

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

**Complaint no. : 765 of 2018**  
**Date of first hearing: 08.02.2019**  
**Date of decision : 14.03.2019**

1. Mr. Anil Kak
2. Neelam Kak

Both R/o House no. 694, Sector 7B, Faridabad  
Haryana.

**Complainants**

Versus

M/s Unitech Ltd.

Regd. office 6, Community Centre, Saket, New  
Delhi 110017.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sushil Yadav  
None for the respondent

Advocate for the complainant  
Advocate for the respondent

**EX-PARTE ORDER**

1. A complaint dated 27.08.2018 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 complainants Mr. Anil Kak

and Neelam Kak, against the promoter M/s Unitech Limited, in respect of said unit described below in the project 'Unitech South Park', for not handing over possession by the due date which is of violation of the section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 18.03.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory 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	"Unitech South Park" Sector 70, Gurugram, Haryana
2.	Nature of real estate project	Group housing complex
3.	Project area	20.02 acres
4.	Unit no.	0603, 6 <sup>th</sup> floor, block D2
5.	Unit area	1655 sq.ft.
6.	Registered/ not registered	<b>Unregistered</b>
7.	DTCP license	204 of 2008 dated

		16.12.08
8.	Date of buyer agreement	18.03.2013
9.	Total consideration as per clause 2(a) of buyer's agreement dated 18.03.2013	Rs. 1,16,74,305/-
10.	Total amount paid by the complainant as per customer ledger (upto transaction date 23.06.2016)	Rs. 41,70,600/-
11.	Payment plan	Construction linked payment plan
12.	Due date of delivery of possession as per clause 4(a)(i) i.e. within 36 months from the date of signing of this agreement	18.03.2016
13.	Delay in handing over possession from due date of possession till date of decision	2 years 11 months 27 days
14.	Penalty as per clause 4.c.(ii)	Rs. 5/- per sq. ft.per month of the super area for any delay in offering possession of the unit

4. The details provided above have been checked on the basis of the record available in the case file. A buyer's agreement dated 18.03.2013 is placed on record for the aforesaid unit according to which the possession of the same was to be delivered by 18.03.2016. Neither the respondent has delivered the possession of the said unit till date nor have they paid any compensation @ Rs.5 /- per sq.ft. per month of

the area of the said unit for the period of such delay as per clause 4.c.(ii) 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 come up for hearing on, 08.02.2019 and 14.03.2019. 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 had been initiated against the respondent.

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

6. The complainants submitted that the respondent gave advertisement in various leading newspapers about their forthcoming project named "Unitech South Park", Sector-70, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisement the complainants, booked an apartment/flat admeasuring 1655 sq. ft. in project of the respondent for total sale consideration

price is Rs. 1,16,74,305/- which includes BSP, car parking, IFMS, club membership, PLC etc. and the buyer's agreement was executed on 18.03.2013. Out of the total sale consideration amount the complainants made payment of Rs. 47,18,405/- to the respondent vide different cheques on different dates detail of which is annexed with the complainant.

7. The complainants submitted that as per buyers agreement the respondent had allotted a unit bearing no. block/tower D2-06-0603 having super area of 1655 sq. ft. to the complainants. The complainant submitted that as per clause 4.a.(i) of the buyer's agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the date of signing of the buyer's agreement and according to that the flat was to be delivered by 18.03.2016.
8. The complainants submitted that some of the clause in the buyer agreement are one sided. The complainants had signed already prepared documents and that some of the clauses

contained therein were totally unreasonable and in favor of the respondent only.

9. The complainants submitted that they regularly visited the site but was surprised to see that construction work was not in progress and no one was present at the site to address the queries of the complainants. The complainant submitted that appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the tower without completing the work.
10. The complainants submitted that despite receiving payments of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.
11. The complainants submitted that it could be seen that the construction of the block in which the complainants flat was booked with a promise by the respondent to deliver the flat by 18.03.2016 but was not completed within time for the

reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

12. The complainants submitted that as per clause 4(c)(ii) of the buyer's agreement dated 18.03.2013 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq. ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at a nominal rate of @ Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the flat as per the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of @ Rs.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 1.5% per

annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

### 13. Issue 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 amount paid by the complainant along with the interest at prescribed rate?

### 14. Relief sought

In view of the above, complainant are seeking the following relief:

- i. Direct the respondent to refund the amount of Rs. 47,18,405/- along with interest @ 18% per annum on compounded rate from the respective dates of payment of the flat in question.

### 15. Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainants and perusal of



record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

i. With respect to the **issue** raised by the complainants, the

delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 4.c.(ii) of buyer's agreement is held to be very nominal and unjust. On the other hand, the respondent is demanding interest at the rate of 18% for delay in making payment by the complainants. 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 ors. (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."*

In that case the interest for every month @10.75% p.a. will accrue till the possession is given.

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.

#### **Findings of the authority**

18. **Jurisdiction of the authority**-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.

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.

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 22.09.2018, 16.11.2018 and on 29.11.2018. Besides this, a penalty of Rs. 5000/- and Rs. 10,000/- was also imposed on 17.09.2018 and 29.11.2018 for non-filing of reply even after service of notices. Since none has present on behalf of respondent as such matter is decided ex-parte against the respondent.

21. Complainant has submitted photographs of the project which have been placed on record which distinctly shows that the project has yet been started as on date and no construction

activity has been observed from the photographs on the spot.

As per averments the complainant is well within his right to seek refund of amount deposited with the respondent an amount of Rs.41,70,600/- along with prescribed rate of interest i.e. 10.75% per annum.

22. As per clause 4(a)(i) of the floor buyer's agreement dated 18.3.2013 for unit no.0603, block-B2, in project "Unitech South Park" Sector-70, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of buyer's agreement which comes out to be 18.3.2016. Complainant has so far made an amount of Rs. 41,70,600/- to the respondent for the booked unit against a total sale consideration of Rs.1,16,74,305/-.

### **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 entire amount deposited by the complainant within prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this.
  - ii. Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
25. The complaint stand disposed of.
26. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 14.03.2019

**Judgement Uploaded on 12.04.2019**