

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

<b>Complaint no. :</b>	<b>1560 of 2021</b>
<b>Date of filing complaint:</b>	<b>31.03.2021</b>
<b>First date of hearing:</b>	<b>31.05.2021</b>
<b>Date of decision :</b>	<b>27.05.2022</b>

Sh. Inderpal Sharma S/o Lt. Sh. B.D. Sharma <b>R/O:</b> CS-91/311, VPO Rajokri, New Delhi-38	<b>Complainant</b>
Versus	
M/s Landmark Apartments Private Limited <b>Regd. office:</b> Landmark house-65, Sector-44, Gurgaon, Haryana	<b>Respondent</b>

**CORAM:**

Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>

**APPEARANCE:**

Sh. Abhinav Tathagat (Advocate)	Complainant
Ms. Shreya Takkar (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under



the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Landmark- The Residency", Sector- 103, Gurugram
2.	Project area	10.868 acres
3.	Nature of the project	Group housing complex
4.	DTCP License	33 of 2011 dated 16.04.2011 Valid up to- 15.04.2021
5.	Name of the licensee	Basic Developers Private Limited & 2 others
6.	RERA Registered/ not registered	<b>Not Registered</b>
7.	Unit no.	(5 <sup>th</sup> , 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> floor) non- PLC unit, middle floor, 1350 sq. ft. [As per page no. 25 of the reply]
8.	Unit measuring	1350 sq. ft. (super area) [As per page no. 25 of the reply]
9.	Date of application/ provisional allotment letter	25.01.2011 [As per page no. 23 of the reply]
10.	Date of execution of builder buyer agreement	Not- executed
11.	Possession clause	<b>Clause 16 of application/provisional allotment letter</b> The company shall make all efforts to handover possession of the unit <b>within</b>



		<b>thirty (36) months from the date of the execution of buyer's agreement,</b> subject to certain limitations as may be provided in the buyer's agreement and timely compliance of the provisions of the buyer's agreement by the applicant(s). The applicant agrees and understands that the company shall be entitled to a grace period of ninety (90) days over and above the period more particularly specified here-in-above, for applying and obtaining necessary approvals in respect of the project.
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs. 43,20,000/- [As alleged by the complainant on page no. 10 of the complaint]
14.	Total amount paid by the complainant	Rs. 19,49,000/- [As alleged by the complainant on page no. 10 of the complaint]
15.	Payment plan	Construction linked payment plan [As per page no. 26 of reply]
16.	Occupation Certificate	25.09.2020 [As per page no. 49 of reply]
17.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the complainant was lured by the advertisements issued by respondent regarding development of a residential complex known as "Landmark-The Residency" (hereinafter referred to as the 'project') to be developed in Sector 103, Tehsil & District Gurgaon, (Haryana) and planned to purchase a 2 BHK residential flat for his personal/family use.



4. That believing on the advertisement and false representations of the respondent that the said project shall be completed within 5 years of booking, the complainant paid a booking amount of Rs. 4,32,000/- vide two cheques dated 19.01.2011 and 26.02.2011 drawn on DCB Bank for a sum of Rs 2,00,000/- & Rs. 2,32,000/- respectively and receipt dated 25.01.20211 was issued against aforesaid payment by the respondent.
5. That after expiry of two months from the date booking there was no allotment letter or any kind of communication on part of the respondent. Thus, it requested the respondent for issuance of allotment letter and execution of builder/flat buyers' agreement in respect of the aforesaid flat. However, the respondent failed to either issue the allotment letter or to execute the builder/flat buyers' agreement despite several requests of the complainant.
6. That thereafter, on the request of the respondent, the complainant again made a payment of Rs. 6,48,000/- towards sale consideration of the said flat vide two cheques bearing no. 25612 & 25613 drawn on DCB Bank for the amount of Rs. 3,48,000/- & 3,00,000/- respectively. However, the respondent yet again failed to act further on its part and did not issue any allotment letter or executed buyers' agreement.
7. That the respondent issued a demand notice dated 12.09.2012, admitting the receipt of Rs. 10,80,000/- up to 31.03.2012 and demanded a sum of Rs.



27,810/- towards the service tax on the amount deposited by the complainant till 31.03.2012. However, despite repeated reminders and requests, the respondent did not come forward to execute any other documents as mentioned herein above in favour of the complainant.

8. That the respondent's executive kept dilly dallying and avoiding the execution of agreement and issuance of any letter in favour of the complainant on the one pretext or the other. Further, whenever the complainant used to enquire about the status of construction of his flat, the executive of the respondent never gave any satisfactory reply and used to make false statements to the effect that the construction of the project is in full swing and the same shall be completed very soon.
9. That on requests of the officials of the respondent, he further made payments of Rs. 5,19,000/- vide cheque no. 025617, drawn on DCB New Delhi and Rs. 3,50,000/- vide cheque no. 00245 drawn on Kotak Mahindra Bank towards the sale consideration of the flat. Almost 50% of total sale consideration has been paid by the complainant till the year 2013. But the respondent has failed to take necessary steps on its part in furtherance of the transaction between the parties.
10. That in the month of April 2018, the complainant visited the construction site and was shocked to see that the construction work was not complete even after more than 7 years of booking of the flat in the year 2011. The



respondent has failed to inform the complainant the exact reasons for delay in construction of the project.

11. That on account of the above-mentioned conduct of the respondent, the complainant has decided to withdraw from the project and requested it to return his hard-earned money, to which the respondent initially agreed and requested for some time to return the money. However, later on, the complainant realised that it was nothing but a delaying tactics adopted by the respondent to further harass the complainant.
12. That in view of aforesaid circumstances, the complainant issued a legal notice dated 30.07.2018. Despite receiving the said legal notice, the respondent neither complied nor replied to it and kept requesting the complainant for time to return his money and also tried to convince the complainant for out of court settlement. The complainant in the hope of getting his hard-earned money back without irking the respondent approached the Permanent Lok Adalat at Gurugram vide an application under section 22C of the Legal Services Act, 1987, seeking relief of refund along with interest and compensation.
13. That to the shock and surprise of the complainant, the respondent filed a reply before the Permanent Lok Adalat, wherein the respondent did not deny that it had received the amount of Rs.19,49,000/- against the said booking in the manner mentioned herein above. It did not deny that the



booking was made in the year 2011 and did not state that the construction of the project is complete or the flat of the complainant is complete in all aspect. However, it malafidely refused to return the hard-earned money of the complainant on the ground that he was a defaulter, and he ought to have filed a recovery suit by paying the requisite court fees if he wanted his money back.

14. That the respondent has in effect refused to settle the matter before the Permanent Lok Adalat and in view of these circumstances, the complainant was left with no other alternative but to approach this this authority as his last hope getting back his hard-earned money. Needless to state that the matter filed before Permanent Lok Adalat is presently pending adjudication and no final order in the said matter has been passed and as such, there is no bar for the complainant to approach the authority for adjudication of the dispute.

**C. Relief sought by the complainant:**

15. The complainant has sought following relief(s):
- i. Direct the respondent to refund the amount of Rs. 19,49,000/- being the principal amount paid by the complainant against the sale consideration of the subject unit along with interest @ 24% p.a. to an extent of Rs. 43,01,012/- calculated from the date of respective payments till 15.03.2021.



- ii. Direct the respondent to pay Rs. 1,00,000/- to the complainant as cost towards litigation charges and to pay the compensation of Rs. 1,00,000/- for the mental agony and financial loss suffered by him.
- iii. Direct the respondent to compensate the complainant with Rs. 5,00,000/- due to inflation in property market proportionate size of flat in the past 5 years.

**D. Reply by respondent:**

The respondent by way of written reply made the following submissions:

16. That the complainant himself approached the respondent at its office and showed interest in the project. The complainant being an educated person and on his own free will and understanding booked the unit after satisfying himself. The complainant applied for booking of 2 BHK flat admeasuring 1350 sq. ft. It is denied that no allotment letter was issued to the complainant. It is submitted that in due consideration of complainant's commitment to make timely payments, a unit was allotted to him vide provisional allotment/ application form dated 25.01.2011. The complainant did not make the payments as per the terms of the provisional allotment / application and as per the demand notices issued from time to time and thus, delayed the execution of the buyer's agreement.
17. That the demands raised were strictly in accordance of the schedule being legal and proper. The complainant never requested for the execution of the agreement, or any document as stated. In fact, it is the complainant who did



not come forward for payment or execution of the agreement. The complainant was dilly-dallying and avoided the execution of agreement and issuance of any letter in his favour.

18. That the complainant did not come forward to make the payment as a result of which the respondent issued reminders/ letters. Thus, the respondent was constrained to issue final reminder cum cancellation letter dated 03.03.2012. Thereafter, the complainant visited the office of the respondent and requested it to not to cancel the unit allotment, as he was going through some financial difficulty. Accordingly, the respondent acceded to his and the officials of the respondent elected not to cancel his unit. Thereafter, the respondent vide letter dated 12.09.2012 raised further demand of the due amount. However, the complainant again requested the respondent for some more time to clear the outstanding dues as he was in financial difficulty.
19. That the respondent being a customer-oriented company agreed to the request of the complainant and granted time to him to clear his dues. Ultimately, due to default of the complainant on account of non-payment of the dues, the respondent was constrained to issue last and final reminder whereby the respondent accorded final opportunity to the complainant to clear the outstanding dues and informed that in case of non-receipt of the payment within the prescribed time, then the said letter be treated as a



cancellation letter. Thereafter, the complainant failed to pay the outstanding dues and accordingly, the booking of the complainant was deemed to be cancelled.

20. That the project and the unit of the complainant is fully developed and complete, and the complainant is not coming forward to take the delivery of the possession and rather is levying false and baseless allegations. The respondent deny each and every averment of the complainant. It is submitted that the complainant is not entitled to any relief or interest as alleged.
21. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

22. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

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.

## **E. II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

## **F. Findings on the objections raised by the respondent:**

### **F.I Objections regarding default on behalf of the complainant:**



23. It was pleaded on behalf of respondent that the complainant failed to make timely payments with regard to consideration of the subject unit and never came forward to get execute the buyer's agreement and other documents. As a consequence, the unit of the complainant was cancelled vide letter dated 03.03.2012. The complainant alleged that the complainant has paid an amount of Rs. 19,49,000/- towards total consideration of Rs. 43,20,000/- constituting approximately 50% of total consideration. The authority observes that the complainant opted for construction linked payment plan and the same is evident from application form filed by him. There is nothing on the record to substantiate the status of construction at the project. The complainant till date has paid an amount equivalent to 45% of total consideration. It was the obligation on part of the respondent to allot a specific unit in respect of application filed by the complainant before raising any further demands from him. Therefore, the plea advanced by the respondent is devoid of merit and hence, is rejected.

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the amount of Rs. 19,49,000/- being the principal amount paid by the complainant to the respondent against the sale consideration of the subject unit along with the interest @ 24% p.a. to an extent of Rs. 43,01,012/- calculated from the date of respective payments till 15.03.2021.**

24. The complainant was allotted a unit in the project of respondent detailed above on 25.01.2011 for a total sale consideration of Rs.43,20,000/-. No builder buyer agreement was executed between the parties. The complainant paid a sum of Rs.19,49,000/- up to 26.08.2013. As per clause 16 of the letter of allotment, the possession of subject unit was to be offered



within 36 months from the date of execution of builder buyer agreement with a grace period of 90 days. The due date for completion of project and offering possession of the unit comes to 25.01.2014. But the respondent failed to carry out the construction of the project and which led to his withdrawal from the project and seeking refund by filing of complaint on 16.03.2021. In between, the complainant also filed a complaint before permanent Lok Adalat seeking refund on 30.07.2018. However, it is pleaded on behalf of the respondent that though the complainant booked a unit in its project but failed to execute the BBA. A number of reminders in this regard as well as demands for payment of the due amount were issued vide annexures R-3 to R-5 but with no positive results. The project has been completed and OC has been received on 25.09.2020. When the complainant failed to pay the due amount, he was issued last and final reminder on 15.10.2013 to make payment and otherwise, treating that reminder to be cancellation of the unit. No doubt, the complainant failed to make payment of the amount due despite issuance of reminders but in the absence of BBA, it was obligatory upon the respondent to follow the provisions of provisional allotment letter dated 25.01.2011 as per under clause 10 and refund the remaining amount after deducting the earnest money. There is nothing on the record that after cancellation of unit as per the provisions of provisional allotment letter, any amount was sent to the complainant. Secondly even otherwise as per regulation 11 of 2018 of the authority, the respondent could have deducted 10% of basic sale consideration of unit and not beyond that. So, keeping in view all these facts the termination of the allotted unit is not as per law. It is pertinent to



note that the respondent has been using the amount paid by the complainant even after cancellation of subject unit. Thus, the respondent is directed to refund the amount received from the complainant, after deducting 10% of the basic price. Therefore, the respondent is further directed to return the amount paid by the complainant with interest @ 9.50% per annum from the date of cancellation of the allotted unit till the actual realization of the amount.

25. The authority hereby directs the promoter to return to the complainant, the amount received by it i.e., **Rs. 19,49,000/-** with interest at the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of said unit till the actual date of refund of the amount after deducting 10% of the basic sale price within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G.II. Direct the respondent to pay Rs. 1,00,000/- to the complainant as cost towards litigation charges and to pay the compensation of Rs. 1,00,000/- for the mental agony and financial loss suffered by the complainant.**

**G.III. Direct the respondent to compensate the complainant with Rs. 5,00,000/- due to inflation in property market proportionate size of flat in the past 5 years**

26. The complainant is claiming compensation in the above-mentioned relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/right which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may



file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**H. Directions of the Authority:**

27. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

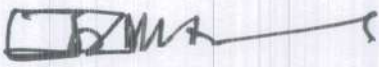
- i) The respondent /promoter is directed to refund the amount received by it from the complainant after deducting 10% of the basic sale price of the unit along with interest at the rate of 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation till the date of actual realization of amount.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. KK Khandelwal)  
Chairman

**Dated: 27.05.2022**