

**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 21.01.2019
Complaint No.	717/2018 Case Titled As Navodit Kumar V/S Universal Buildwell Pvt Ltd
Complainant	Navodit Kumar
Represented through	Complainant in person.
Respondent	Universal Buildwell Pvt Ltd
Respondent Represented through	<b>None for the respondent.</b>
Last date of hearing	
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 14.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 29.8.2018, 17.9.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.9.2018 and 29.11.2018 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 a count legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Brief facts of the matter are as under :-

As per clause 15 (a) of the Builder Buyer Agreement dated 27.7.2010 for unit No.207, 2<sup>nd</sup> floor, in project "Universal Square" in Sector-59, Golf Course Extension Road, 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 + 180 days grace period as per clause 15 (ii). Since building plans are not attached so the computed date has been taken from the date of execution of BBA which comes out to be **27.1.2014**. It was a construction linked plan. Complainant has already paid Rs.16,64,200/- to the respondent against a total sale consideration of Rs.32,68,500/-. However, the respondent has miserably failed to deliver the possession of the unit in time and there are no chances to deliver the same 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)  
21.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint no.** : 717 of 2018  
**Date of First  
hearing** : 21.01.2019  
**Date of decision** : 21.01.2019

Sh. Navodit Kumar Garg  
R/o 1703, Tower A1, Mapsko Casa Bella,  
Sector 82, Gurugram

**...Complainant**

Versus

M/s Universal Buildwell (P) Ltd  
Office at: 8th Floor, Universal Trade Tower,  
Gurugram-Sohna Road, Sector 49, जयते  
Gurugram

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Complainant in person Advocate for the complainant  
None for the respondent Advocate for the respondent



**EX-PARTE ORDER**

1. A complaint dated 14.08.2018 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 complainant Sh. Navodit

Kumar Garg against the promoter M/s Universal Buildwell (P) Ltd in respect of unit described below in the project 'Universal Square', on account of violation of section 11(4)(a) of the Act *ibid*.

2. Since the office space buyer's agreement has been executed on 27.07.2010, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 Square" in Sector 59, Golf course extension road, Gurugram
2.	Project area	3.487 acres
3.	Nature of project	Commercial complex
4.	Unit no.	207, 2 <sup>nd</sup> floor
5.	Unit area	500 sq. ft.
6.	Registered/ not registered	<b>Not registered</b>
7.	DTCP license	38 dated 15.07.2009



8.	Date of booking	18.04.2010 (as per demand letter dated 28.08.2010)
9.	Date of provisional allotment letter	19.05.2010 (as per annexure P/19)
10.	Date of buyer's agreement	<b>27.07.2010</b>
11.	Basic sale price	Rs. 28,10,500/- (as per office space buyer's agreement)
12.	Total consideration	Rs.32,68,500/-
13.	Total amount paid by the complainant	Rs. 16,64,200/- (as per statement of account dated 10.08.2016)
14.	Payment plan	Construction linked plan
15.	Date of delivery of possession	<b>27.01.2014</b> Clause 15(a)- 36 months from execution of agreement, i.e. 27.07.2010, or sanctioning of building plan, whichever is later + 180 days grace period <b>Note: No building plan approval has been attached in the file. Therefore, the due date is calculated from the date of agreement</b>
16.	Delay of number of months/ years up to 21.01.2019	4 years 11 months (approx.)
17.	Penalty clause	Clause 17(a)- Rs. 15/- per sq. ft. per month for the period of delay



4. The details provided above have been checked on the basis of the record available in the case file. An office space buyer's agreement dated 27.07.2010 is available on record, according to which the possession of the same was to be delivered by 27.01.2014. Neither the respondent has delivered the possession of the said until 27.01.2014 nor they have paid any compensation @ Rs.15/- per sq. ft. per month of the for the period of such delay as per clause 17(a) of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 21.01.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

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

6. On 18.04.2010, the complainant booked a commercial unit (office space) in the project named "Universal Square" in Sector 59, golf course extension road, Gurugram by paying an



advance amount of Rs. 3,00,000/- to the respondent. Accordingly, the complainant was allotted a unit bearing no. 207 on 2<sup>nd</sup> floor admeasuring 500 sq. ft. vide provisional allotment letter dated 19.05.2010.

7. The complainant submitted that out of the total basic sale consideration of Rs. 32,68,500/-, the complainant paid total amount of Rs. 16,64,200/- as demanded by the respondent.
8. The complainant submitted that he had put his best efforts to make sure all the payments are on time. As per the office space buyer's agreement dated 27.07.2010, the respondent was supposed to handover possession by 27.01.2014.
9. The complainant further submitted that he himself along with his father visited the respondent's office many times in order to enquire about the status of the project and met their representatives named Sh. Manu Katal, Smt. Richi Rawat and Sh. Manoj many times. Some of the visits on record are 20.03.2013, 21.06.2013, 09.09.2013, 19.12.2013 and 10.08.2016. However, every time the respondent's representatives gave false commitments and made complainant believe in their story of delay in construction. They always assured in those meetings that construction will





finish in six months.

10. The complainant submitted that on their latest visit dated 02.08.2018, he could not meet any representatives of the respondent as the guard at the respondent's office said they were busy. Hence it is clear that the respondent is running away from his commitments towards the investors.

11. The complainant further submitted that the conditions at the site indicate that even full frame/pillars of building is not constructed so far and hence it cannot be completed in near future and the existing framework is also decomposing due to non-maintenance of the structure.

12. **Issues raised by the complainant**

The relevant issues as culled out from the complaint are as follows:

- I. Whether the respondent failed in handing over the office space as per the terms and conditions of the office space buyer's agreement?
- II. Whether the complainant is entitled to refund of the principal amount paid by him along with interest @ 18% per annum?

13. **Relief sought**



- I. Direct the respondent to grant immediate possession of the office space at the earliest or refund the amount of Rs. 16,64,200/- due, along with the interest @ 18 % per annum.

### Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

14. With respect to the **first issue** raised by the complainant, as per clause 15(a) of the office space buyer's agreement dated 27.07.2010, the possession was to be handed over within 36 months from execution of agreement or sanctioning of building plan, whichever is later + 180 days grace period. However, no building plan approval has been attached in the paper book. Thus, the due date is calculated from the date of execution of agreement. Accordingly, the due date of delivery of possession comes out to be 27.01.2014. Thus, the respondent has failed in handing over the office space as per the terms and conditions of the office space buyer's agreement.



15. With respect to **second issue**, the possession of the unit in question was to be handed over by the respondent till 27.01.2014. As per the submissions of the complainant, even the full frame/pillars of the building have not been constructed. No reply has been filed by the respondent regarding the status of project. Hence, considering the dismal state of affairs, the authority is left with no option but to refund the principal amount of Rs. 16,64,200/- paid by the complainant along with interest at the prescribed rate from the date of payment till the date of this order.
16. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
17. 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.
18. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



### **Findings and directions of the authority**

19. **Jurisdiction of the authority-** The project "Universal

Square” is located in Sector 59, golf course extension road, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial 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 complainant at a later stage.

20. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs.5,000/-. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs.10,000/-.



21. Such notices were issued to the respondent on 29.08.2018 and on 17.09.2018 and on 29.11.2018. Further, a final notice dated 14.01.2019 by way of email was sent to both the parties to appear before the authority on 21.01.2019.
22. As the respondent has failed to be present before the authority or to submit the reply in such period, despite due and proper service of notices, it appears that the respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing material particulars in the matter. Thus, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.
23. The ex-parte final submissions have been perused at length. Details regarding the status of the project have not been supported by relevant documents. As per clause 15(a) of the office space buyer's agreement dated 27.07.2010, the possession was to be handed over within 36 months from execution of agreement or sanctioning of building plan, whichever is later + 180 days grace period. However, no building plan approval has been attached in the paper book.



Thus, the due date is calculated from the date of execution of agreement. Accordingly, the due date of delivery of possession comes out to be 27.01.2014. Thus, the respondent has failed in handing over the office space as per the terms and conditions of the office space buyer's agreement. As per the statement of account, the complainant has paid a sum of Rs. 16,64,200/- as against a total sale consideration of Rs. 32,68,500/-. In view of the facts and circumstances of the case, the authority is of the considered opinion that the respondent miserably failed in delivering the possession of the unit in time and there are no chances to deliver the same in near future. The respondent retained the amount paid by the complainant from 2010 till date which must be paid back to them. Accordingly, the amount of Rs.16,64,200/- be refunded to the complainant along with interest at the prescribed rate of 10.75% per annum.



24. 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:

(i) The respondent is directed to refund to the complainant the principal sum of Rs. 16,64,200/- paid by him along with

interest at the prescribed rate of 10.75% per annum. The interest will be given from date of receipt of payments till 21.01.2019 (date of disposal of complaint) to the complainant 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 promoter thereby violating section 3(1) of the Act, 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 complaint is disposed of accordingly.
27. The order is pronounced.
28. Case file be consigned to the registry.



**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: 21.01.2019

Judgement uploaded on 12.02.2019