

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 15.01.2019
Complaint No.	736/2018 Case Titled As Sumit Sharma Bhumika Rani V/S Umang Realtech Private Limited
Complainant	Sumit Sharma Bhumika Rani
Represented through	Complainant in person with Shri Sushil Yadav Advocate.
Respondent	Umang Realtech Private Limited
Respondent Represented through	Shri Yash Verma Advocate for the respondent.
Last date of hearing	18.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Arguments heard.

Keeping in view the fact that only 10% construction has taken place and there is no possibility of handing over unit in near future. The intention of allottee to withdraw from the project after expiry of due date of possession on 19.11.2017. The allottee is entitled for refund of the amount deposited by him alongwith prescribed rate of interest i.e. 10.75% per annum.

After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation & Development) Act 2016

hereby issues the following directions to the respondent in the interest of justice and fair play:

- i) The respondent is directed to refund the amount of Rs.40,16,300/- received by him from the complainants along with interest at the prescribed rate i.e. 10.75% p.a.
- ii) Since the complainant has made the payment in instalments, therefore the interest for particular instalment shall be calculated from the date of its payment till the date of refund. The payment shall be made by the respondent within 90 days from today.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
15.01.2019

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

**Complaint No. : 736 of 2018**  
**First date of Hearing : 18.12.2018**  
**Date of Decision : 15.01.2019**

Mr. Sumit Sharma and Mrs. Bhumika Rani  
R/o. 103, Block E 1-A, Samridhi Apartment,  
Pocket -1, sector 18-B, Dwarka,  
New Delhi-110078.

**Complainants**

**Versus**

M/s Umang Realtech Pvt. Ltd.  
(through its Director)  
Address: D- 64, 2<sup>nd</sup> floor,  
Defence Colony, New Delhi-110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sumit Sharma Complainant in person  
Shri Sushil Yadav Advocate for the complainants  
Shri Yash Verma Advocate for the respondent

**ORDER**

1. A complaint dated 20.08.2010 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 Mr. Sumit Sharma and Mrs. Bhumika Rani, against the promoter M/s Umang Realtech Pvt. Ltd., on account of violation of the clause



6.1 of apartment buyer agreement executed on 20.09.2013 in respect of apartment described as below for not handing over possession on the due date which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer agreement dated 20.09.2013 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 obligations on the part of respondent/ promoter under section 34(f) of the Act *ibid*.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	“Monsoon breeze 78 II”, sector 78, village Naurangpur, Gurugram, Haryana.
2.	Nature of real estate project	Group housing colony
3.	Project area	38 of 2002 for 12.514 acres and 77 of 2012 for 7.342 acres.
4.	RERA registered/ unregistered	<b>Registered vide no. 116 of 2017 superseded by 14 of 2018</b>
5.	Revised date of delivery of possession	31.12.2020
6.	Status of project	10% construction completed as per LC report.
7.	Apartment/unit no.	1002, 10 <sup>th</sup> floor, tower T
8.	Apartment measuring	1300 sq. ft.
9.	Apartment buyer’s agreement executed on	19.11.2013



10.	Total consideration	Rs.62,36,000/-
11.	Total amount paid by the complainant till date	Rs.40,16,300 /-
12.	Percentage of consideration amount	62.44%
13.	Due date of delivery of possession as per clause 6.1 of the agreement dated 19.11.2013  (42 months plus 180 days of grace period from the date of approval of building plans or signing of this agreement, whichever is later)	<b>19.11.2017</b> Note: Date of approval of building plan is not mentioned anywhere so the due date of delivery of possession is calculated from the date of signing of agreement.
14.	Delay in handing over possession till date	One year and one month
15.	Penalty clause as per apartment buyer agreement dated 2.9.2014	Clause 6.7 of the agreement i.e. Rs.5/- per sq. ft. of the super area of the apartment for every month of delay till the actual handing over of the possession.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant. An apartment buyer's agreement is available on record for the aforesaid apartment. The possession of the said unit was to be delivered by 19.11.2017, as per the agreement. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft of the super area of the apartment for every month delay till the actual



handing over of the possession as per clause 6.7 of apartment buyer's agreement dated 19.11.2013. Moreover, as per reply filed by the promoter in other two complaints numbered as CR/248/2018 and CR/249/2018, this project stands scrapped. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel has appeared on 18.12.2018. The case came up for hearing on 18.12.2018 and 15.01.2019. The respondent has filed their reply on 02.11.2018 which has been perused by the authority.

**Facts of the complaint:**

6. Briefly stated, the facts of the case as culled out from the case of complainants are that the respondent advertised its new aforesaid project launched in Sector 78, Gurugram in newspaper and hoardings. The complainants received many calls from the representatives of the company inviting him to visit the project and purchase an apartment there. Under the influence of lucrative brochure and various false assurances by



the sales officers of the respondent company and agreed to purchase an apartment no. 1002, on 10<sup>th</sup> floor, tower T, measuring 1300 sq. ft. in aforesaid project at sector 78, Gurugram, Haryana in year 2013. On 19.11.2013, apartment buyer agreement for the booked apartment was executed between the parties. The total consideration of the apartment was fixed at Rs. 62,36,000/- out of which the complainants have made total payment of Rs. 40,16,300/- on various occasions as per the payment schedule.

7. The complainants submitted that as per clause 6.1 of the apartment buyer agreement, the respondent had agreed to deliver the possession of the apartment within 42 months from the date of signing of the agreement with an extended period of 180 days i.e. by 19.11.2017.
8. The complainants alleged that they regularly visited the site but was surprised to see that the construction work was not in progress and no one was present at the site to address the queries of the complainants. It was further alleged by the complainants that the respondent has failed to complete the



construction and deliver the possession till date despite repeated reminders from the complainants.

9. The complainant submitted that due to this omission on the part of the respondent the complainant suffered mental torture, agony and also continues to incur severe financial losses. It was further submitted by the complainant that the delay compensation payable by the respondent as per clause 6.7 of the agreement dated 19.11.2013 at the rate of Rs. 5/- per sq. ft. per month of the super area is unjust and arbitrary.
10. Being aggrieved by the delay and conduct of the respondent, the complainants were constrained to file the instant complaint.
11. **The issues raised by the complainant are as follow:**
  - i. **Whether the respondent company has failed to complete the construction and incorporated one sided clauses in the apartment buyer agreement dated 19.11.2013?**
  - ii. **Whether the delay in delivery of possession is justified?**



**Reliefs sought:-**



**Direct the respondent to refund the entire money paid by the complainant towards the apartment i.e. Rs. 40,16,300/- along with interest @ 15% p.a. on compounded rate from the date of booking of the apartment.**

**Respondent's reply:**

12. The respondent raised preliminary objections that the present complaint is filed without any cause of action and only on experimental basis. The respondent contended that there is arbitration clause i.e. clause 13.9 in the agreement as per which the dispute pertaining to the agreement should be referred to the arbitration and the present complaint is not maintainable.
13. The respondent further contended that there was no delay since the respondent is entitled for reasonable extension of time for handing over possession in terms of agreement. The present complaint is an abuse and misuse of the process of law. The main grievance in the complaint is that there is delay in delivery of possession. It is submitted that in the present case there is no deliberate or wilful delay in completing construction and handing over possession of the apartment. The possession could not be handed over only because of the reasons which are beyond the control of the Respondent and



hence a reasonable extension of time is required in terms of clause 6.4 of the apartment buyer's agreement. Clause 6.4 of the agreement is quoted hereunder;

*"6.4: "Force Majeure shall mean any of the following events circumstances or combination thereof which may prevent/obstruct/hinder/delay the construction/development of the Project by the Developer including act of God e.g. fire, drought, flood, typhoon, tornado, landslide, avalanche, tempest, storm, earthquake , epidemics or other natural disasters, explosions or accidents, strikes or lock-outs; civil war, riots, insurgency, embargo, revolution, acts of terrorism, military action, any delays caused by competent authority with respect to obtaining approvals pertaining to the Project, any change in law, court order/injunction, or from any other similar cause, any event or circumstances analogous to the foregoing. "*

14. It was submitted by the respondent that delay in construction was caused due to the reasons beyond the control of the respondent. The respondent submitted that the real estate sector is facing global recession which hits the economy badly due to which the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings made by the prospective purchasers. Apart from this, there were various other problems which are beyond the



control of the respondent which seriously affected the construction:

- a. *Lack of adequate sources of finance;*
- b. *Shortage of labour;*
- c. *Rising manpower and material costs;*
- d. *Approvals and procedural difficulties.*

15. In addition to aforesaid challenges the following factors also played major role in delaying the offer of possession i.e. shortage of water, bricks, unexpected declaration of demonetization policy by the Central Government, affected the construction work, shortage of labour due to implementation social scheme like NREGA and JNNURM. All these problems are beyond the control of the respondent and possession could not be offered to the complainant only because of the reasons explained above which falls within the purview of clause 6.4 of the agreement, the respondent stated that they are entitled for reasonable extension of time for handing over the possession to the complainant.

16. The respondent submitted that they are customer oriented organization and are ready and willing to offer an option of transfer of their booking to the complainant in their another project being developed by the respondent i.e. “monsoon breeze ABLM towers” occupancy certificate applied or “winter hills 77”, Gurugram or “winter hills dwarka morh” occupancy



certificate received. It is submitted that the construction in project 'monsoon breeze ABLM towers' is complete and application has been filed for issuance of OC and the apartment is ready to move, whereas the construction at project "winter hills 77", Gurugram is under progress and the respondent can offer possession in June, 2019, these all projects are at finishing stage and the respondent can handover the possession very soon.

17. The respondent further submitted that complainants have made regular default in making payments. All payments made by the complainants are according to payment plan opted by them i.e. time linked payment plan. Further, they have defaulted in timely part 22<sup>nd</sup> payment of demand raised on January, 2015 amounting to Rs. 10,17,9901/- and they are also liable to pay Rs. 5,60,112/- as interest liability for delay in timely payment of demands. In such a scenario, the instant complaint under reply deserves an outright dismissal with exemplary costs.

18. The respondent contended that the complainants have approached this authority with unclean hands: - The complainants have filed the present complaint with incomplete and untrue facts and thus played fraud on this hon'ble authority. It is the settled law that a party who



approached the court with unclean hands, disentitles himself from getting any relief whatsoever. As such the present complaint deserves dismissal with exemplary costs. The captioned complaint has been filed by the complainants with the sole objective of being unjustly enriched. Firstly, the challenges being faced by the real estate industry as a whole are being simply brushed aside; secondly the mechanism which has been put in place by the respondent to compensate the buyers for delay in completion of project is being disregarded by them. The buyers were well aware of the contractual provisions and they have agreed to purchase the apartment only after carefully understanding each and every clause of the agreement. It was never projected by the respondent that there may not be an eventuality of delay. Keeping any such eventuality in mind, the complainants had agreed to purchase the apartment. It may be appreciated that the developer does not gain anything in case its project completion is delayed. There are wide scale financial ramifications, which the developer has to face. Clearly, the complainants in the present case have embarked upon a witch hunt against a genuine developer like the respondent who has good intention to complete the construction of the project as early as possible.



19. The respondent contended that the alternative civil remedies ought to have been availed instead of approaching this hon'ble authority. It is submitted that the complainants have prayed for relief for refund of the amount paid which have to be claimed in a suit for recovery after paying ad volerum court fee. That in order to avoid the payment of court fee, the Complainants have filed the present compliant of a civil nature in this authority. It is submitted that the present compliant requires elaborate evidence as it involves complicated questions of facts and law which cannot be adjudicated upon under the summary jurisdiction of this Hon'ble Authority. In this view of the matter, the complaint is liable to be dismissed with costs.

20. The respondent further contended that the complainants are not entitled to seek any remedies beyond the terms of the agreement. It is submitted that as per the apartment buyer agreement which is legally binding between the complainants and the respondent, the parties have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the respondent on account of delay is specified in clause 6.7 of the apartment buyer agreement and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by him. In this view of the matter, the captioned



complaint is not maintainable in law and liable to be dismissed in limine. It is a well settled proposition of the law that the courts cannot generate altogether a new contract; the responsibility of the courts is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract. It is submitted that the apartment buyer agreement delineates the respective liabilities of the complainants as well as the respondent in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.

21. In view of aforementioned facts, it is submitted that the captioned complaint is frivolous, vague and vexatious in nature and the complaint has been made to injure the interest and reputation of the respondent and therefore, the instant complaint is liable to be dismissed in limine.

**Determination of issues:-**

After considering the facts submitted by the complainant and perusal of record available in the file, the issue wise findings of the authority are as under:-

22. With respect to the **first issue** raised by the complainants, the authority came across that as per clause 6.1 read with clause



6.2 of apartment buyer agreement, the possession of the said apartment was to be handed over within 42 months plus 180 days' grace period from the date of approval of building plans or signing of this agreement, whichever is later. In the present case, the date of sanction of building plan was not mentioned by either of the parties, but the apartment buyer agreement was signed on 19.11.2013. Therefore, the due date of handing over possession shall be computed from signing of this agreement. The clause regarding the possession of the said unit is reproduced below:

*"6. Possession of Apartment*

*6.1 Subject to other terms of this agreement including but not limited to timely payment of the total sale price, stamp duty and other charges by the buyer, force majeure conditions, and also subject to the buyer(s) having complied with all formalities or documentation as prescribed by the developer, the developer shall endeavour to handover the possession of the said apartment to the buyer within a period of 42 months from the date of approval of the building plans or signing of this agreement, whichever is later.*

*6.2 the buyer further agrees and understands that the developer shall additionally be entitled to a period of 180 days' grace period, after the expiry of the said committed period."*

23. The apartment buyer agreement was executed on 19.11.2013 and the due date of handing over possession as per the said agreement is 19.11.2017 and accordingly the possession has been delayed by one year and one month till the date of





decision. Thus, the respondent has failed to adhere with the terms of the said agreement and failed to develop the said project in prescribed timeline. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. of super area of the said apartment for every month of delay thereafter till the actual handing over of possession as per clause 6.7 of apartment buyer 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.”*

24. With respect to the **second issue** raised by the respondent, as the promoter has already scrapped this project and has not started the construction on the site even after five years from the date of booking, therefore, the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) to return the amount received by him in respect of the said



unit along with interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

**Findings of the authority:-**

25. The preliminary objection regarding jurisdiction of the authority as raised by the respondent stands dismissed. 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.
26. 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.
27. As per the local commissioner's report, so appointed in similar cases of the same project, the construction of the project is completed only upto 10%.



28. As the possession of the apartment was to be delivered by 19.11.2017, 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. In the present complaint, the complainant is seeking refund of the entire money paid towards the apartment along with prescribed rate of interest and intends to withdraw from the project as the project stands scrapped.
29. However, the authority is of the considered opinion that since the building plan is not valid as on date and the respondent has not started the construction at site even after a lapse of five years after booking of the apartment. This project stands scrapped by the realtor and the realtor cannot force to the complainant to shift to another project. Keeping in view that the project stands scrapped, the promoter is bound to refund the amount received by him from the complainant along with interest at prescribed rate. The matter be referred to the Department of Town and country planning and police department to take legal action against the realtor for booking the project whereas the building plans were not sanctioned. The project was scrapped much earlier but the amount was paid to the promoter and now promoter is forcing the allottees to change some other project against their wishes.



30. The complainant also informed that the respondent threatens through goon elements engaged in the office whenever any allottee visit them. They are badly treated and threatened not to enter in the premises. This is a very sorry state of affair and this fact is to be kept in mind while allowing the registration of other projects of the same promoter. If further projects have also been registered with the authority, then the respondent shall be asked to file affidavit that it is right of the allottees to visit not only office but also site to observe the progress and also quality of construction. This type of unruly behaviour by the promoter is uncalled for and such promoters shall not be allowed to operate in case, their project have already been registered, they should be issued a show cause notice why the registration shall not be cancelled for unfair and unethical practice.

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

31. After taking into consideration all the material facts as adduced and produced by both the parties, 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 in the interest of justice and fair play:

- (i) The respondent is directed to refund the amount of Rs.40,16,300/- received by him from the



complainants along with interest at the prescribed rate i.e. 10.75% p.a.

- (ii) Since, the complainant has made the payment in instalments, therefore the interest for particular instalment shall be calculated from the date of its payment till the date of refund. The payment shall be made by the respondent within 90 days from today.

32. The order is pronounced.

33. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: - .....

Judgement uploaded on 12.02.2019

HARERA  
GURUGRAM

