

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

**Complaint no. : 427 of 2018**  
**Date of First hearing : 07.08.2018**  
**Date of decision : 10.01.2019**

1. Sh. Jai Bhagwan Verma  
2. Smt. Neelam Verma  
R/o 96, Godavari Apts. Alaknanda New  
Delhi-110019

**...Complainants**

Versus

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. Sushil Yadav  
None for the respondent

Advocate for the complainants  
Advocate for the respondent



**EX-PARTE ORDER**

1. A complaint dated 13.06.2018 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. Jai Bhagwan Verma and Smt. Neelam Verma against the promoter M/s Universal Buildwell (P) Ltd in respect of apartment described below in the project 'Market Square', on account of violation of section 11(4)(a) of the Act ibid. A non-executed builder buyer agreement has been annexed with the paper book.

2. Since the provisional allotment letter was issued on 28.03.2011, 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	"Market Square" in
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		Sector 67, Gurugram
2.	Unit no.	G-71
3.	Unit area	448.7 sq. ft.
4.	Registered/ not registered	<b>Not registered</b>
5.	DTCP license	18 of 2010 dated 10.03.2010
6.	Date of booking	21.02.2011
7.	Date of provisional allotment letter	28.03.2011
8.	Date of buyer's agreement	<b>Note: BBA has not been executed between the parties</b>
9.	Basic sale price	Rs. 38,13,950/- (as per provisional allotment letter)
10.	Total amount paid by the complainants	Rs. 11,73,432/- (as per the receipts attached with the paper book)
11.	Payment plan	Construction linked plan (as per application from, pg 21 of the complaint)
12.	Date of delivery of possession	<b>Note: BBA has not been executed between the parties</b>
13.	Delay of number of months/ years up to 10.01.2019	<b>Cannot be ascertained</b>



4. The details provided above have been checked on the basis of the record available in the case file. A non-executed builder buyer agreement is available on record. However, the date of

booking is 21.02.2011 and more than 7 years have elapsed since the said date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared through proxy counsel on 21.08.2018. The case came up for hearing on 07.08.2018, 21.08.2018 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 21.02.2011, the complainants booked a commercial unit in the project named "Market Square" in Sector 67, Gurugram by paying an advance amount of Rs 3,50,000/- to the respondent. Accordingly, the complainants were allotted a unit bearing G-71 admeasuring 448.7 sq. ft vide provisional allotment letter dated 28.03.2011.
7. The complainants submitted that out of the total basic sale consideration of Rs.38,13,950/-, the complainants paid total



amount of Rs.25,19,432/-, out of which the complainants paid a sum of Rs.11,73,432/- by way of cheque and Rs. 13,46,000/- by way of cash as demanded by the respondent.

8. The complainants submitted that after receiving the above payment for the said shop, the respondent sent the copy of builder buyer agreement dated 04.11.2015 and in the said agreement, the unit has been mentioned as G-45 which the respondent has changed without the consent and permission of the complainants. However, as there is nothing on the ground and the project has not been conceived in between the period of the payments made in year 2011 and the builder buyer agreement sent by the respondent on 04.11.2015. The complainants have been made to put under loss when huge payments were made in 2011 itself and the commercial project was to be delivered within 3 years from the date of said payments.

9. The complainants further submitted that the complainants have several times requested the respondents that they were not capable of conceiving the project and completing the



project and as they have failed to commence the project for the last 7 years and have been retaining the huge amount of the complainants illegally and unlawfully without there being any justified cause.

10. It is further submitted that clause 17(a) of the application form provides that the project would be completed and occupation certificate would be obtained within 36 months. The respondent has been retaining the entire amount without fulfilling their commitments. Even despite several oral communication and exchange of emails, the respondent is not coming forward to make the payment of the complainants.

11. The complainants submitted that they requested the respondent several times to refund the said amount, but the interactions and altercations advanced from the side of the respondent clearly portrays that the respondent has turned mala fide and has no intention to make payment.

12. The complainants submitted that it is also pertinent to mention herein that that the respondent has not even started



the construction of the said property as on date nor the respondent has shown any documents regarding licence or other NOC or permission from the concerned department to the complainants, in absence of which, the respondents are not in a position to deliver the project in next couple of years.

13. The complainants submitted that due to this omission on the part of the respondent, the complainant has been suffering from disruption, mental torture, agony and continues to incur severe financial losses. This could be avoided if the respondent had given possession of the shop on time.
14. The complainants submitted that they have requested the respondent several times by making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the shop in question or to refund the amount along with interest @ 24% per annum on the amount deposited by the complainants, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants wrongfully gained himself and caused wrongful loss to the complainants.



## 15. Issues raised by the complainants

The relevant issues as culled out from the complaint are as follows:

- I. Whether the respondent has incorporated the clause in a one-sided buyer agreement which is unjustified?
- II. Whether there is no reasonable justification for the delay as the construction has not started yet?

## 16. Relief sought

- I. Direct the respondent to refund the amount of Rs.25,19,432 due from 02.09.2011 till date, along with the interest 24 % per annum.

## 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:

17. With respect to the **first issue** raised by the complainants, no builder buyer agreement has been executed between the





parties. Thus, the issue becomes infructuous.

18. With respect to **second issue**, the complainants have failed to furnish any concrete document in order to show the status of construction. As per clause 17(a) of the terms and conditions for provisional allotment, the possession was stipulated to be handed over within 36 months from date of signing of builder buyer agreement. No builder buyer agreement has been executed in order to enable the authority to ascertain the due date of possession. Thus, owing to lack of any documentary proof, this issue cannot be determined.

19. 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.

20. 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

21. **Jurisdiction of the authority-** The project “Market Square” is located in Sector 67, 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.



22. 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.
23. Such notices were issued to the respondent on 09.07.2018 and on 30.10.2018 and on 15.11.2018. In compliance of the proceedings dated 07.08.2018, service to the respondent was also got effected through Commissioner of Police, Gurugram vide notice dated 16.08.2018. Further, 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.
24. As the respondent has failed appear before the authority or 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 personal appearance by adducing and producing 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 complainant in its pleading.

25. 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 builder buyer agreement has not been executed between the parties. However, a provisional allotment letter dated 28.03.2011 was issued by the respondent in favour of the complainants with respect to the unit in question. As per the

terms and conditions of the provisional allotment, it is clearly stated under clause 17(a) that the respondent shall make efforts to apply for occupation certificate within 36 months from execution of agreement. But no agreement has been

executed. Further, it has been admitted by the complainants in the complaint itself that they paid total amount of

Rs.25,19,432/-, out of which the complainants paid a sum of Rs.11,73,432/- by way of cheque and Rs. 13,46,000/- by way

of cash as demanded by the respondents. However, no statement of account regarding the cash payment has been



furnished by the complainants. 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. The respondent retained the amount paid by the complainants from 2011 till date which must be paid back to them. Accordingly, the amount of Rs. 11,73,432/- be refunded to the complainants along with interest at the prescribed rate of 10.75% per annum within 90 days from the date of this order.

26. 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.11,73,432/- paid by them along with interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant. The interest will be given from date of receipt of payments till 10.01.2019 (date



of disposal of complaint) to the complainant within a period of 90 days from the date of this order.

27. 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.
28. The complaint is disposed of accordingly.
29. The order is pronounced.
30. Case file be consigned to the registry.

HARERA  
GURUGRAM



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2019

Judgement uploaded on 28.01.2019