

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 26.02.2019
Complaint No.	886/2018 Case Titled As Mrs. Ramesh Wadhwa V/S Universal Buildwell Private Ltd
Complainant	Mrs. Ramesh Wadhwa
Represented through	Complainant in person with Shri V.P.Munjal Advocate.
Respondent	M/S Universal Buildwell Private Ltd
Respondent Represented through	None for the respondent.
Last date of hearing	First 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 13.09.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 4.10.2018, 17.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.10.2018 and on 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 account legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 14.02.2019 by way of email was sent to both the parties to appear before the authority on 26.02.2019.

Brief facts of the matter are as under :-

As per clause 13.03 of the Builder Buyer Agreement dated 13.12.2011 for unit No.704, 7th floor, Tower-F, 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 approvals of building plan or execution of BBA whichever is earlier + 6 months grace period which comes out to be 13.6.2015. However, the respondent has not delivered the unit in time. It was a construction linked plan. Complainant has already paid Rs.45,66,525/- to the respondent against a total sale consideration of Rs.50,19,711/-.

As per averments made by the counsel for the complainant that there is no progress w.r.t. construction of work. Since there is no hope and scope for completion of project, no choice is left with the authority but to direct the respondent to refund the entire amount deposited by the complainant with

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
26.2.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 886 of 2018
First date of hearing : 26.02.2019.
Date of Decision : 26.02.2019.

Mrs. Ramesh Wadhwa
R/o. 23/2-B, Tilak Nagar,
New Delhi- 110018.

Complainant

Versus

1. Shiv Ganesh Buildcon P. Ltd.
Address: 102, Antriksh Bhawan, 22 K.G.
Marg, New Delhi- 110001.

2. M/s Universal Buildwell Pvt. Ltd.
Address: Universal Trade Tower,
8th floor, sector 49, Sohna Road, Gurugram,
Haryana - 122018.

Respondents

CORAM:

Shri Samir Kumar
Shri SubhashChander Kush

Member
Member

APPEARANCE:

Smt. Ramesh Wadhwa : Complainant in person
Shri V.P. Munjal : Advocate for the complainant
None for the respondent : Proceeded exparte on 26.02.2019



ORDER

1. A complaint dated 13.09.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation

and Development) Rules, 2017 by the complainant Mrs. Ramesh Wadhwa, against the promoters M/s. Shiv Ganesh Buildcon P. Ltd. and M/s Universal Buildwell P.Ltd., on account of violation of the clause 13.3 of apartment buyer's agreement executed on 13.12.2011 in respect of apartment/unit no. 704, 7th floor, tower F of the project 'universal aura' located at sector 82, Gurugram for not handing over possession on the due date i.e. by 13.06.2014 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer agreement dated 13.12.2011 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non compliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Universal Aura", Sector
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		82, Gurugram, Haryana.
2.	Apartment/unit no.	704, 7 th floor, tower 'F'.
3.	Nature of real estate project	Group housing colony
4.	Total area of the project	11.231 acres
5.	DTCP license no.	51 of 2011
6.	Admeasuring super area of the allotted unit	1179 sq. ft.
7.	RERA registered/unregistered	Unregistered
8.	Date of execution of apartment buyer's agreement	13.12.2011 (Annx P-1)
9.	Payment Plan	Construction linked payment plan
10.	Total consideration amount as per agreement dated 13.12.2011	Rs. 50,19,711/- (Pg.80)
11.	Total amount paid by the complainant till date	Rs. 45,66,525/-
12.	Percentage of consideration amount	Approx. 82%
13.	Due date of delivery of possession as per apartment buyer's agreement dated 13.12.2011 (clause 13.3:-36 months + 180 days from the date of approval of building plans and/or execution of the apartment buyer's agreement whichever is later)	13.06.2015 Note - due date has been calculated from the date of signing of agreement
14.	Delay in handing over possession till date	3 years and 8 months approx.
15.	Penalty clause as per apartment buyer's agreement dated 13.12.2011	As per Clause 13.4 of the agreement i.e. Rs.10/- per sq. ft. of the super area for every month till the actual date fixed by the company for handing over of possession is payable as ' Delay



	Compensation'.
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4. The details provided above have been checked as per record available in the case file which has been provided by the complainant. An apartment buyer's agreement dated 13.12.2011 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 13.06.2015. Neither the respondents have delivered the possession of the subject unit till date to the complainant nor they have paid any compensation @ Rs.10/- per sq. ft. of the super area for every month till the actual date fixed by the company for handing over of the possession as per clause 13.4 of apartment buyer's agreement dated 13.12.2011. Therefore, the promoter has not fulfilled his obligation which is in violation of section 11(4)(a) of the Act *ibid*.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Despite service of notice the respondents neither appeared nor file their reply to the complaint therefore the case is being proceeded *exparte* against the respondents.



Facts of the complaint:-

6. Briefly stated, facts relevant for the disposal of present complaint as that on 13.12.2011, M/s. Ranil Projects P. Ltd. (original allottee) entered into an apartment buyer agreement with the respondent for the purchase of apartment/unit no. 704, 7th floor, tower F in the project namely "universal aura" developed by M/s Universal Buildwell Pvt. Ltd. in Sector 82, Gurugram. The said apartment was purchased by the complainant from the original allottee which was duly confirmed by the respondent vide letter dated 22.06.2012. The total cost of the unit was Rs. 50,1,711/- excluding service tax as against which the complainant has made a total payment of Rs. 45,66,525/- on various dates under the construction linked plan, as per the demand note of the respondent. It was alleged by the complainant that respondent vide letter dated 06.12.2013 increased the super area from 1179 sq. ft. to 1331sq. ft. and demanded additional amount of Rs. 3,66,675/- for increase in super area and the same was duly paid by the complainant.



7. As per clause 13.3 of the agreement dated 13.12.2011 possession of the apartment was to be delivered within a period of 36 months plus 180 days grace period from the date of approval of building plan or execution of agreement whichever is later. As such the schedule date of offer of possession was June 2015 inclusive of grace period.
8. It was further alleged by the complainant that construction activity was left standstill since the year 2014 and the respondents have failed to deliver the possession of the unit by promised date despite repeated visits/ follow ups of the complainant. Due to aforesaid acts of the respondents the complainant has suffered potential loss and mental harassment. Left with no other option, the complainant was constrained to file the present complaint.

Issues to be decided:-

Whether the respondent has failed to give possession of apartment in violation of BBA and the complainant has suffered mental harassment and financial loss due to said failure?



Relief sought:-

- i. **Direct the respondent to refund Rs. 45,66,525/- alongwith interest @ 24% p.a., so paid by the complainant.**
- ii. **Direct the respondents to pay Rs. 10 lakhs on account of mental harassment and Rs. 50,000/- as litigation cost.**

The complaint was filed on 13.09.2018. Notices with respect to the hearing of the case were issued to the respondent on 04.10.2018;17.10.2018 and 29.11.2018 for making the appearance. Besides this a penalty of Rs. 5,000/- and Rs. 10,000/- were imposed on 17.10.2018 and on 29.11.2018 for non-filing of reply. However, despite due and proper service of notices, the respondent did not come present before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. 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.

Determination of issues: -

9. After considering the facts submitted by the complainants and perusal of record on file, the issue wise findings of the authority are given below:
10. With respect to the **core issue** raised by the complainant, as per clause 13.3 of apartment buyer's agreement, the possession of the apartment was to be handed over within a period of 36 months (plus grace period of 180 days) from the date of approval of building plans and/or execution of the apartment buyer's agreement whichever is later. The clause regarding the possession of the said apartment is reproduced below:



"13. POSSESSION AND HOLDING CHARGES

.....subject to force majeure, as defined herein and further subject to the allottee having complied with all its obligations under the terms and conditions of this agreement and the allottee not being in default under any part of this agreement including but not limited to the timely payment of the

total sales consideration, stamp duty and other charges and also subject to the allottee having complied with all formalities or documentation as prescribed by the company, 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("committed 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 committed period to allow for unforeseen delays in obtaining the occupation certificate etc., from the DTCP under the act, in respect of the project."

Accordingly, the due date of delivery of possession on calculation from the date of execution of agreement came out to be 13.06.2015 and the possession has been delayed by 3 years and 8 months (approx.) till the date of decision. As the possession of the flat was to be delivered by 13.06.2015 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.



11. The complainant made a submission before the authority under section 34 (f) to ensure

compliance/obligations cast upon the promoter as mentioned above.

12. 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 of the authority:-

13. 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.

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.



15. A final notice dated 14.02.2019 by way of email was sent to both the parties to appear before the authority on 26.02.2019.

16. As per averments made by the counsel for the complainant that there is no progress with respect to the construction of work. Since there is no hope and scope for completion of project, no choice is left with the authority but to direct the respondent to refund the entire amount deposited by the complainant with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

Decision and directions of the authority:-

17. Keeping in view the dismal state of affairs with regard to the status of project and non-appearance of the respondent despite service, the authority left with no option but to order refund of the amount paid by the complainant to the respondent alongwith prescribed rate of interest.

18. Accordingly, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondents to refund the entire amount of Rs. 45,66,525/- paid by the complainant alongwith



prescribed rate of interest i.e. 10.75% p.a. within a period of 90 days from the date of issuance of this order failing which execution proceedings shall be initiated against the respondent ipso facto.

19. 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 under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.
20. The order is pronounced.
21. Case file be consigned to the registry.
22. Copy of this order be endorsed to the Registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram.

Dated:

Judgement uploaded on 11.03.2019

