

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	369/2018 Case titled as Ms. Nidhi Bablani Vs M/s Universal Buildwell Pvt. Ltd. & Anr.
Complainant	Ms. Nidhi Bablani
Represented through	Shri V.P.Munjal, Advocate for the complainant.
Respondent	M/s Universal Buildwell Pvt. Ltd. & Anr.
Respondent Represented through	None for the respondent.
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 1.6.2018. 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 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.1504, 14th floor, tower-1, 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.40,56,281 /- to the respondent against a total sale consideration of Rs.50,87,676/-. 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. : 369 of 2018
Date of First hearing : 26.07.2018
Date of decision : 10.01.2019

Ms. Nidhi Bablani
R/o: H.No. 463, Sector-56, Huda Plots,
Gurugram, Haryana-122011

Complainant

Versus

M/s Universal Buildwell
Office at: Universal Trade Tower, 8th floor,
Sohna Road, Sector-49, Gurugram
M/s Shiv Ganesh Buildcon Pvt. Ltd.
Office at: 7th floor, Vatika Triangle, Sushant
Lok-1, Block A, M.G. Road, Gurugram,
Haryana

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member



APPEARANCE:

Shri V.P. Munjal
None for the respondents

Advocate for the complainant
Advocate for the respondent

EX-PARTE ORDER

1. A complaint dated 01.06.2018 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 Ms. Nidhi Bablani, against the promoter M/s Universal Buildwell Pvt Ltd. and M/s Shiv Ganesh Buildcon Pvt. Ltd. , in respect of said apartment described below in the project 'Universal Square, on account of violation of the section 11(4)(a) of the Act ibid.
2. Since the apartment buyer agreement has been executed on 05.10.2011, 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 Aura" in Sector 82, Gurugram
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2.	Nature of real estate project	Group Houing Colony
3.	Unit no.	1504, 14 th floor, Tower I
4.	Unit area admeasuring	1179 sq.ft.
5.	Registered/un registered	Unregistered
6.	DTCP license	51 of 2011 dated 05.06.2011
7.	Date of apartment buyer's agreement	01.09.2010
8.	Basic sale price (Clause 3.1)	Rs. 35,95,950/-
9.	Total amount paid by the complainant	Rs. 40,56,281/- As per the receipts annexed at P3
10.	Payment plan	Construction lined payment plan
11.	Date of delivery of possession	Clause 13.3- 36 months from date of execution of agreement or sanctioning of the building plans whichever is later plus grace period of 180 days , i.e. by 05.04.2015
12.	Delay of number of months/ years up to 10.01.2019	3 years 9 months 5 days
13.	Penalty clause as per apartment buyer agreement dated 05.10.2011	Clause 13.4- Rs. 10/- 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 apartment buyer agreement dated 05.10.2011 is placed on record for the

aforesaid unit according to which the possession of the same was to be delivered by 05.04.2015. Neither the respondent has delivered the possession of the said until 05.04.2015 nor they have paid any compensation @ Rs.10/- per sq.ft. per month of the area of the said unit for the period of such delay as per clause 13.4 of the said agreement. Therefore, the promoter have not fulfilled their 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 26.07.2018 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 complainant submitted that he made all the payments as demanded by the respondent according to the construction linked plan. The payment which got delayed due to any reason, the respondent charged interest on that and such payment has been made. All the payments made from the year December



2010 to the year January 2017 have been acknowledged by the respondents.

6. The complaint submitted that she made a total payment of Rs. 40,56,281/- as against the total cost of Rs. 50,87,676/-. The amount paid so far includes 80% of the BSP of the apartment and preferred location charges. It also includes, car parking charges, club membership charges and EDC and IDC.
7. The respondent vide letter dated 10.12.2013 intimated about the increase in the super area of apartment from 1179 sq.ft to 1331.93 sq.ft and demanded Rs. 3,07,168/- on account of increase in super area. The amount in increase in super area has also been paid by the complainant in given time of demand letter dated 10.12.2013. The complainant paid the amount on account of increase in super area though it was violation of the agreement.
8. The construction work is stalled at site since from more than 3 years. On visiting the office of the respondents, false assurances were given for handing over the possession. Therefore, the respondents are violating the provisions of the agreement.



9. Issues raised by the complainants

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

- I. Whether the respondents are liable to refund the entire deposited money of Rs. 40,56,281/- along with interest at the rate of 18% per annum?

10. Relief sought

- I. Direct the respondents to refund the amount of Rs.40,56,281/- along with interest at the rate of 18% per annum on the deposited amount from the date of making payment till its realization.

Determination of issues

No reply has been filed by the respondents. 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:

11. With respect to the **first issue** raised by the complainant, as per clause 13.3 of the apartment buyer's agreement dated 05.10.2011, the possession was stipulated to be handed over within 36 months sanctioning of building plans whichever is



later plus 6 months or, i.e. by 05.04.2015. Thus, the respondent failed in handing over the possession on or before the said due date and paying, the compensation stipulated under clause 13.4 of the agreement, thereby committing a breach of the said agreement. In these circumstances, refund cannot be allowed at this stage. However, the complainant is entitled to delayed possession interest @ 10.75% p.a. from the due date of possession till the actual handing over of possession.

12. 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.

13. The complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required.



Findings and directions of the authority

14. **Jurisdiction of the authority-** The project “Universal Aura” is located in Sector 82, 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.

15. As required by the authority, the respondents have 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/-.



16. Such notices were issued to the respondent on 26.07.2018, 12.09.2018 and on 15.11.2018.
17. As the respondents have 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 adjudges the matter in the light of the facts adduced by the complainant in its pleading.
18. 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 apartment buyer's agreement has been executed on 05.10.2011, according to which the due date of possession comes out to be 05.04.2015 . 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:

19. 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 complainant along with prescribed rate of interest i.e 10.75% per annum within a period of 90 days from the date of the order.

20. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

21. The complaint is disposed of accordingly.

22. The order is pronounced.

23. 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