

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	335/2018 Case titled as Mr. Suren Goel V/S M/S Universal Buildwell Pvt. Ltd.
Complainant	Mr. Suren Goel
Represented through	Shri Jogender Singh, Advocate for the complainant.
Respondent	M/S Universal Buildwell Pvt. Ltd.
Respondent Represented through	None for the complainant.
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 28.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 19.6.2018, 12.9.2018 and 15.11.2018. Besides this, a penalty of Rs.5000/- and Rs.10000/- was also imposed on 12.9.2018 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 he 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 26 (c) of the Builder Buyer Agreement dated 20.3.2015 for unit No.406 B, 4th floor, in project "Universal Business Park", Sector-66, Gurugram, possession was to be handed over to the complainant on 31.3.2011. It was a construction linked plan. Complainant has already paid Rs. 75 Lakhs to the respondent against a total sale consideration of Rs.75 Lakhs. 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. : 335 of 2018
First date of hearing : 24.07.2018
Date of Decision : 10.01.2019

Mr. Suren Goel
R/o C-192, Defence Colony, New Delhi

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:

Shri Jogender Singh Advocate for the complainant
None for the respondent Proceeded ex parte

ORDER



1. A complaint dated 28.05.2018 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 Mr. Suren Goel, against the promoter M/s Universal Buildwell Pvt. Ltd.,

on account of violation of the clause 26(c) of builder buyer's agreement executed dated 20.03.2015 in respect of flat no. 324-A, 3rd floor, admeasuring 2500 sq. ft. of the project 'universal business park' located at sector 66, Gurugram for not handing over possession of the subject office space on the due date i.e. by 31.03.2011 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the builder buyer agreement dated 20.03.2015 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.	Office space/unit no.	406 B, 4 th floor
3.	Nature of real estate project	Commercial complex
4.	DTCP license no.	Not mentioned
5.	Admeasuring super area of the	2500 sq. ft.



	allotted unit	
6.	RERA registered/unregistered	Unregistered
7.	Date of execution of builder buyer agreement	20.03.2015
8.	Payment Plan	Construction linked payment plan
9.	Total consideration amount as per agreement dated 08.12.2011	Rs. 75,00,000/-
10.	Total amount paid by the complainant till date	Rs. 75,00,000/- (as per complainant)
11.	Percentage of consideration amount	100%
12.	Due date of delivery of possession as per clause 26(c) of the agreement dated 20.03.2015	31.03.2011
13.	Delay in handing over possession till date	7 years and 9 months approx.
14.	Penalty clause as per agreement dated 12.10.2010	Not available

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 20.03.2015 is available on record for the aforesaid unit no. 324-A according to which the possession of the same was to be delivered by 31.03.2011. 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 complainant submitted that after going through the advertisement and size of the flats, he decided to purchase a residential flat in the above said project. Also, submitted that the sale representative of respondents shown one residential/ flat unit no. 324-A admeasuring 2500 sq. ft. located on 3rd floor, in Sector- 66 situated at Village Badshahpur, and Distt. Gurugram Haryana in project "Universal Business Park". Further, submitted that after carrying out all the necessary formalities the respondent executed a flat buyers agreement on dated 20.03.2015 in favour of complainant.



7. The complainant submitted that the respondent represented and assured the complainant that the said project would be completed and the possession of the apartment would be given to the complainant by 31.03.2011 as per terms mentioned in the buyers agreement. Also, submitted that representations made by the respondent the complainant agreed to purchase a residential flat for personal use in the project in total sale consideration of Rs. 75,00,000/- out of which complainant made full and final payment of Rs. 75,00,000/- up to date against which the respondents issued receipts as well as statement of account.
8. The complainant submitted that the respondent lease out the premises to one M/s Jaarwis Technologies Pvt. Ltd. at the rate of Rs.75/- per sq. ft. per month. Since it was rented out plan. Therefore, deed of adornment between the respondent and the tenant was executed on 16.09.2015. It is pertinent to mention that the tenant left the premises due to incomplete work and non availability of completion certificate by the respondent. Further, submitted that he continuously called upon the respondent to enquire about the status of completion of the project, and in one such enquiry during the



month of January,2018 the complainant was informed that the delivery date of said flat would be shortly. It is also submitted that when complainant visited the site during the August, 2017 he saw that the project is complete but completion certificate is not obtained by the respondent and therefore, he requested to handover the physical possession of the flat and also the competition certificate but the respondent refused to the same.

9. The complainant submitted that he filed a police complaint on dated 27.10.2017 before Police Commissioner, Gurugram. Further, submitted that as per clause 26 (c) of agreement, possession of the residential flat was to be delivered by 31.03.2011, however the respondent has failed to deliver the possession till date.

10. Issues to be decided:

- i. Whether the respondent has handed over the possession of the booked unit on time as per the terms of agreement dated 20.03.2015?
- ii. Whether the respondent has completed the entire project?



11. Relief sought-

The complainant is seeking the following reliefs:

- i. Refund the entire paid amount of Rs. 75,00,000/- alongwith interest @18%p.a. from the date of receipt of payments.
- ii. INR 5 lakhs as compensation for mental agony and hardship caused to the complainant.

12. 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:

- i. With respect to the **issue no. 1 and 2** raised by the complainant, as per clause 26(c) of the builder buyer agreement dated 20.03.2015, the possession of the office space was to be handed by 31.03.2011. However, the possession has been delayed by 7 years and 10 months(approx.) till the date of decision.

13. As the possession of the said unit was to be delivered by 31.03.2011 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% as per the provision of section 18(1) of the Act.

Findings of the authority

14. 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.

15. The complaint was filed on 28.05.2018. Notices with respect to the hearing of the case were issued to the respondent on 19.06.2018, 12.09.2018 and on 15.11.2018. Besides thus, a penalty of Rs. 5000/- and Rs. 10,000/- was also imposed on 12.09.2018 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 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 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 31.2.2018 by way of email was sent to both the parties to appear before the authority on 10.01.2019.

16. As per clause 26(c) of the builder buyer agreement dated 20.03.2015 for unit no. 406 B, 4th floor, in project “Universal Business park” sector-66, Gurugram, possession was to be handed over to the complainant on 31.03.2011. it was a construction linked plan. Complainant has already paid Rs. 75 lakhs to the respondent against a total sale consideration of Rs. 75 lakhs. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future.

Decision and directions of the authority:-

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

- i. Accordingly, it is hereby directed that the respondent to refund the entire amount of Rs. 75,00,000/- paid by the complainant alongwith prescribed rate of interest i.e. 10.75% p.a. 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.

18. 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.

19. The order is pronounced.

20. Case file be consigned to the registry. The copy of this order be endorsed to the registration branch.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 10.01.2019

Judgement Uploaded on 08.02.2019

