

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	710/2018 Case titled as Mr. Jeewan Joshi & anr Vs. M/s Umang Realtech Pvt Ltd.
Complainant	Mr. Jeewan Joshi & Anr
Represented through	Shri Sushil Yadav Advocate for the complainant.
Respondent	M/s Umang Realtech Pvt Ltd.
Respondent Represented through	Shri Gaurav Verma, authorized representative on behalf of respondent company with Shri Arpit Dwivedi, Advocate
Last date of hearing	4.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

As per clause 6.1 of the Builder Buyer Agreement dated 11.4.2015 for unit No.901, Tower-O, Monsoon Breeze-II, Sector-78, Gurugram possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans or execution of BBA whichever is later + 180 days grace period which comes out to be **11.4.2019**. It was a construction linked plan. However, the respondent has miserably failed to deliver the unit in time. Complainant has already paid Rs.36,80,586/- to the respondent against a total sale consideration of Rs.101,58,750/-.

Local Commissioner was appointed vide order dated 4.12.2018. As per his report dated 4.1.2019 which was read in the court before the public, only 10% work has been done, 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. 710 of 2018
Date of first hearing 09.10.2018
Date of decision 10.01.2019

1) Mr Jeewan Joshi
2) Mr Akash Handa
R/o House No G 2/122, 2nd Floor, Block G,
Pocket 2, Rohini, Sector 16, Delhi-110085

Complainants

Versus

1) M/s Umang Realtech Pvt Ltd,
Regd. Office : D-64, 2nd Floor, Defence
Colony, New Delhi-110001
2) M/s Siyona Construction Pvt Ltd
Registered Office : 910, Ansal Bhawan, 16,
Kasturba Gandhi Marg, New Delhi

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav Advocate for the complainants

Shri Arpit Dwivedi Advocate for the respondents

ORDER

1. A complaint dated 10.08.2018 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 complainants Mr Jeewan Joshi and Mr Akash Handa, against the promoter M/s Umang Realtech Pvt Ltd and another.

2. Since, the apartment buyer agreement was executed on 11.04.2015 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondents in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	Monsoon Breeze II Sector 78, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Current status of project	Environmental clearance not received
4.	Project area	7.342 acres
5.	DTCP license no	38 of 2008 (12.514 acres)



		77 of 2012 (7.342 acres)
6.	Unit no.	901, tower O, 9 th floor
7.	Unit area	1550 sq. ft
8.	RERA registration status	Registered
9.	RERA registration no	116 of 2017 (expired on 28.08.2017) 14 of 2018 dated 16.01.2018
10.	Completion date as per RERA certificate	31.12.2020
11.	DTCP licence no.	77 of 2012
12.	Date of booking	02.07.2014
13.	Date of apartment buyer agreement	11.04.2015
14.	Total consideration	Rs. 1,01,58,750/-
15.	Total amount paid by the complainant	Rs. 36,80,586/-
16.	Payment plan	Possession linked payment plan
17.	Date of delivery of possession. (As per Clause 6.1 of ABA : 42 months from the date of approval of building plans or date of execution of ABA whichever is later + 180 days grace period)	11.04.2019
18.	Delay	Premature
19.	Penalty clause (as per clause 6.7 of the agreement)	Rs 5/- per sq. ft of the super area for every



		month of delay
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4. The details provided above have been checked as per record of the case file. An apartment buyer agreement is available on record for unit no. 901, tower-O, 9th floor. The promoters have failed to deliver the possession of the said unit to the complainants. Therefore, the promoters have not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 9.10.2018. The case came up for hearing on 09.10.2018, 13.11.2018, 04.12.2018 and 10.01.2019. The reply has been filed on behalf of the respondents on 26.09.2018.

Facts of the case

6. The complainants submitted that the respondents gave advertisement in various leading newspapers about their forthcoming project named "Monsoon Breeze Phase II", sector 78, Gurugram. Promising various advantages like



world class amenities and timely completion of the project etc.

7. The complainants submitted that relying on the promise and undertakings given by the respondents in the aforementioned advertisements, the complainants had booked an apartment no 901 in the “Monsoon Breeze Phase II” at sector 78, Gurugram for a total consideration of Rs. 1,01,58,750/-which includes BSP, car parking, IFMS, club membership, PLC etc and excludes taxes. Out of the total sale consideration amount, the complainants made a payment of Rs 36,80,586/- to the respondents vide different cheques on different dates
8. As per the apartment buyer agreement, the respondents had allotted a unit no 901 on 9th floor to the complainants.
9. The complainants also submitted that as per clause 6.1 of apartment buyer agreement, the respondents had agreed to deliver the possession of the flat within 42 months from the date of approval of building plan or the date of signing of the apartment buyer agreement whichever is later with an



extended period of 180 days and accordingly the flat had to be delivered till 11.04.2019.

10. The complainants also submitted that they regularly visited the project site but was surprised to see that the construction was not in progress and no one was present at the site to address their queries.

11. The complainants submitted that they contacted the respondents through mails and personal visits about the project but the respondents did not gave any satisfactory answer and moreover the complainants also came to know through their fellow friends and other buyers in the project that the respondents are not developing the project now and the respondents are shifting the units of allottees to some other project in another sector without any consent.

12. The complainants also submitted that on 31.08.2017 they received a call from the representative of the respondents Ms Anuradha Chauhan, where she confirmed on phone that respondents had halted construction of the project due to reasons best known to the respondents and also received an



email from the representative of the respondents to shift the booked unit to another project of the respondents in Gurugram or Delhi.

Issues raised by the complainants

13. The issues raised by the complainants are as follows :-

- I. Whether the respondents are liable to refund the total consideration amount paid by the complainants along with interest at the rate of 15% per annum on compound rate from the date of booking?
- II. Whether the respondents have delivered the possession of the booked unit to the complainants?

Relief Sought

14. The relief sought by the complainants are as follows :-

- I. To direct the respondents to refund the total consideration amount paid by the complainants along with interest at the rate of 15% per annum on compound rate from the date of booking.



Reply

15. The respondents submitted that as per the terms of apartment buyer agreement dated 11.04.2015, the respondents was obligated to deliver the possession of the apartment within 42 months from the date of the agreement and with the grace period of 180 days. Therefore, the due date for handing over possession of the subject apartment is 11.04.2019. The complaint is premature and deserve to be dismissed.

16. The respondents submitted that respondents are a customer oriented organization and are ready to shift the complainants booking in another projects of the respondents i.e 'Monsoon Breeze ABLM Towers' or 'Winter Hills 77' Gurugram or 'Winter Hills Dwarka Morh'. The respondents also admitted that all the aforesaid projects are at a finishing stage and answering respondents can handover possession of these projects very soon.

17. The respondents are entitled for reasonable extension of time in completing the construction and handing over possession in terms of the agreed contract in between parties



18. The respondents submitted that the issue of revenue rasta had impacted the clearance of phase II of the subject project from Haryana State Environment Impact Assessment Authority which created a hindrance in building plans and progress of construction work at the project site since the year 2014. However, in spite of such roadblocks and hindrances, answering respondents, being a customer-oriented organization and fully committed to welfare of its valued customers and abiding by the terms of respective apartment buyer agreements, made serious efforts to resolve the issue of revenue rasta in order to obtain environment clearance for the entire phase-II of subject project.

19. The respondents submitted that as per the apartment buyer agreement which is binding between the complainants and the respondents, both 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 respondents on account of delay is specified in the clause 6.7 of the said agreement and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by them. In



this view of the matter, the captioned complaint is not maintainable in law and liable to be dismissed.

20. The respondents submitted that allegations in the present complaint cannot be decided summarily and hence instant complaint is out of the jurisdiction of this authority.

Determination on issues

21. After considering the facts submitted by the complainants and the respondents, the authority decides the issues raised by the complainants as under :

- i. **Issue 1** : As per the status of the project, only 10% of the work has been done even after a lapse of 4 years after booking of the flat, therefore the authority is of the view, that the realtor cannot force the complainant to shift to another project and the respondents are liable to refund the total consideration paid by the complainants along with interest calculated at the prescribed rate of interest of 10.45% per annum.



- ii. **Issue 2** : The respondents have failed to deliver the possession of the project in question and the complaint is premature in nature.

Findings of the authority

22. Jurisdiction of the authority-

Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & 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 complainants.

23. In the present case, the authority has observed that as per clause 6.1 of the builder buyer agreement dated 11.4.2015 for unit no. 901, tower-O, Monsoon Breeze-II, Sector-78, Gurugram, possession was to be handed over to the complainants within a period of 42 months from the date of approval of building plans or execution of BBA whichever is later + 180 days grace period which comes out to be **11.4.2019**. It was a construction linked plan. However, the respondents has miserably failed to deliver the unit in time. Complainants have already paid Rs.36,80,586/- to the respondents against a total sale consideration of Rs.1,01,58,750/-.

24. Local commissioner was appointed vide order dated 4.12.2018. As per his report dated 4.1.2019 which was read in the court before the public, only 10% work has been done. Therefore authority has no option but to direct the respondents to refund the amount paid by the complainant along with prescribed rate of interest i.e. 10.75% per annum



Decision and directions of the authority

25. 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 respondents in the interest of justice and fair play :

- i. The respondents are directed to refund the amount paid by the complainant along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

26. The complaint is disposed of accordingly.

27. Order is pronounced.

28. File be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 10.01.2019

Judgement uploaded on 12.02.2019