

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	516/2018 Case Titled As Ms. Smriti Sharma & Anr. Vs M/s Unitech Limited
Complainant	Ms. Smriti Sharma & Anr.
Represented through	Shri Sushil Yadav Advocate for the complainant.
Respondent	M/s Unitech Limited
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 9.7.2018. 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 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 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 account 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 4.a(1) of the Developer-Anchor Unit Agreement dated 31.12.2012 for unit No. 803, 8th floor, block-D1, in project Unitech South Park, Sector-70, Gurugram, possession was to be delivered within 36 months from the date of signing of agreement. Complainant has already paid Rs. 47,53,223/- to the respondent against a total sale consideration of Rs.110,14,438/-. 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. : 516 of 2018
First date of hearing : 11.09.2018
Date of Decision : 10.01.2019

Ms. Smriti Sharma and Ms. Sonika Sindhu
R/o. 62, Hewo Apartment,
Sector- 15 II, Gurugram, Haryana

Complainants.

Versus

M/s. Unitech Limited
(Through its Managing Director)
Regd. Office: 6, Community Centre,
Saket, New Delhi- 110017.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

None for the respondent: Proceeded exparte

ORDER

1. A complaint dated 09.07.2018 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 Ms. Smriti Sharma and Ms. Sonika Sindhu against the promoter M/s Unitech Ltd., on account of violation of the clause 4.a. (1) of apartment allotment agreement dated 31.12.2012 in respect



of apartment no. 0803, 8th floor, block D1, admeasuring 1650 sq. ft. of the project 'unitech south park' located at sector 70, Gurugram for not handing over possession of the subject apartment on the due date i.e. by 31.12.2015 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the apartment allotment agreement dated 31.12.2012 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	'Unitech south park', sector- 70, Gurugram.
2.	Apartment no.	803, 8 th floor, block D1
3.	Nature of real estate project	Group housing colony
4.	Project area	20.02 acres
5.	DTCP license no.	204 of 2008
6.	Admeasuring super area of the allotted unit	1655 sq. ft.





7.	RERA registered/unregistered	Unregistered
8.	Date of execution of apartment allotment agreement	31.12.2012
9.	Payment Plan	Construction linked payment plan
10.	Total consideration	Rs. 1,10,14,438/-
11.	Total amount paid by the complainant till date	Rs. 47,53,223/-
12.	Due date of delivery of possession as per clause 4.a. (1) of the agreement dated 31.12.2012 (36 months' from the date of signing of agreement)	31.12.2015
13.	Delay in handing over possession till date	3 years and 10 days.
14.	Penalty clause as per agreement dated 31.12.2012 (clause 4.c. (i))	Rs. 5/- per sq. ft. per month of the super area

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. An apartment allotment agreement dated 31.12.2012 is available on record for the aforesaid apartment no. 803, 8th floor, tower D1 in the project according to which the possession of the same was to be delivered by 31.12.2015. 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*.



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 on 17.12.2012, the complainants booked an apartment in the respondent's project namely 'universal south park' located at sector 70, Gurugram. Pursuant to the said booking of the complainants, respondent vide allotment letter dated 17.12.2010 allotted apartment no. 803, on 8th floor, tower D1 admeasuring 1655 sq. ft. in favour of the complainant. On 31.12.2012 apartment allotment agreement for the allotted flat/apartment was executed between the parties. The total consideration of the space was agreed at Rs. 1,01,14,438/- out of which the complainants have made total payment of Rs. 47,53,223/- on various dates as per the payment plan.



7. As per clause 4.a. (i) of agreement, possession of the apartment was to be delivered within a period of 36 months from the date of execution of agreement i.e. by 31.12.2015, however the respondent has failed to deliver the possession till date despite collecting substantial amount of sales consideration and repeated reminders from the complainants.

8. Hence, the complainants were constrained to file the present complaint.

Issues to be decided:

- i. **Whether the possession has not been delivered to the complainant till date and there has been no justification for the delay?**
- ii. **Whether the clauses incorporated in the agreement are one sided and arbitrary?**



Reliefs sought:-

Direct the respondent to refund the entire paid amount of Rs. 47,53,223/- alongwith interest @18%p.a. on compounded rate from the date of receipt of payments.

9. The complaint was filed on 09.07.2018. Notices with respect to the hearing of the case were issued to the respondent on 1. 03.08.2018; 2. 12.09.2018; and 3. 17.10.2018 for making the appearance. 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 account legal/factual propositions as raised by the complainants in their 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:

10. With respect to the **issue no. 1 and 2** raised by the complainants, as per clause 4.a. (i) of the apartment allotment agreement dated 31.12.2012, the possession of the apartment was to be handed over within a period of 36 months' i.e. by 31.12.2015. However, the possession has been delayed by 3 years and 10 days till date.



11. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the said apartment as per clause 4.c.(i) of apartment allotment agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in **para 181 of 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."

As the possession of the subject apartment has not been delivered within stipulated period, 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:-

12. 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:-

13. 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.

14. Accordingly, the authority exercising its power under section 37 of the Real Estate (Regulations and Development) Act, 2016 hereby directs that the respondent to refund the entire amount of Rs. 47,53,223/- paid by the complainant alongwith prescribed rate of interest i.e. 10.75% p.a. from the respective date of payments till 10.01.2019 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. The details of interest payable is given below in the tabular form –



Date of payment	Principal amount paid (in Rs.)	Interest payable @ 10.75% p.a. on the paid amount from the date of payment till 10.01.2019.

17.12.2012	Rs.1,25,000/-	Rs. 81,545.38/-
17.12.2012	Rs. 8,89,350/-	Rs.5,80,179.05/-
31.01.2013	Rs. 2,88,250/-	Rs.91,262.71/-
31.01.2013	Rs.10,00,000/-	Rs. 3,16,609.59/-
16.03.2013	Rs. 12,88,252/-	Rs.8,06,639.87/-
27.04.2013	Rs.6,081/-	Rs.3,732.40/-
08.03.2014	Rs. 11,56,290/-	Rs.6,02,435.01/-
Total Amount payable	Rs. 47,53,223/-	Rs. 24,82,404.01/-

15. 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.

16. The order is pronounced.

17. 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



HARERA
GURUGRAM

