, complainant seeks the following relief:

- (i) Direct the respondent to refund the amount of Rs.4947725/- along with interest @ 15% per annum on compounded rate from the date of booking of the flat in question.
- (ii) Direct the respondent to pay interest calculated @15% per annum on compound rate from the



committed date of possession i.e 26.03.2018 on the entire sum paid by the complainant to the respondent and to continue paying such interest till the possession is handed over by the respondent to the complainant.

(iii) Direct the respondent to handover the possession of the respective flat to the complainant.

(iv) Direct to pay a sum of Rs.30000/- (Rs. thirty thousand only) cost of litigation.

(v) Direct to pay a cost of Rs500000/- (Rs five lacs only) for the harassment and mental agony suffered by the complainant.

REPLY BY THE RESPONDENT

14.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 since as per clause 6.1 and 6.2 of apartment buyer agreement, due date for possession is 26.03.2018 plus grace period of 180 days.



15. The relationship of the complainant and the respondent is defined and decided by the apartment buyers agreement executed between both the parties. It is submitted that an specific clause for referring dispute to arbitration is included in the said agreement vide clause 13.9 of the agreement.
16. The main grievance in the complaint is that there is delay in delivery of possession. It is submitted that 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 reason 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 apartment buyers agreement.
17. It is submitted that real estate sector is facing global recession as it hit the economy badly and is continuing particularly in the real estate sector. 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.



18. It is submitted that respondent is a customer oriented organization and is also willing to offer to the complainant an option to transfer his booking in another project being developed by the respondent i.e. "Monsoon Breeze-II" ABLM tower, for which OC has been applied or Winter Hills 77 or Winter Hills Dwarka Morh for which OC received.
19. All payments made by the complainant are according to payment plan opted by him i.e construction linked payment plan. Further, he has defaulted in part payment of demand raised on 31.01.2015 amounting Rs.15,520/- and he is also liable to pay Rs.10,652/- as interest liability for delay in timely payments.
20. It is submitted that that the liability of the respondent on account of delay is specified in the clause 6.7 of the builder buyer's agreement and as such the complainant cannot claim reliefs which are beyond the compensation agreed upon by him.
21. The respondent has nothing to gain by deliberately delaying the delivery of subject project and such delays only act to the detriment of the goodwill of the respondent. The fully



committed to complete the project and handover the project to the respective buyers and is making sincere and earnest efforts to arrange for necessary funds for construction of project and same shall move towards completion very soon.

DETERMINATION OF THE 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:

- i. With respect to the **first and second issues** raised by the complainant, the authority came across that as per clause 6.1 of apartment buyer's agreement, the possession of the flat was to be handed over by 26.09.2018. The clause regarding the possession of the said unit is reproduced below:

" 6.1 Subject to other terms.....the developer shall endeavour to hand over the possession of the said apartment to the buyer within a period of 42 months from the date of approval of the building plans or signing of this agreement, whichever is later"



Accordingly, the due date of possession was 26.09.2018 and the possession has been delayed by approx. three months and eighteen days till the date of decision. The delay compensation

payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said apartment as per clause 6.7 of apartment buyer's agreement is held to be very nominal and unjust.

- ii. With respect to **third issue** raised by complainant accordingly, as far as the interest cost being demanded by the respondent i.e. 15%, it is held to be very nominal, unjust and one sided as also held in para 181 of the judgment in ***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.”

22. As the possession of the flat was to be delivered by 26.09.2018 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.



Findings of the authority

23. 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.
24. 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.
25. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.



26. 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.
27. As per clause 6.1 of the builder buyer's agreement dated 26.9.2014 for unit no. T-301, 3rd floor, Monsoon Breeze-II, Sector 78, Gurugram possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans or execution of BBA whichever is later + 6 months grace period which comes out to be 26.9.2018. It was a time linked payment plan. However, the respondent has miserably failed to deliver the unit in time. Complainant has already paid Rs.49,47,725/- to the respondent against a total sale consideration of Rs.61,71,000/-.
28. Local commissioner was appointed vide order dated 4.12.2018. As per his report dated 4.1.2019 which was read in the court before the public, only 10% work has been done, 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.



Decision and directions of the authority

29. 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 respondent in the interest of justice and fair play:

- i. The respondent is 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.

30. The order is pronounced.

31. Case file be consigned to the registry.



(Samir Kumar)

Member

Dated 10.01.2019

(Subhash Chander Kush)

Member

Judgement Uploaded on 29.01.2019