

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	426/2018 Case Titled As Mr. Neelam Verma & Anr. V/S M/S Universal Buildwell Pvt. Ltd.
Complainant	Mr. Neelam Verma & Anr.
Represented through	Shri Sushil Yadav, Advocate for the complainant.
Respondent	M/s Universal Buildwell Pvt. Ltd.
Respondent Represented through	None for the respondent.
Last date of hearing	27.9.2018
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 13.6.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 9.7.2018, 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 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 6 of the Builder Buyer Agreement dated 9.7.2009 for unit No.239, 2nd floor, in project "Universal Business Park" Sector-66, Gurugram, possession was to be handed over to the complainant on **1.4.2010**. Complainant has already paid Rs.38,70,000/- to the respondent against a total sale consideration of Rs.38,70,000/-. 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. : 426 of 2018
First date of hearing : 07.08.2018
Date of Decision : 10.12.2018

Mrs. Neelam Verma and Mr. Jai Bhagwan
Verma.

R/o. 96, Godavari Apartments,
Alakanada, New Delhi- 110019.

Complainant

Versus

M/s. Universal Buildwell Pvt. Ltd.
(Through its Managing Director)
Corporate Office:- Universal Trade Tower,
8th floor, sector 49, Sohna Road, Gurugram,
Haryana - 122018.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

None for the respondent: Proceeded exparte on

ORDER

1. A complaint dated 13.06.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs. Neelam Verma and Mr. Jai Bhagwan, against the promoter M/s Universal Buildwell Pvt. Ltd.,



on account of violation of the clause 6 of builder buyer's agreement dated 09.07.2009 in respect of flat no. 239, 2nd floor, admeasuring 600 sq. ft. of the project 'universal business park' located at sector 66, Gurugram for not handing over possession of the subject flat on the due date i.e. by 01.04.2010 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the builder buyer agreement dated 09.07.2009 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non compliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

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

1.	Name and location of the project	"universal business park", Sector 66, Gurugram, Haryana.
2.	Flat no.	239, 2 nd floor.
3.	Nature of real estate project	Commercial complex



4.	DTCP license no.	Not mentioned
5.	Admeasuring super area of the allotted unit	600 sq. ft.
6.	RERA registered/unregistered	Unregistered
7.	Date of execution of builder buyer agreement	09.07.2009
8.	Payment Plan	Construction linked payment plan
9.	Total consideration amount as per agreement dated 09.07.2009	Rs. 38,70,000/-
10.	Total amount paid by the complainant till date	Rs. 38,70,000/-
11.	Percentage of consideration amount	100%
12.	Due date of delivery of possession as per clause 6 of the agreement dated 09.07.2009	01.04.2010
13.	Delay in handing over possession till date	7 years and 9 months approx.
14.	Committed return plan as per the agreement dated 09.07.2009	Rs. 68/- per sq. ft. per month till 31.03.2010

4. 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 09.07.2009 is available on record for the aforesaid flat no. 239 on 2nd floor, admeasuring 600 sq. ft. according to which the possession of the same was to be delivered by 01.04.2010. 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*.

5. 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:-

6. Briefly stated, facts relevant for the disposal of present complaint as that in 2007, the complainants booked a commercial space in the respondent's project namely 'universal business park' located at sector 66, Gurugram. Pursuant to the said booking of the complainants, respondent executed an agreement dated 19.10.2007 for unit no. 943 on 9th floor admeasuring 600 sq. ft. in the project in favour of the complainants. Thereafter, pursuant to agreement dated 19.10.2007, respondent has executed another builder buyer agreement dated 09.07.2009 (superseded over the earlier agreement) for



allotted flat no. 239 on 2nd floor, admeasuring 600 sq. ft. in favour of the complainant. The total consideration of the flat/unit was agreed at Rs. 38,70,000/- and the complainant has made payment of entire consideration as per the payment plan. As per clause 6 of agreement, possession of the unit no. 239 was to be delivered by 01.04.2010, however the respondent has failed to deliver the possession till date.

7. It was further alleged by the complainants the respondent as per assured return plan term of the agreement was liable to pay assured return of Rs. 68/- per sq. ft. per month till handing over of possession by 31.03.2010. However, the respondent has stopped making payment of assured returns after March, 2014. The construction activity was left standstill since the year 2014 and the respondent has failed to deliver the possession of the unit by 01.04.2010 despite repeated visits/ follow ups of the complainant. Left with no other option, the complainant was constrained to file the present complaint.



Issues to be decided:-

- i. Whether the respondent has failed to handover the possession of the unit as per the terms of agreement dated 09.07.2009?
- ii. Whether the respondent has not paid the assured returns despite even not giving the possession of the flat/unit no. 239?

Reliefs sought:-

The complainant is seeking the following reliefs:

- i. Direct the respondent to pay the assured monthly return of Rs.68/- per sq. ft. per month for 600 sq. ft. area due from April,2014 alongwith interest @ 18% p.a.
- ii. Direct the respondent to handover the possession of the commercial space/unit completed in all respect failing which the respondent be directed to refund Rs. 53,70,000/- with interest @24% p.a.

8. The complaint was filed on 28.05.2018. Notices with respect to the hearing of the case were issued to the respondent on (1) 07.08.2018; (2)16.08.2018; (3) 30.10.2018 and (4) on 15.11.2018 for making the



appearance. Besides this a penalty of Rs. 5,000/- was imposed on 21.08.2018. 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 complainants in their complaint.

Determination of issues: -

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

- i. With respect to the **issue no. 1** raised by the complainants, as per clause 6 of the builder buyer agreement dated 09.07.2009, the possession of the subject unit was to be handed by 01.04.2010. However, the possession has been delayed by 7 years and 10 months (approx.) till the date of decision.



- ii. As the possession of the flat was to be delivered by 01.04.2010 as per the clause referred above, 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% p.a. as per the provision of section 18(1) of the Act.
- iii. With respect **issue no. 2** raised by the complainants, it is relevant to note that the complainants have not annexed any statement of account in support to prove that the respondent has stopped making payment of assured returns from March, 2014. Further, on perusal of file it is noticed by the authority that the complainants have endorsed a letter dated 25.09.2014 annexed at page 40 of the complaint wherein it is written that assured returns till March, 2014 is received



by the complainants and now no assured returns remains due, Hence, this issue became infructuous with the said letter dated 25.09.2014.

Findings of the authority:-

11. 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 14.12.2017 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.



Decision and directions of the authority:-

12. 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.

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

- i. Respondent is directed to refund the entire amount of Rs. 38,70,000/- paid by the complainant alongwith prescribed rate of interest i.e. 10.75% p.a. from the respective date of payments within a period of 90 days from the date of issuance of this order failing which execution proceedings shall be initiated against the respondent ipso facto. Details of interest payable is given below in tabular form-



Date of payment	Principal Amount paid	Interest payable @ 10.75%p.a. from the date of payment 10.01.2019 on amount paid
18.10.2007	Rs. 36,70,000/-	Rs.44,33,812.47/-
03.09.2007	Rs.2,00,000/-	Rs.2,44,275.34/-

Total	Rs. 38,70,000/-	Rs.46,78,087.81/-
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12. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.

13. The order is pronounced.

14. 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:

Judgement Uploaded on 08.02.2019

