

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 10.01.2019
Complaint No.	336/2018 Case titled as Ms. Sapna Jain Vs M/s Universal Buildwell Pvt. Ltd.
Complainant	Ms. Sapna Jain
Represented through	Shri Jogender Singh, Advocate for the complainant.
Respondent	M/s Universal Buildwell Pvt. Ltd.
Respondent Represented through	<b>None for the respondent.</b>
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 for appearance before the authority on 24.07.2018. On this date, Shri Mukesh Kumar, Assistant Manager(Legal) alongwith Mr. Prabhat Advocate appeared on behalf of the

respondent and filed authorization letter issued by the respondent company in favour of Mr. Mukesh Kumar to represent before the authority , as well as Vakalatnama on behalf of counsel for the respondent filed. A request was made on behalf of the respondent company for granting time to file reply and accordingly two weeks' time was granted to the respondent to file. In spite of granting time, no reply was filed on behalf of respondent. Again notices on 29.06.2018, 10.08.2016 and finally on 31.12.2018 were sent by email to the respondent to put appearance and to file reply and reports to this effects are placed on record. 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 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 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 12.10.2010 for unit No.406-B, 4<sup>th</sup> Floor, "Universal Business Park" Sector 66, possession was to be handed over to the complainant by 31.03.2011. It was a construction linked plan. Complainant has already paid Rs.15,00,000/- to the respondent against a total sale consideration of Rs.15,00,000/-. 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. : 336 of 2018**  
**First date of hearing : 24.07.2018**  
**Date of Decision : 10.01.2019**

Mrs. Sapna Jain w/o. Mr. Sunil Jain  
R/o. B-326, 1<sup>st</sup> floor, C.R. Park,  
New Delhi.

**Complainant**

Versus

M/s Universal Buildwell Pvt. Ltd.  
(Through its Managing Director)  
Corporate Office:  
Universal Trade Tower,  
8<sup>th</sup> 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 exparte on 10.01.2019.

**ORDER**

1. A complaint dated 28.05.2018 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 complainant Mrs. Sapna Jain, 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 12.10.2010 in respect of flat/office space no. 406 B, 4<sup>th</sup> floor, admeasuring 500 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 12.10.2010 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 business park", Sector 66, Gurugram, Haryana.
2.	Office space/unit no.	406 B, 4 <sup>th</sup> floor
3.	Nature of real estate project	Commercial complex



4.	DTCP license no.	Not mentioned
5.	Admeasuring super area of the allotted unit	500 sq. ft.
6.	RERA registered/unregistered	Unregistered
7.	Date of execution of builder buyer agreement	12.10.2010
8.	Payment Plan	Construction linked payment plan
9.	Total consideration amount as per agreement dated 08.12.2011	Rs. 15,00,000/-
10.	Total amount paid by the complainant till date	Rs. 15,00,000/-
11.	Percentage of consideration amount	100%
12.	Due date of delivery of possession as per clause 26(c) of the agreement dated 12.10.2010	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 12.10.2010 is available on record for the aforesaid office space no. 406-B according to which the possession of the same was to be delivered by 01.04.2011. 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 has 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 ex parte against the respondent.

#### **Facts of the complaint**

6. Briefly stated, facts relevant for the disposal of present complaint as that in 2010, the complainant 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 complainant, respondent vide allotment letter dated 12.10.2010 allotted commercial space no. 406-B, on 4<sup>th</sup> floor, admeasuring 500 sq. ft. in favour of the complainant. On the same date builder buyer agreement for the allotted office space was executed





between the parties. The total consideration of the space was agreed at Rs. 15,00,000/- and the complainant has made payment of entire consideration as per the payment plan.

7. As per clause 26 (c) of agreement, possession of the office space was to be delivered by 31.03.2011, however the respondent has failed to deliver the possession till date.

8. It was further alleged by the complainant that construction activity was left standstill since the year 2014 and the respondent has failed to deliver the possession of the unit by 31.03.2011 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:**

- 1. Whether the complainant has made all payments in time?**



2. Whether the respondent has handed over the possession of the booked unit on time as per the terms of agreement dated 12.10.2010?
3. Whether the respondent has completed the entire project?

**Reliefs sought-**

**The complainant is seeking the following reliefs:**

- i. Refund the entire paid amount 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.

**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:

9. With respect to **issue no. 1** raised by the complainant it is evident from the payment receipts issued by the respondent, the complainant has made entire payment of sales consideration.



10. With respect to the **issue no. 2 and 3** raised by the complainant, as per clause 26(c) of the builder buyer agreement dated 12.10.2010, 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.

11. As the possession of the office space 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: -**

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.

13. Complaint was filed on 28.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 19.6.2018 for appearance before the authority on 24.07.2018. On this date, Shri Mukesh Kumar,



assistant manager(legal) alongwith Mr. Prabhat advocate appeared on behalf of the respondent and filed authorization letter issued by the respondent company in favour of Mr. Mukesh Kumar to represent before the authority, as well as vakalatnama on behalf of counsel for the respondent filed. A request was made on behalf of the respondent company for granting time to file reply and accordingly two weeks' time was granted to the respondent to file. In spite of granting time, no reply was filed on behalf of respondent. Again notices on 29.06.2018, 10.08.2016 and finally on 31.12.2018 were sent by email to the respondent to put appearance and to file reply and reports to this effects are placed on record. 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 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 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

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

14. 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.

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

*The respondent is directed to refund paid amount of the complainant alongwith prescribed rate of interest i.e. 10.75% p.a. from the respective date of*



*payments till actual realization within a period of 90 days from the date of issuance of this order.*

16. 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.

17. The order is pronounced.

18. 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 12.02.2019

