

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	517/2018 Case Titled As Mr. Ashok Kumar Nagpal & Anr. V/S M/S Universal Buildwell Pvt. Ltd.
Complainant	Mr. Ashok Kumar Nagpal & Anr.
Represented through	Complainant Ashok Kumar Nagpal in person
Respondent	M/S Universal Buildwell Pvt. Ltd.
Respondent Represented through	None for the respondent.
Last date of hearing	11.9.2018
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 10.7.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 3.8.2018, 12.9.2018 and 17.10.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 12.9.2018 and on 17.10.2018 for non-filing of reply even after service of

notices. 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 his 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 5.10.2011 for unit No.H-1601, 15th floor, tower-H, 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 **5.4.2015**. It was a construction linked plan. Complainant has already paid Rs.45,49,156/- to the respondent against a total sale consideration of Rs.54,39,146/-. 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. : 517 of 2018
Date of First hearing : 11.09.2018
Date of decision : 10.01.2019

1. Sh. Ashok Kumar Nagpal
R/o House no. 267/28, Jyoti Park, Gali no. 6,
Ward no. 27, Gurugram-122001

2. Sh. Manish Batra
R/o House no. 298/1A, Batra Sadan,
Gali no. 5, Madanpuri, Gurugram-122001

...Complainants

Versus

सत्यमेव जयते

M/s Universal Buildwell (P) Ltd
Office at: 102, Antriksh Bhawan ,22,
Kasturba Gandhi Marg, Connaught Place,
New Delhi-110001
Corporate office: 8th Floor, Universal Trade
Tower, Gurgaon-Sohna Road,
Sector 49, Gurugram

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Ashok Kumar Nagpal,
complainant no.1 in person
None for the respondent

Advocate for the complainants
Advocate for the respondent



EX-PARTE ORDER

1. A complaint dated 10.07.2018 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 complainants Sh. Ashok Kumar Nagpal and Sh. Manish Batra against the promoter M/s Universal Buildwell Pvt. Ltd in respect of apartment described below in the project 'Universal Aura', on account of violation of the section 11(4)(a) of the Act *ibid*.
2. Since the apartment buyer's agreement has been executed on 05.10.2011, 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 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	"Universal Aura" in Sector 82, Gurugram
2.	Unit no.	H-1601, 15 th floor, tower no. H
3.	Unit area	1179 sq. ft.



4.	Registered/ not registered	Not registered
5.	DTCP license	51 of 2011
6.	Date of booking	31.12.2010
7.	Date of buyer's agreement	05.10.2011
8.	Basic sale price	Rs. 37,31,535/- (as per pg 09 of apartment buyer's agreement)
9.	Total consideration excluding service tax	Rs.54,39,146/- (as per pg 38 of the complaint)
10.	Total amount paid by the complainant	Rs. 45,49,156/- (As per the complaint)
11.	Payment plan	Construction linked plan
12.	Date of delivery of possession	05.04.2015 Clause 13.3- 36 months from date of approval of building plans and/or execution of apartment buyer's agreement, whichever is late + 180 days grace period. Note: No building plan approval has been attached in the file. Therefore, the due date of possession is calculated form date of execution of agreement.
13.	Delay of number of months/ years up to 10.01.2019	3 years 9 months
14.	Penalty clause as per apartment buyer's agreement dated 05.10.2011	Clause 13.4- Rs.10/- per sq. ft. of the super area for every month of delay



4. The details provided above have been checked on the basis of the record available in the case file. An apartment buyer's agreement dated 05.10.2011 is placed on record for the aforesaid unit according to which the possession of the same was to be delivered by 05.04.2015. Neither the respondent has delivered the possession of the said until 05.04.2015 nor they have paid any compensation @ Rs.10/- per sq. ft. per month of the area of the said unit for the period of such delay as per clause 13.4 of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 11.09.2018 and 10.01.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

Facts of the complaint

6. On 31.12.2010, the first buyer, Col. Ranjit Singh booked a commercial unit in the project named "Universal Aura" in Sector 82, Gurugram by paying an advance amount of



Rs.3,50,000/- to the respondent. Accordingly, the first buyer was allotted a unit bearing no. H-1601, 15th floor, tower no. H admeasuring 1179 sq. ft.

7. On 05.10.2011, an apartment buyer's agreement was entered into between the parties wherein as per clause 13.3, the company proposes to handover the possession within 36 months from date of approval of building plans and/or execution of apartment buyer's agreement, whichever is late + 180 days grace period. However, no building plan approval has been attached in the file. Therefore, the due date of possession is calculated form date of execution of agreement. Accordingly, the due date of possession comes out to be 05.04.2015. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. Out of the total basic sale consideration of Rs.54,39,146/-, the complainants paid total amount of Rs.45,49,156 as demanded by the respondent.



8. On 02.02.2013, an agreement to sell was entered into between the first byer, Col. Ranjit Singh and complainants whereby the first buyer transferred the apartment in

question in favour of the complainants. Further vide confirmation of ownership dated 04.02.2013, the aforesaid transfer was confirmed.

9. It is pertinent to mention here that vide letter to Chief Minister, Haryana, annexed at pg 41 of the complaint, the complainants have submitted that only 30-35% of the project has been constructed and the builder has stopped the construction for last three years. Various grievance letters were sent by the complainants to the respondent as well, but to no avail.

10. **Issues raised by the complainants**

The relevant issue as culled out from the complaint is as follows:

I. Whether the complainants are entitled to refund of principal amount paid along with interest at the prescribed rate?

11. **Relief sought**

I. Direct the respondent to refund the amount of Rs.45,49,156 paid from 31.12.2010 to 10.01.2017, along with the interest.



Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainants and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

12. With respect to the **sole issue** raised by the complainants, the complainants have failed to furnish any concrete document in order to show the status of construction. As per clause 13.3 of the agreement, the possession was stipulated to be handed over by 05.04.2015. Thus, the respondent failed in handing over the possession on or before the said due date, nor paid the compensation stipulated under clause 13.4 of the agreement, thereby committing a breach of the said agreement. The project is not registered. It has been submitted by the complainants that the project is not under construction since last three years. In these circumstances, the authority is left with no other option but to allow refund along with delayed possession interest at the prescribed rate.
13. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

14. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings and directions of the authority

15. **Jurisdiction of the authority-** The project “Universal Aura” in Sector 82, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. 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 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.

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 complainant at a later stage.

16. 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.
17. Such notices were issued to the respondent on 03.08.2018 and on 12.09.2018 and on 17.10.2018. a final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.01.2019.
18. As the respondent has failed to appear before the authority and to submit the reply in such period, despite due and proper service of notices, it appears that the respondent does not want to pursue the matter before the authority by way of making his personal appearance by adducing and producing any material particulars in the matter. Thus, the authority hereby proceeds ex-parte on the basis of the facts available



on record and adjudges the matter in the light of the facts adduced by the complainants in their pleading.

19. The ex-parte final submissions have been perused at length. Details regarding the status of the project have not been supported by relevant documents, as already stated above. The apartment buyer's agreement has been executed on 05.10.2011, according to which the due date of possession comes out to be 05.04.2015. Further, as per respondent's demand, the complainant made a payment of Rs.45,49,156/-. The project is not registered with the authority, violating the provision of section 3(1) of the Act *ibid*. In view of the facts and circumstances of the case, the authority is of the considered opinion that the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. Thus, keeping in view the dismal state of affairs with regard to status of the project and non-appearance of the respondent despite service, the authority is left with no option but to order refund of the amount of Rs. 45,49,156/- deposited by the complainants/buyer along with



prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

20. 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:

(i) The respondent is directed to refund to the complainants the principal sum of Rs.45,49,156/- paid by them along with interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants. The interest will be given from date of receipt of payments till 10.01.2019 (date of disposal of complaint) to the complainants within a period of 90 days from the date of this order. The complaint is disposed of accordingly.

21. As the project is registerable and has not been registered by the promoter thereby violating section 3(1) of the Act, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under



section 59 of the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

22. The complaint is disposed of accordingly.

23. The order is pronounced.

24. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2019

Judgement uploaded on 28.01.2019

(Subhash Chander Kush)

Member

HARERA
GURUGRAM

