

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	282/2018 case titled as Ms. Shivani Sharma Vs M/s Universal Buildwell Pvt. Ltd.
Complainant	Ms. Shivani Sharma
Represented through	Shri K.P. Pandey Advocate for the complainant.
Respondent	M/s Universal Buildwell Pvt. Ltd.
Respondent Represented through	None for the respondent.
Last date of hearing	12.9.2018
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 17.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 13.6.2018, 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 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 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 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 10.1.2019.

Brief facts of the matter are as under :-

As per clause 13.3 of the Builder Buyer Agreement dated 22.9.2011 for unit No. 601, 6th floor, tower-D, 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 **22.3.2015**. It was a construction linked plan. Complainant has already paid Rs.53,68,249/- to the respondent against a total sale consideration of Rs.59,16,393/-. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit to the complainant 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. : 282 of 2018
First date of hearing : 17.07.2018
Date of decision : 10.01.2019

Mrs. Shivani Sharma,
R/o. 35/8, Ground Floor, East Patel
Nagar, New Delhi-110008.

Complainant

Versus

1. M/s Universal Buildwell Pvt. Ltd.
Regd. Office: 102, Antriksh Bhawan,
22, Kasturba Gandhi Marg,
New Delhi-110001.

2. M/s Shiv Ganesh Buildcon Pvt. Ltd.
Regd. Office: 102, Antriksh Bhawan,
22, Kasturba Gandhi Marg,
New Delhi-110001.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri K.P Pandey
None for the respondent

Advocate for the complainant
Proceeded exparte on 10.01.2019

ORDER

1. A complaint dated 17.05.2018 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 Mrs. Shivani Sharma, 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 22.09.2011 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 22.09.2011 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 part of the promoters/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	"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	Not registered
6.	Unit no.	601, 6 th floor, tower D
7.	Unit measuring	1587 sq. ft.
8.	Date of execution of apartment buyer's agreement	22.09.2011
9.	Payment plan annexed as annexure-III to the said agreement	Construction linked payment plan
10.	Basic sale price of the unit	Rs.47,72,109/- (as per clause 3.1)
11.	Total sale consideration (as per clause 3.1, 3.2 and 3.11)	Rs.59,16,393/- (excluding taxes)
12.	Total amount paid by the complainant till date as per receipts available on record (annexure P2).	Rs.62,13,597/-
13.	Statement of account	Not annexed
14.	Due date of delivery of possession as per clause 13.3 of apartment buyer's agreement i.e. (36 months + 180 days from the date of approval of building plans and/or execution of the apartment buyer's agreement whichever is later.)	22.03.2015 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. 22.09.2011.
15.	Delay in handing over possession till date of decision i.e. 22.09.2011	3 years 9 months and 19 days.
16.	Penalty clause as per apartment buyer's agreement dated 22.09.2011	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 22.03.2015. 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 as per clause 13.4 of the agreement duly executed between the parties. Therefore, the promoter has 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 17.07.2018, 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, case is being proceeded ex-parte against the respondents.



Facts of the complaint

6. Briefly stated, the facts of the complaint are that initially on 22.10.2010, a three BHK apartment bearing unit no. 601 on 6th floor, 'D' tower having tentative super area of 1587 sq. ft. with one parking space in a project namely "Universal Aura" was booked by Ms. Charu Maini and booking amount of Rs.4,50,000/- was paid by her to the respondents. The sale consideration of the above apartment as agreed to between the parties is Rs.60,42,866/-.
7. The complainant submitted that the above booked flat was subsequently transferred from the name of Ms. Charu Maini to Sh. Raj Bir Singh on 03.08.2012 on same terms and conditions and accordingly, the entire documents of the above apartment were transferred to Sh. Raj Bir Singh.
8. The complainant submitted that thereafter, by mutual consent between the parties, the said apartment was transferred in the name of complainant on 05.08.2013 on same terms and conditions as agreed between Ms. Charu Maini & Sh. Raj Bir Singh. In furtherance of the same, an "apartment buyer's agreement" was executed between the complainant and the respondents on 05.08.2013. **[Note: The complainant has wrongly mentioned the date of execution of agreement. As**



per record available in the paper book, the same was executed on 22.09.2011.]

9. The complainant submitted that subsequent to 05.08.2013, she made payments directly to the respondent. The complainant had made payments towards transfer charges and other charges as agreed to between the complainant, Sh. Raj Bir Singh and the respondents. Till now the complainant had paid Rs.53,68,249/- against the sale consideration of the above apartment. This payment is duly acknowledged by the respondents against receipts.
10. The complainant submitted that the project was supposed to be developed by respondent no.1 and is owned by respondent no.2. This fact was disclosed by the respondents in the apartment buyer's agreement signed between complainant and the respondents on 05.08.2013.
11. The complainant submitted that as per clause 13.3 of the said agreement, it is specifically agreed between the complainant and the respondents that the possession of the apartment shall be handed over by the respondents to the complainant in 36 months from the date of approval of the building plan and/or execution of the apartment buyer's agreement whichever is later and subject to terms and conditions and limitations



mentioned in the agreement. It was further agreed that the respondents shall be entitled to a period of 180 days (“grace period”) after expiry of above commitment.

12. The complainant submitted that in the present case, first agreement was executed on 31.12.2010. The period of 36 months completes on 30.12.2013 and further grace period of 6 months completes on 30.06.2014. In the above manner, the possession of the booked apartment was supposed to be handed over to the complainant on 30.06.2014 but the same has not been handed over by the respondents to the complainant till date and there is delay of more than 46 months in handing over possession of the apartment. No construction is going on at site and the complainant had no hope to get possession of his apartment in near future.
13. The complainant submitted that as per clause 13.4 of the ‘apartment buyer’s agreement’, it is specifically agreed that if the respondents fail to offer possession of the said apartment to the complainant by the end of grace period, then the respondents shall liable to pay compensation calculated at rate of Rs.10/- per sq. ft. on super area to the complainant.
14. The complainant submitted that she made various correspondences vide e-mail dated 16.01.2017, 11.04.2017 &



06.09.2017 with the respondents and requested the respondents to provide status of his apartment but the respondent did not bother to provide any update and the respondents have not replied to these till date. Complainant has no hope to get her booked apartment in near future as the construction work of the booked apartment has not yet started. Under these circumstances, the complainant seeks refund of her entire deposited amount with interest and compensation as per provisions of RERA Act, 2016.

Issues to be decided:

15. The relevant issues in the present complaint are as follows:
 - i. Whether the complainant is entitled for refund of her entire deposited amount of Rs.62,13,597/-?
 - ii. Whether the complainant is entitled for interest prescribed rate on the deposited amount?
 - iii. Whether the complainant is entitled to get penalty @ Rs.10/- per sq. ft. on super area from 30.06.2014?

Reliefs sought by the complainant:

16. The complainant is seeking the following reliefs:
 - i. The respondents be directed to refund the entire deposited amount of Rs.62,13,597/- to the complainant.



- ii. Direct the respondents to pay interest to the complainant at the prescribed rate on the deposited amount from date of making payment till its realization.
- iii. Direct the respondents to pay penalty to the complainant @ Rs.10/- per sq. ft. on super area from 30.06.2014.

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 as under:

17. With respect to the **first and second issues** 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 plus grace period of 180 days from the execution of the said agreement or approval of building plan whichever is later. Therefore, due date of possession shall be computed from 22.09.2011.

"...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.”

18. Accordingly, the due date of possession was 22.03.2015 and the possession has been delayed by three years nine months and nineteen 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. 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.
19. With respect to the **third issue** raised by the complainant, the delay compensation payable by the respondent @ 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 possession as per clause 13.4 of the apartment buyer's 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. It has also been



observed in **para 181 of Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (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.”.

Thus, the authority is of the considered opinion to grant interest at the prescribed rate as determined aforesaid.

Findings of the authority

20. **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.

21. 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.
22. A complaint was filed on 17.5.2018. Notices w.r.t. reply to the complaint were issued to the respondents on 13.06.2018, 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 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 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.

23. As per clause 13.3 of the apartment buyer's agreement dated 22.09.2011 for unit no. 601, 6th floor, tower-D, 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 **22.3.2015**. It was a construction linked plan. Complainant has already paid Rs.62,13,597/- to the respondents against a total sale consideration of Rs.59,16,393/-. 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

24. 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.62,13,597/- 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.

25. 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.
26. The order is pronounced.
27. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 10.01.2019

Judgement Uploaded on 12.02.2019

