

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

Complaint No. 870 of 2018
Date of First Hearing : 08.01.2018
Date of Decision 11.04.2019

Mrs Geeta Rani
R/o Flat no S-9, Trehan Society, Thada
More Hill view Garden, Tehsil, Tijara, **Complainant**
Bhiwadi, District Alwar, Rajasthan

Versus

M/s Landmark Apartments Pvt Ltd
Office : A-8, CR Park, New Delhi- 110019 **Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Sonu Saini Advocate for the complainant
Shri Amarjeet Kumar Advocates for the respondent

ORDER

1. A complaint dated 06.04.2018 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 Geeta Rani, against the promoter M/s Landmark Apartments Pvt Ltd.

2. Since, the memorandum of understanding was executed 07.07.2008 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 | Landmark cyber Park, Sector- 67, Gurugram |
| 2. | Registered/not registered | Not registered |
| 3. | Nature of the project | I.T. Park |
| 4. | Date of Allotment letter | 23.10.2013 (Annx C/3) |
| 5. | Date of MoU | 07.07.2008 (Annx C/2) |
| 6. | Area of unit | 1000 sq. ft. |
| 7. | Total consideration | Rs. 28,00,000/- (As per clause1 of MOU) |
| 8. | Total amount paid by the complainants | 1.Rs 25,80,000/- (as per receipts attached in records) 2.Rs. 2580769/- (as alleged by the complainant) (Annx R/1) |
| 9. | Assured return | Clause 4- Rs 47,800/- per month till date of possession or 3 years whichever is later. |

4. The details provided above have been checked as per record of the case file provided by the complainant and the respondent. . A builder buyer agreement is not available on record rather a memorandum of understanding was executed on 07.07.2008. The promoter has failed to deliver the possession of the said unit to the complainant. 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. Accordingly, the respondent appeared on 08.01.2019. The case came up for hearing on 08.01.2019. The reply filed on behalf of the respondent has been perused by the authority.

Facts of the case

6. The complainant submitted that on persuasion of the respondent company , he had visited the corporate office of the respondent company situated in sector - 44 , Gurugram to further know about the said project of “Landmark Cyber Park” and with the complete belief in the respondent company as to adhering to the time schedule as represented by the respondent company officials, agreed to filling in of the application form as a means of showing complainant’s personal interest in the above said project .

7. The complainant submitted that the respondent has claimed that they have obtained license from Director General , Town & County planning (DTCP) , Haryana for development of a commercial group on the said land and building plans have already been approved.
9. The complainant submitted that he entered into a MOU dated 07.07.2008 for purchase of commercial space admeasuring a super area of 1000 sq. ft, which was under development .
10. The complainant submitted that the respondent company in terms of the application of the complainant executed the MOU and agreed to the terms and conditions as set forth under this MOU .
11. The complainant submitted that as per MOU read with schedule of payment he has to make payments of 92% of the total cost for the unit of 1000 sq. Ft. to the respondent and remaining balance and all other charges like maintenance ,parking, EDC etc. according to the demand will be paid at the time of possession .
12. The complainant submitted that till date he had already paid full amounting to Rs. 25,80,000/- . which is approx.. 92% of the sale consideration towards the cost of the commercial

space in the complex till 28 June 2008 , including costs towards other facilities .

13. The complainant also submitted that in terms of personal visit to the project –site by him, it does not seem to be completed by July 2011 and the respondent company failed to keep their promised of delivery of the “IT Space” within the time prescribed under the MOU .

14. The complainant also submitted that the respondent company keeps on giving unintended reasoning for the delay which is otherwise should be covered within the extended time as per the MOU .

Issues to be determined

15. The relevant issues as called out from the complainant are:

- i. Whether the respondent is liable to refund the total consideration amount paid by the complainant along with interest @ 24% per annum?

Relief Sought

16. The reliefs sought by the complainant are as follows :-

- I. To handover the fully developed physical possession of the booked commercial space in the IT Park of the respondent in

the name and style of “Landmark Cyber Park” situated at Sector-67, Gurugram, Haryana.

OR

- II. Respondent may be directed to refund the total sale consideration amount of Rs. 25,80,000/- paid by the complainant along with interest @ 18% per annum from the date of payment till its actual realization.
- III. To direct the respondent to pay penalty for delay in handing over possession of the property.

Determination of issues:

1. With respect to the **first issue** raised by the complainant, as per the facts and circumstances of the case, both the parties i.e. respondent and complainant respectively are directed to hand over/take over the possession of the booked commercial space within a period of 30 days.

Respondent Reply

17. The respondent submitted that the authority in the similar matter titled as *Brhimjeet v Landmark Apartment Pvt Ltd (HRR/GGM/VRN/141/2018)* wherein it has been held that the matter in dispute therein was to be adjudicated by the adjudicating officer and not by the authority and accordingly

dismissed the complaint with liberty to approach the adjudicating officer. Respondent further submitted that the facts related to the aforesaid mentioned case and the present case in dispute are identical in nature and thus the present complaint should also be dismissed.

18. The respondent submitted that the hon'ble Supreme Court of India in the matter titled as *K Ajit Babu and Others v Union of India and Others. (Civil appeal no 3520 of 1991)* has held as "consistency, certainty, and uniformity in the judicial decisions are considered to be the benefits arising out of the doctrine of precedent". Therefore in the light of the aforesaid mentioned judgment of the Hon'ble Supreme Court of India, the present complaint should not be entertained by this authority as the same would be against the doctrine of judicial precedent.
19. The respondent submitted that the project was complete in the year 2015 and accordingly he had applied for occupation certificate before the competent authority and offered possession vide letter dated 12.06.2015. Furthermore, the offer of possession was sent to the complainant vide letter dated 15.07.2015.
20. The respondent submitted that the total cost of the unit is Rs. 28,00,000/- and complainant had paid only Rs. 25,80,000/-.

21. The respondent submitted that he had not only paid the assured return amount i.e. Rs. 15,48,289/- for the period of 3 years i.e. by June, 2011, but has paid the same in excess by Rs. 10,32,480/- for the period of almost another 1 and half year i.e. 30.06.2013.
22. The respondent submitted that as per the terms and conditions of the MoU, he is agreed to pay a sum Rs. 47,800/- as a assured return per month payable quarterly to the complainant till the date of possession or 3 years. And the respondent also submitted that the complainant apart from clearing the dues amounting to Rs 6,54,900/- is also liable to refund the excess of assured return amounting to Rs 10,32,480/-.
23. The respondent submitted that the present complaint is not maintainable or tenable in the eyes of law as the complainants have not approached the authority with clean hands and has not disclosed the true and material facts of the case.
24. The respondent submitted that the complainants wilfully agreed to the terms and conditions of the MOU and now at a belated stage attempting to wriggle out of their obligations by filling the instant complaint before this authority.

25. The respondent also submitted that the present complaint pertains to compensation and is required to be filled before the adjudicating officer under rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the Real Estate (Regulation and Development) Act, 2016.

Findings of the Authority

26. Since the project is not registered, 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. And the complainant is seeking directions against the respondent to hand over the possession of the booked unit or to refund an amount of Rs.47,80,000/- (Rs.25,80,000/- + Rs.22,00,000/- paid in cash) with interest.

27. The complainant had booked a commercial space measuring 1000 sq. ft with the respondent and MoU to this effect between the parties was signed on 07.07.2008. As per terms of clause 4 of the MoU, the respondent was obligated to pay a sum of Rs. 47,800/- to the complainant as a assured return per month payable quarterly to the complainant till the date of possession or three years but no specified time limit has been mentioned in the MoU to deliver the unit to the

complainant. In addition to this, complainant is alleging that she had paid an amount of Rs.22,00,000/- in cash on 25.06.2015 to the respondent and copy of 'katcha' receipt is placed on record. Complainant has further alleged that respondent till date has not delivered the booked unit.

28. As per the facts of the case the respondent has already paid more than the original amount paid by the complainant i.e. Rs28,00,000/- as per statement of accounts(Annex R-1). As far as payment of Rs.22,00,000/- in cash, as alleged, by the complainant the respondent denied of having received the said amount in cash.

29. It is further submitted that respondent has received occupation certificate and copy of which is placed on record and the offer of possession to the complainant shall be made subject to payment of balance amount by the complainant. Counsel for the respondent has placed a copy of judgment passed by the Hon'ble Supreme Court in case titled **Chand Rani Vs Kamal Rani(1993) 1 SCC 519**, where the Hon'ble Supreme Court has opined that if no time limit is given in case of immovable property, time is not an essence of the contract.

Jurisdiction of the authority

Subject matter Jurisdiction

30. The authority has complete subject matter 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.

Territorial Jurisdiction

31. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & 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 complainants.

32. After hearing the arguments, the authority is of the view that the authority has already adjudged the present case in the order dated 7.8.2018 passed in complaint No.141 of 2018 titled as *Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd.* which is as under:-

“The complainant has made a complaint dated 15.5.2018 with regard to the refund of the assured return of Rs.55,000/- per

month. As per Clause 4 of the Memorandum of Understanding dated 14.8.2010, the complainant is insisting that the RERA Authority may get the assured return of Rs.55,000/- per month released to him. A perusal of the Real Estate (Regulation & Development) Act, 2016 reveals that as per the Memorandum of Understanding, the assured return is not a formal clause with regard to giving or taking of possession of unit for which the buyer has paid an amount of Rs.55 Lakhs to the builder which is not within the purview of RERA Act. Rather, it is a civil matter. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project, as per the provisions of Section 18 (1) of the Act. As such, the buyer is directed to pursue the matter with regard to getting assured return as per the Memorandum of Understanding by filing a case before an appropriate forum/Adjudicating Officer”.

33. As already decided in complaint No.141 of 2018 titled as *Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd.* no case is made out. It is pertinent to note that, counsel for respondent has given a Supreme Court judgment dated 25.7.1997 vide which he has pleaded the doctrine of precedent. Since the authority has taken a view much earlier as stated above, the authority cannot go beyond the view already taken.

34. The buyer is at liberty to pursue the matter with regard to getting assured return as per the memorandum of understanding by filing a case before an appropriate forum/adjudicating officer”.
35. As complainant is seeking directions against the respondent to hand over the possession of the booked unit or to refund an amount of Rs.47,80,000/- (Rs.25,80,000/- + Rs.22,00,000/- paid in cash) with interest.
36. The complainant had booked a commercial space admeasuring 1000 sq. ft with the respondent and MoU to this effect between the parties was signed on 07.07.2008. As per terms of clause 4 of the MoU, the respondent was obligated to pay a sum of Rs. 47,800/- to the complainant as a assured return per month payable quarterly to the complainant till the date of possession or three years but no specified time limit has been mentioned in the MoU to deliver the unit to the complainant. In addition to this, complainant is alleging that she had paid an amount of Rs.22,00,000/- in cash on 25.06.2015 to the respondent and copy of 'katcha' receipt is placed on record. Complainant has further alleged that respondent till date has not delivered the booked unit. The respondent further submits that respondent has already paid

more than the original amount paid by the complainant i.e. Rs28,00,000/- as per statement of accounts. As far as payment of Rs.22,00,000/- in cash, as alleged, by the complainant the respondent denied of having received the said amount in cash.

37. Counsel for the respondent further submits that respondent has received occupation certificate and copy of which is placed on record and the offer of possession to the complainant shall be made subject to payment of balance amount by the complainant. Counsel for the respondent has placed a copy of judgment passed by the Hon'ble Supreme Court in case titled **Chand Rani Vs Kamal Rani(1993) 1 SCC 519**, where the Hon'ble Supreme Court has opined that if no time limit is given in case of immovable property, time is not an essence of the contract.

Decision and direction of the authority: -

38. After taking into consideration all the material facts as adduced and produced by both the parties, 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 in the interest of justice and fair play:

i. Both the parties i.e. respondent and complainant are directed to hand over/take over the possession of the booked commercial space within a period of 30 days.

39. As the project is registrable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceedings will be initiated against the respondent by the registration branch. A copy of this order be endorsed to registration branch for further action in the matter

38. Detailed order is pronounced.

39. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 11.04.2019

Judgement uploaded on 29.05.2019

HARERA
GURUGRAM