

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 10.01.2019
Complaint No.	339/2018 Case titled as Mr. Aseem Sadana Vs M/s Universal Buildwell Pvt. Ltd.
Complainant	Mr. Aseem Sadana
Represented through	Shri Parmanand Yadav Advocate for the complainant.
Respondent	M/s Universal Buildwell Pvt. Ltd.
Respondent Represented	<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, 12.9.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 12.9.2018 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 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 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.

The brief facts of the matter are as under :-

As per clause 15 (a) of the Builder Buyer Agreement dated 1.9.2010 for unit No.709, in project "Universal Square", Sector-59, 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 1.3.2014. It was a construction linked plan. Complainant has already paid Rs.18,21,788/- to the respondent against a total sale consideration of Rs.36,83,000/-. 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. : 339 of 2018**  
**Date of First hearing : 24.07.2018**  
**Date of decision : 10.01.2019**

Mr. Aseem Sadana and Mrs. Sejal Sadana  
R/o. : 1005, Amarnath Tower, Sanjeev  
Enclave Lane, off J.P. Road, Andheri West,  
Mumbai-400061

**Complainants**

Versus

M/s Universal Buildwell  
Office at: Universal Trade Tower, 8<sup>th</sup> floor,  
Sohna Road, Sector-49, Gurugram-122001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Parmanand Yadav Advocate for the complainant  
None for the respondent Advocate for the respondent



**EX-PARTE ORDER**

1. A complaint dated 28.05.2018 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 complainants Mr. Aseem Sadana and Mrs. Sejal Sadana, against the promoter M/s Universal Buildwell, in respect of said office space/shop described below in the project 'Universal Square, on account of violation of the section 11(4)(a) of the Act ibid.

2. Since the office space buyer agreement has been executed on 01.09.2010, 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, Gurugram
2.	Nature of real estate project	Commercial Complex
3.	Project area	3.487 acres
4.	Unit no.	709, 7 <sup>th</sup> floor
5.	Unit area	500 sq.ft.
6.	Registered/un registered	<b>Unregistered</b>
7.	DTCP license no.	38 dated 15.07.2009



8.	Date of office space buyer's agreement	<b>01.09.2010</b>
9.	Total consideration <b>Annexure 2 of the agreement</b>	Rs. 36,83,000/- As per the payment plan, Page 50
10.	Total amount paid by the complainant <b>As per annexure 4 to 8</b>	Rs. 18,21,788/-
11.	Payment plan	<b>Construction lined payment plan</b>
12.	Date of delivery of possession	<b>Clause 15(a)</b> - 36 months from date of execution of agreement or sanctioning of the building plans whichever is later plus grace period of 180 days or, i.e. by <b>01.03.2014</b>
13.	Delay of number of months/ years up to 10.01.2019	4 years 10 months 9 days
14.	Penalty clause as per office space buyer's agreement dated 01.09.2010	Clause 17- Rs. 15/- per sq. ft. per month for such period of delay.



3. The details provided above have been checked on the basis of the record available in the case file. An office space buyer agreement dated 01.09.2010 is placed on record for the aforesaid unit according to which the possession of the same was to be delivered by 01.03.2014. Neither the respondent has delivered the possession of the said until 01.03.2014 nor have

they paid any compensation @ Rs.15/- per sq.ft. per month of the area of the said unit for the period of such delay as per clause 17 of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

4. 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 24.07.2018 and 11.09.2018. 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**

5. Briefly stated the facts of the complaint, the complainants submitted that on 27.08.2010 the complainants made a booking in the project of the respondent by making a payment of Rs. 3,00,000/- against which a receipt was issued acknowledging the said booking.
6. On 01.09.2010 the complainants were allotted was allotted unit no. 709 admeasuring 500 sq.ft. in the project of the respondent at the total agreed sale consideration of Rs. 36,83,000/-.





7. On 01.09.2010 itself an office space buyer's agreement was presented to the complainants which was duly signed and executed by the complainants and the respondent which declared that project will be completed within a period of 36 months from the date of signing of the agreement or the sanctioning of building plans whichever is later.
8. The respondent failed to obtain any permissions from the concerned departments and did not raise any demands for the rest of the payments until September 2013.
9. It has already been almost 8 years since the complainants made the booking and therefore the complainants for the past 2 years have been chasing the ghosts of the respondent, wherein the respondent has apart from merely acknowledging the emails of the complainants failed to respond to any of the queries so raised in the said emails.
10. In January 2018 the complainants got to know that the respondent has suffered a decree dated 24.01.2018 in case titled M/s. Tremendous Comped Pvt. Ltd. versus M/s Universal Buildwell Pvt Ltd. decided by the hon'ble court of Ms. Mohini civil judge, Gurugram, the respondent has lost its



rights, titled and interest acquired via assignment agreement dated 13.03.2010.

11. The respondent has even failed to register the project in terms of the RERA Act, 2016 and has not even moved an application for any such registration before the authority as enshrined under the Act.

12. The complainant submitted that they have been suffering for the past 8 years and do not wish to suffer any longer especially in view of the fact that the respondent has even lost the title and interests in the land accrued by way assignment dated 12.03.2010, from M/s. Tremendous Comped Private Limited, by way of the decree dated 24.01.2018.

**13. Issues raised by the complainants**

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

- I. Whether the respondent is liable to refund the money so advanced to it in terms of the office space buyers agreement along with interest at the rate of 24% per annum?





#### 14. Relief sought

- I. Direct the respondent to refund the amount of Rs.18,21,788/- along with interest at the rate of 24% per annum compounded quarterly as enshrined under clause 14 of the buyer's agreement in terms of the provisions of the Act governing this present forum.

#### 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:

15. With respect to the **sole issue** raised by the complainants, as per clause 15(a) of the office space buyer's agreement dated 01.09.2010, the possession was stipulated to be handed over within 36 months from date of signing of office space buyer agreement or sanctioning of building plans whichever is later plus 180 days grace period, i.e. by 01.03.2014. Thus, the respondent failed in handing over the possession on or before the said due date, nor paid the compensation stipulated under clause 17 of the agreement, thereby committing a breach of the said agreement. However, the



complainant is not allowed refund and is entitled to delayed possession interest @ 10.75% p.a. form the due date of possession till the actual handing over of possession.

16. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

17. The complainant reserves their 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**

18. **Jurisdiction of the authority-** The project “Universal Square” is located in Sector 59, 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 complainants at a later stage.

19. 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/-.
20. Such notices were issued to the respondent on 24.07.2018, 12.09.2018 and on 15.11.2018.
21. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and decides to adjudge the matter in the



light of the facts adduced by the complainant in their pleading.

22. 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 already stated above. The office space/shop buyer's agreement has been executed on 01.09.2010. According to clause 15(a) of the agreement, the due date of possession comes out to be 01.03.2014. In view of the facts and circumstances of the case, the authority is of the considered opinion that the respondent has miserably failed to deliver the unit and there are no chances to deliver the unit in near future.

### **Decision and Directions of the Authority**

23. 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 the amount paid by the complainants along with prescribed rate of interest i.e 10.75% per annum within a period of 90 days from the date of the order.



24. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.
25. The complaint is disposed of accordingly.
26. The order is pronounced.
27. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2019

Judgement uploaded on 25.02.2019

