

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	693/2018 Case Titled As Ms. Geeta Sharma V/S M/S Universal Buildwell Pvt Ltd & Ors.
Complainant	Ms. Geeta Sharma
Represented through	Shri V.P.Munjhal, Advocate for the complainant.
Respondent	M/S Universal Buildwell Pvt. Ltd & Ors.
Respondent Represented through	None for the respondent.
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.

Shri V.P.Munjhal Advocate has appeared on behalf of the complainant and filed power of attorney.

Arguments heard.

Complaint was filed on 8.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 4.9.2018, 27.9.2018 and 16.10.2018.

Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 27.9.2018 and on 16.10.2018 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 a count 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 12.10.2011 for unit No.803, 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 i.e. 17.5.2012 + 6 months grace period which comes out to be **17.11.2015**. It was a construction linked plan. Complainant has already paid Rs.43,65,044/- to the respondent against a total sale consideration of Rs.50,71,676/-. 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)

Subhash Chander Kush
(Member)

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

Complaint no. : 693 of 2018
First date of hearing : 4.9.2018
Date of decision : 10.1.2019

Mrs. Geeta Sharma
R/o: R2F 5/42, F-Block,
Dabri Extension East, Gali no.3,
Mandir Marg, New Delhi-110045

...Complainant

Versus

1.M/s. Universal Buildwell Pvt. Ltd.
Corporate Office:-Universal Trade Tower,
8th floor, sector 49,
Sohna Road, Gurugram, Haryana –
122018.

Also at: 102, Antriksh Bhawan,
22, K.G. Marg, New Delhi

...Respondent

2.Shiv Ganesh Buildcon Pvt. Ltd.
Address: 7th floor, Vatika Triangle,
Sushant Lok-I, Block A, M.G. Road,
Gurugram, Haryana

3. Raman Puri
Address: House no.59 B, C-5,
Sainik Farm, Neb Sarai-110062



CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri V.P. Munjal
None

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 8.8.2018 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, Mrs. Geeta Sharma, against the promoter M/s Universal Buildwell Pvt. Ltd., Shiv Ganesh Buildcon Pvt. Ltd. and Mr. Raman Puri in respect of apartment/unit described below in the project "Universal Aura", on account of violation of the section 11(4)(a) of the Act *ibid*.
2. The complaint was filed on 8.8.2018. Notices w. r. t. hearing of the case were issued to the respondent on 4.9.2018, 27.9.2018 and 16.10.2108 for making his appearance. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does 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 anchor unit agreement has been executed on 12.10.2011 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.
4. The particulars of the complaint are as under: -

1.	Name and location of the project	“Universal Aura”, Sector 82, Gurugram, Haryana.
2.	Flat no.	803, tower-G
3.	Nature of real estate project	Residential colony
4.	DTCP license no.	51 of 2011
5.	Admeasuring super area of the allotted unit	1179 sq. ft’
6.	RERA registered/unregistered	Not registered
7.	Date of execution of builder buyer agreement	12.10.2011



8.	Payment Plan	Construction linked payment plan
9.	Total consideration amount as per performa for complaint	Rs. 50,71,676/-
10.	Total amount paid by the complainant till date	Rs. 43,65,044/- (as per receipts attached page no.87-98)
11.	Percentage of consideration amount	86.06%
12.	Due date of delivery of possession clause 13.3 – 36 months + 6 months from the date of approval of building plans or signing of the agreement. (building plans approved on – 17.5.2012)	17.11.2015
13.	Delay in handing over possession till date	3 years 1 month 24 days (approx.)
14.	Penalty clause as per agreement dated 12.10.2011	Clause 13.4 - Rs.10 per sq. ft' of super area

5. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement dated 12.10.2011 is available on record for the aforesaid unit no. 803, tower-G according to which the possession of the same was to be delivered by 17.11.2015. The respondent has failed to deliver the possession till date. Therefore, the



promoter has not fulfilled his obligation which is in violation of section 11(4)(a) of the Act *ibid*.

6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor file their reply to the complaint therefore their right to file reply has been struck off and case is being proceeded *exparte* against the respondent.

Facts of the complaint

7. License no.51 of 2011 dated 5.6.2011 was granted to M/s Shiv Ganesh Buildcon Pvt Ltd, for the construction of group housing project measuring 11.231 acres in sector-82, Gurugram upto 4.6.2014. The building plan was approved by competent authority on 17.5.2012.
8. The associate of Shiv Ganesh Buildcon Pvt. Ltd., i.e., Universal Buildwell Pvt Ltd registered at Universal Trade Tower has launched a residential project named “Universal Aura” in Sector-82, Gurugram, Haryana. The project was supposed to be developed by Universal Buildwell and is owned by Shiv Ganesh Buildcon Pvt Ltd.



9. A 2 BHK was purchased by the complainant admeasuring 1179 sq. ft' from Mrs.Shakuntala Devi and the same was confirmed by the respondent M/s Universal Buildwell. The unit no.803, 8th floor, tower-G was confirmed by Universal Buildwell vide confirmation of ownership on page no.83 of builder buyer agreement.
10. The complainant has paid the amount as per payment schedule as per construction linked plan. The payment which was delayed, the respondent has charged interest on that and that has also been paid. All the payments have been annexed from page 87-98.
11. The complainant has paid in total Rs.43,65,044 out of Rs.50,87,676. The buyer's agreement was executed on 12.10.2011 and submitted in the office of respondent in December, 2011 by the original allottee, shown in annexure-P1. The respondent vide letter dated 10.12.2013 intimated about increase in super area from 1179 sq. ft' to 1331.93 sq. ft' and demanded Rs.3,36,184 on account of increase in super area.
12. As per clause 10.2 of buyer's agreement the respondent can claim this payment only after completion of project/occupation certificate from the competent



authority. The amount has been paid by the complainant though it was in violation of the agreement.

13. As per clause 13.3 of the buyer's agreement, the possession was to be handed over within a period of 36 months from the date of approval of building plans with 180 days grace period. The construction work has been stopped since more than 2 years.

14. Issues to be decided:

- I. Whether the work is delayed or stopped by the builder for more than 1 year?
- II. Whether there has been violation of the provisions of builder buyer agreement by increasing super area and not delivering possession of the apartment?

Reliefs sought-

15. The complainant is seeking the following reliefs:

- i. Refund the entire paid amount of Rs.43,65,044 along with interest @18%p.a. from the date of receipt of payments.



- ii. To pass any such order which this authority may deem fit.

16. The respondent has not filed their reply despite service of notice till date, hence their right of defence has been struck down and respondents are proceeded ex parte.

17. The complaint was filed on 8.8.2018. Notices with respect to the hearing of the case were issued to the respondent on 4.9.2018, 27.9.2018, 16.10.2018 for making the appearance. Besides this a penalty of Rs. 5,000/- and Rs. 10,000/- were imposed on 27.9.2018 and on 16.10.2018. However, despite due and proper service of notices, the respondent did not come present 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 a count legal/factual propositions as raised by the complainant in his complaint.



Determination of issues

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:

18. With respect to **issue no. 1** raised by the complainant, the complainant has attached photographs in the complaint from page no.108-114 which shows that the construction work is stopped at the site.
19. With respect to the **issue no. 2** raised by the complainant, as per clause 13.3 of the builder buyer agreement dated 12.10.2011, the possession of the unit was to be handed by 17.11.2015. However, the possession has been delayed by 3 years 1 month 24 days (approx.) till the date of decision. The authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Moreover, the project is not registered and there is no likelihood of hope to ascertain the exact status of the completion of project. Hence, the authority left with no other option decided to order for the refund of the paid amount by the respondent alongwith



prescribed rate of interest @10.75% as per the provision of section 18(1) of the Act.

Findings of the authority

20. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, 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.



21. Keeping in view the dismal state of affairs with regard to the status of project and non-appearance of the respondent despite service, the authority left with no option but to order

refund of the amount paid by the complainant to the respondent alongwith prescribed rate of interest.

Decision and directions of the authority

21. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:-

- i. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulatory and 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.
- ii. Complaint was filed on 8.8.2018. notices w.r.t reply to the complainant were issued to the respondent on 4.9.2018, 27.9.2018 and 16.10.2108. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 27.9.2018 and on 16.10.2018 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 came



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.

- iii. A final notice date 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.
- iv. As per clause 13.3 of the builder buyer agreement dated 12.10.2011 the 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 i.e. 17.5.2012 + 6 months grace period which comes out to be



17.11.2015. The complainant has already paid Rs.43,65,044/- to the respondent against a total sale consideration of Rs.50,71,676/-. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the same 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.

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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 10.1.2018

Judgement uploaded on 29.01.2019

