

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 10.01.2019
Complaint No.	472/2018 Case titled as Mr. Tejbir Singh Vs M/s Universal Buildwell Pvt. Ltd. & Anr.
Complainant	Mr. Tejbir Singh
Represented through	Complainant in person
Respondent	M/s Universal Buildwell Pvt. Ltd. & Anr.
Respondent Represented through	<b>None for the respondent</b>
Last date of hearing	19.9.2018
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 21.6.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 18.7.2018, 19.9.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 19.9.2018 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 13.3 of the Builder Buyer Agreement dated 5.10.2011 for unit No.504, 5<sup>th</sup> floor, tower-G, in project "Universal Aura", Sector-82, 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 + 6 months grace period which comes out to be **5.4.2015**. It was a construction linked plan. Complainant has already paid Rs.43,76,302 /- to the respondent against a total sale consideration of Rs.51,56,936/-. 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.

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)  
10.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 472 of 2018**  
**First date of hearing : 23.08.2018**  
**Date of decision : 10.01.2019**

Mr. Tejbir Singh,  
R/o. H.no.1015, Ground Floor,  
Sector 10A, Gurugram.

**Complainant**

Versus

1. M/s Universal Buildwell Pvt. Ltd.  
Address: Universal Trade Tower, 8<sup>th</sup> Floor,  
Sector 49, Gurugram-122028.
2. M/s Shiv Ganesh Buildcon Pvt. Ltd.  
Address: 7<sup>th</sup> floor, Vatika Triangle,  
Sushant Lok-I, Block A, M.G. Road, Gurugram.

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Tejbir Singh Complainant in person  
None for the respondent Proceeded ex-parte on 10.01.2019

**BRIEF**

1. A complaint dated 21.06.2018 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. Tejbir Singh, against the promoters M/s Universal Buildwell Pvt. Ltd.



and M/s Shiv Ganesh Buildcon Pvt. Ltd., on account of violation of the clause 13.3 of apartment buyer's agreement executed on 05.10.2011 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 05.10.2011 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be 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/respondent 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	"Universal Aura", Sector 82, Gurugram.
2.	Nature of the project	Residential group housing colony
3.	Project area	11.231 acres
4.	DTCP license no.	51 of 2011
5.	Registered/ not registered	<b>Not registered</b>
6.	Unit no.	504, 5 <sup>th</sup> floor, tower G.
7.	Unit measuring	1179 sq. ft.



8.	Date of execution of apartment buyer's agreement	05.10.2011
9.	Payment plan annexed as annexure-III to the said agreement	Construction linked payment plan
10.	Total sale consideration	Rs.51,56,936/- [as per letter dated 24.12.2013, annexure P/6]
11.	Total amount paid by the complainant till date	Rs.43,76,302 /- [as per receipts, annexure P/2]
12.	Statement of account	<b>Not annexed</b>
13.	Due date of delivery of possession as per clause 13.3 of apartment buyer's agreement i.e. (36 months from the date of approval of building plans and/or execution of the apartment buyer's agreement whichever is later + 180 days grace period)	05.04.2015 <b>Note: date of approval of building plan is not available on record so due date is calculated from the date of execution of the agreement i.e. 05.10.2011</b>
14.	Delay in handing over possession till date of decision	3 years 9 months and 5 days.
15.	Penalty clause as per apartment buyer's agreement dated 05.10.2011	Clause 13.4 of the said agreement i.e. Rs.10/- per sq. ft. of the super area for every month of delay thereafter until the actual date fixed by the company for handing over of possession of the said apartment.



4. The details provided above have been checked on the basis of record available in the case file which has been provided by

the complainant. An apartment buyer's agreement is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 05.04.2015. Neither the respondents have delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.10/- sq. ft. per month for the delay in handing over possession of the unit. 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. The case came up for hearing on 23.08.2018 and 10.01.2019. Despite service of notice, neither the respondents have appeared nor have filed their reply to the complaint, therefore the complaint is being proceeded ex-parte against the respondent.

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

6. Briefly stated, the facts of the complaint are that the complainant had booked a flat about 7.5 years back in the said project being allured by a lustful advertisement of the respondent and believing the plain words of respondents in good faith. The complainant submitted that due to the malafide intention of the respondents and non-delivery of the flat, the



complainant has accrued huge losses on account of the career plans of his family and himself. The complainant submitted that he has been paying EMI of home loan taken from SBI dated 18.05.2015 and house rent has created pecuniary burden on the complainant.

7. The complainant submitted that he booked a flat measuring 1179 sq. ft. on 21.10.2010 in "Universal Aura", Sector 82, Gurugram being developed by M/s Universal Buildwell Pvt. Ltd. and paid provisional booking amount of Rs.3,50,00/-. The same was acknowledged by the respondent vide letter dated 31.12.2010.
8. The complainant submitted that on 31.03.2011, the respondents have allotted unit no. G-504 measuring 1179 sq. ft. the complainant submitted that he paid an amount of Rs.43,79,701/- (including service tax) as against the total cost of Rs.50,87,676/- (excluding service tax) and it comes around 87% of total value of flat. The complainant submitted that the respondent has increased the super area (1179 sq. ft. to 1331.93 sq. ft.) without any technical justification vide letter dated 24.12.2013.
9. The complainant submitted that on 05.10.2011, apartment buyer's agreement was signed between M/s Universal Buildwell Pvt. Ltd. and Mr. Tejbir Singh, just to create a false





belief that the project shall be completed in a time bound manner. As per clause 13.3 of the said agreement, the builders are liable to offer possession within 36 months with grace period of 180 days i.e. 04.04.2015.

10. The complainant submitted that he visited the project site number of times and was shocked to see that construction is not going on since last 3 years and 50% of construction work is still pending. The respondents have failed to offer possession as per the terms of the agreement.

**Issues to be decided:**

11. The relevant issue in the present complaint is whether the respondents have failed to deliver possession of the said unit as per the terms of the said agreement?

**Reliefs sought by the complainant:**

12. The complainant is seeking the following reliefs:
- The respondent be directed to handover possession in habitable condition within time bound manner or refund the paid amount i.e. Rs.43,79,701/- along with interest on principal amount.
  - Direct the respondent to pay interest for the delay period from 04.04.2015 as per the agreement.



### Determination of issues

After considering the facts submitted by the complainant and perusal of record on file, the findings of the authority on the sole issue is as under:

13. With respect to the **sole issue** raised by the complainant, as per clause 13.3 of apartment buyer's agreement, the possession of the said unit was to be handed over within 36 months from the execution of the said agreement or approval of building plan whichever is later plus grace period of 180 days. As the building plan approval is not available on record, therefore, due date of possession shall be computed from 05.10.2011. The relevant clause is reproduced as below:

*"...the company proposes to handover the possession of the said apartment to the allottee within a period of 36 months from the date of approval of the building plans and/or execution of the apartment buyer agreement whichever is later and subject to terms and conditions and limitations mentioned in the apartment buyer agreement (commitment period). The allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (grace period), after the expiry of the said commitment period to allow for unforeseen delays in obtaining the occupation certificate etc., from the DTCP under the Act, in respect of the project."*

14. Accordingly, the due date of possession was 05.04.2015 and the possession has been delayed by three years nine months and five days from due date of possession till the date of decision. 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. Therefore, the promoter is liable under section 18(1) of the Act ibid read with rule 15 of the rules ibid, to refund the entire amount paid by complainant to the respondents along with interest at the prescribed rate of 10.75% per annum.

### **Findings of the authority**

15. **Jurisdiction of the authority-** 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.



16. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
17. A complaint was filed on 21.06.2018. Notices w.r.t. reply to the complaint were issued to the respondents on 18.07.2018, 19.09.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 19.09.2018 and 15.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondents neither filed reply nor were present before the authority. From the above stated conduct of the respondents, it appears that respondents do 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 respondents and to decide the matter on merits by taking into account 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 10.01.2019.



18. As per clause 13.3 of the apartment buyer's agreement dated 05.10.2011 for unit no. 504, 5<sup>th</sup> floor, tower-G, in project "Universal Aura", Sector-82, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of the agreement or from the date of approval of building plans, whichever is later + 180 days grace period which comes out to be **05.04.2015**. It was a construction linked plan. Complainant has already paid Rs.43,76,302/- to the respondents against a total sale consideration of Rs.51,56,936/-. However, the respondents have miserably failed to deliver the unit in time and there are no chances to deliver the unit to the complainant in near future.

**Directions of the authority**

19. 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 direct the respondents to refund the entire amount of Rs.43,76,302/- paid by the complainant along with prescribed rate of interest i.e. 10.75% p.a. within a period of 90 days from the date of this order.



20. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act ibid. A copy of this order be endorsed to registration branch for further action in the matter.

21. The order is pronounced.

22. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2019

**(Subhash Chander Kush)**

Member

Judgement Uploaded on 12.02.2019

HARERA  
GURUGRAM

