

**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 21.01.2019
Complaint No.	425/2018 Case Titled As Mr. Harsh Verma V/S M/S Universal Buildwell Pvt. Ltd.
Complainant	Mr. Harsh Verma
Represented through	Shri Sushil Yadav, Advocate for the complainant.
Respondent	M/S Universal Buildwell Pvt. Ltd.
Respondent Represented through	<b>None for the respondent.</b>
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, 16.8.2018, 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 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 personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent 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 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Brief facts of the matter are as under :-

As per clause 15 of the Builder Buyer Agreement dated 7.8.2010 for unit No.A4, Ground floor, Commercial Complex in Universal Square, Sector-59, 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 + 180 days grace period as per clause 15 (ii). Since the building plans are not attached so the computed date has been taken from the date of execution of BBA which comes out to be **7.2.2014**. It was an instalment payment plan. Complainant has already paid Rs.10,53,250/- to the respondent against a total sale consideration of Rs.22,97,400/-. However, the respondent has miserably failed to deliver the possession of the unit in time and there are no chances to deliver the same 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.

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar  
(Member)  
21.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 425 of 2018**  
**First date of hearing : 07.08.2018**  
**Date of decision : 21.01.2019**

Harsh Verma  
R/o 96, Godavari Apts., Alaknanda New  
Delhi-110019

**Complainant**

Versus

M/s Universal Buildwell Pvt. Ltd.  
Corporate Office:  
Universal Trade Tower,  
8<sup>th</sup> floor, sector 49, Sohna Road, Gurugram.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sushil Yadav Advocate for the complainant  
None for the respondent Proceeded ex parte

**EX-PARTEE 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 complainant Mr. Harsh Verma, against the promoter M/s Universal Buildwell Pvt. Ltd., on account of violation of the



clause 15 of builder buyer's agreement executed dated 07.08.2010 in respect of flat no. A-4, Ground floor, admeasuring 150 sq. ft. of the project 'universal square' located at sector 59, Gurugram for not handing over possession of the subject office space on the due date i.e. by 07.02.2014 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act ibid.

2. Since the builder buyer agreement dated 07.08.2010 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 square", Sector 59, Gurugram, Haryana.
2.	Unit no.	A-4 on ground floor
3.	Nature of real estate project	Commercial complex



4.	DTCP license no.	38 dated 15.07.2009
5.	Project area	3.487 acres
6.	Admeasuring super area of the allotted unit	150 sq. ft.
7.	RERA registered/unregistered	<b>Unregistered</b>
8.	Date of execution of builder buyer agreement	07.08.2010
9.	Payment Plan	Instalment payment plan( page 47)
10.	Total consideration amount as per agreement dated 07.08.2010	Rs. 22,97,400/-
11.	Total amount paid by the complainant till date	Rs. 10,53,250/-
12.	Due date of delivery of possession as per clause 15 - 36 months of the execution of agreement or sanctioning of building plans whichever is later with clause 15(ii) grace period of 180 days <b>(Building plan not attached so date computed from the date of BBA i.e. 07.08.2010)</b>	07.02.2014
13.	Delay in handing over possession till date	4 years and 11 months approx.
14.	Penalty clause as per agreement dated 07.08.2010	Clause 17- Rs. 15/- per sq. ft. per month for such period of delay



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 07.08.2010 is available on record for the aforesaid unit

no. A-4 on ground floor according to which the possession of the same was to be delivered by 07.02.2014. 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 the respondent gave advertisement in various print as well as electronic media about their forthcoming project named “Universal Square” Sector-59, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the



aforementioned advertisements he booked commercial shop for ATM in aforesaid project of the respondent. The respondent allotted the shop unit no. A-4 measuring 150 sq. ft. on the ground floor to the complainant. The complainant paid the total money amounting to Rs. 10,53,250/- by cheque for the sale consideration of the above said unit as demanded by the respondent. That after, the respondent executed the builder buyer agreement on dated 07.08.2010 with the complainant. However, as there is nothing on the ground and the project has not been conceived from the period of the payments made in year 2010.

7. The complainant submitted that he has several times requested the respondent that the respondent was 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 complainant illegally.

8. The complainant submitted that the respondent has been retaining the entire amount without fulfilling their





commitments even despite several oral and exchange of emails, despite that the respondent is not coming forwards to make the payments of the complainant. Further, submitted that as per clause 15 of the buyer agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the date of signing of the buyers agreement dated 07.08.2010.

9. The complainant submitted that he has regularly visited the site but was surprised to see that construction work is not even started and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the shop without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving of payment of all the demands raised by the respondent for the said unit/ATM and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted unit/ATM to the complainant



within stipulated period for the reasons best known to the respondent.

10. The complainant submitted that as per clause 17(a) of the buyer agreement dated 07.08.2010 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.15/- per sq. ft. per month of the super area of the unit. It is however, pertinent to mention here that a clause of compensation at such of nominal rate of @ Rs.15/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the shop as per the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers agreement and offered to pay a sum of @Rs.15/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 1% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.



11. The complainant submitted that he has requested the respondent several times on 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 complainant but respondent has flatly refused to do so.

12. The complainant submitted that the respondent has not even started the construction of the said property date nor the respondent has shown any documents regarding licence or other NOC or permission from the concerned department to the complainants. So in absence of which, the respondent is not in position to deliver the project in next couple of years.

**13. Issues to be decided:**

- i. Whether the respondent is not handing over the possession and buyer's agreement is one-sided which is unjustified?
- ii. Whether the construction has not been started yet and there is no reasonable justification for the delay?



#### 14. Reliefs sought-

The complainant is seeking the following reliefs:

- i. Direct the respondent to pay the refund the amount of Rs. 10,53,250/- due from date of allotment 26.02.2010 till date, along with the interest 24 % per annum.
- ii. Direct the respondent pay a sum of Rs. 30,000/- cost of litigation.
- iii. Direct to pay a cost of Rs. 5,00,000/- for the harassment and mental agony suffered by the complainant.

#### 15. Determination of issues: -

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

- i. With respect to the **first issue** raised by the complainant, the delay compensation payable by the respondent @ Rs.15/- per sq. ft. per month of the super area of the unit



for the period of delay as per clause 17 of buyer's agreement is held to be very nominal and unjust. On the other hand, the respondent is demanding interest at the rate of 24% for delay in making payment by the complainants. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been observed 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."*

In that case the interest for every month @10.75% p.a. will accrue till the possession is given.

- ii. With respect to the second **issue** raised by the complainant, as per clause 15 of the builder buyer agreement dated 07.08.2010, the possession was stipulated to be handed over within 36 months from date



of signing of builder buyer agreement or sanctioning of building plans whichever is later with grace period of 180 days, i.e. by 07.02.2014. It is matter of fact that the respondent has not delivered the possession of the said unit to the complainant till the date of decision. Thereby, violating section 11 of the Act *ibid*. 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 deposited by the complainant along with prescribed rate of interest.

17. As the possession of the said unit was to be delivered by 07.02.2014 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

18. 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.



19. The complaint was filed on 13.06.2018. Notices with respect to the hearing of the case were issued to the respondent on 09.07.2018, 16.08.2018, 30,10.2018 and on 15.11.2018. Besides this, a penalty of Rs. 5,000/- and Rs. 10,000/- for was also imposed on 30.10.2018 and 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 proceed ex-parte against the respondent and to decide the matter on merits by taking into a count legal/factual propositions as raised by the complainants in his complaint.

A final notice dated 14.01.2019 by way of email was sent to both the parties to appear before the authority on 21.01.2019.

10. As per clause 15 of the builder buyer agreement dated 07.08.2010 for unit no. A4, Ground floor, Commercial complex in Universal Square, Sector-59, 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 + 180 days grace period as per clause 15(ii). Since the building plans are not attached so the computed date has been taken from the date of execution of BBA which comes out to be 07.02.2014. it was an instalment payment plan. Complainant has already paid Rs. 10,53,250/- to the respondent against a total sale consideration of Rs. 22,97,400/-. However, the respondent has miserably failed to deliver the possession of the unit in time and there are no chances to deliver the same in near future.

**Decision and directions of the authority:-**

19. 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.

20. 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. 10,53,250/- 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.
21. 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.
22. The order is pronounced.
23. Case file be consigned to the registry. The copy of this order is endorsed to the registration branch.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2019

Judgement Uploaded on 08.02.2019

**(Subhash Chander Kush)**

Member

