

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

<b>Complaint no.</b>	<b>:</b>	<b>419 of 2021</b>
<b>Date of filing complaint:</b>		<b>03.02.2021</b>
<b>First date of hearing</b>	<b>:</b>	<b>08.03.2021</b>
<b>Date of decision</b>	<b>:</b>	<b>18.04.2023</b>

Mahavir Yadav S/o Sh. Ram Kishan Yadav <b>R/O:</b> VPO Wazirabad, Near Water Supply, Sector - 52A, Gurugram, Haryana	<b>Complainant</b>
Versus	
M/s Landmark Apartments Private Limited <b>Regd. office:</b> Landmark House, Plot no. 65, Sector - 44, Gurugram, Haryana	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
None	Complainant
Sh. Amarjeet Kumar (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 allottees 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. N.	Particulars	Details
1.	Name of the project	Landmark Cyber Park, Sector 67, Gurugram
2.	Total project area	8.3125 acres
3.	Nature of the project	Cyber Park
4.	DTCP license no. and validity status	97 of 2008 dated 12.05.2008 valid up to 11.05.2020
5.	Name of licensee	M/s Landmark Apartments Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 61 of 2019 dated 25.11.2019
7.	Allotment Letter (for old unit)	01.12.2011 (Page 24 of complaint)
8.	Unit no.	<b><u>New Unit</u></b> Executive Suite no. 1222, 1 <sup>st</sup> floor (Page 50 of reply) <b><u>Old Unit</u></b> Executive Suite no. 18, 4 <sup>th</sup> floor (Page 24 of complaint)





9.	Unit area admeasuring (Super area)	<b><u>New Unit</u></b> 186 sq. ft. (Page 50 of reply) <b><u>Old Unit</u></b> 150 sq. ft. (Page 24 of complaint)
10.	MoU	05.12.2011 (Page 18 of complaint)
11.	Addendum to MoU	Date not specified
12.	Possession Clause	<b>10.1 Possession</b> The developer based on its present plans and estimates and subject to all exceptions, contemplates to complete construction of the said apartment within a period of four years (48 months) from the date of execution of this agreement. (Taken from CR/544/2019 Case titled as Hari Ram Gupta V/s M/s Landmark Apartments Pvt. Ltd., in the absence of BBA)
13.	Due date of possession for old unit	01.02.2016 (Calculated as two months plus four years from allotment letter)
14.	Offer of Possession (Fit outs) for old unit	09.07.2015 (Page 32 of Reply)
15.	Request for change of unit	17.05.2017 (Page 33 of the reply)

16.	Allotment Letter for new unit	04.06.2018 (Page 40 of the reply)
17.	Date of execution of BBA (new unit)	10.12.2019
18.	Possession Clause for new unit	<b>3(a) Possession</b> <i>"That the same unit is ready for handover and the possession of the said unit shall be deemed to be handed over to the Allottee after signing this Agreement".</i> (Page 52 of reply)
19.	Due date of Possession	<b>10.12.2019</b> <b>(Date of execution of BBA)</b>
20.	Total sale consideration	<b><u>New Unit</u></b> Rs. 20,46,000/- (BSP) (Page 50 of reply) Rs. 21,49,230/- (Page 61 of the reply) <b><u>Old Unit</u></b> Rs. 16,50,000/- (BSP) (Page 25 of Reply)
21.	Amount paid by the complainant	Rs. 16,50,000/- (As pleaded by complainant on page 5 of complaint)
22.	Assured Return paid by Respondent till 12.02.2016	Rs. 5,34,600/- (Page 30 of Reply)



23.	Occupation certificate	26.12.2018 (Page 42 of the reply)
24.	Offer of possession (for new unit)	10.12.2019 (Date of execution of BBA taken as date of offer of possession in accordance with Clause 3(a) of the BBA)

**B. Facts of the complaint:**

3. That That on 18-10-2011, respondent issued an advertisement through brochure, inviting applications for commercial unit. The complainant was interested in the project and thereafter approached the builder. He was allotted a unit bearing no 18 as per allotment dated 01-12-2011 in project on fourth floor having super area of 150 Sq. Ft. on terms and conditions signed between the parties as MOU 05-12-2011.
4. That on date 18-10-2011 and dated 01-12-2011 an amount of Rs. Rs.14,85,000/- was paid to respondent as advance deposit for the said unit. That in total the payment Rs.16,50,000/- has been made within time to the developer as per payment schedule of addendum of memorandum of understanding and memorandum of understanding dated 05-12-2011.
5. That the date of possession was 5<sup>th</sup> December -2014 as per agreement dated 05-12-2011. That as per MOU, respondent shall pay Rs.16,500/- per month quarterly to him till the date of possession or three years, whichever is earlier as per addendum of memorandum of understanding and memorandum of understanding dated 05-12-2011.

6. That the possession over the said property has not been provided by the developer within time to the allottee as per allotment / MOU

7. Hence, the complaint.

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

8. The complainant has sought following relief(s):

- a) Direct the respondent to refund the amount of Rs. 16,50,000/- with prescribed rate of interest.

**D. Reply by respondent:**

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

9. That complainant booked a unit in a project developed by the respondent by the name "LANDMARK CYBER PARK" situated in Sector 67 Gurugram. That one of the offers made by the respondent at that point of time was that the unit will have a benefit of assured return for a period of three years or till the date of possession whichever is earlier. Thereafter the complainant entered into an MOU dated 05.12.2011 with the respondents determining all the rights and liabilities of the parties.
10. That the complainant as per the terms of the MOU made payment of 100 percent approx. of basic sale price @ Rs.11000/- per sq. ft for an area admeasuring 150 sq. ft to the respondent. That as per the clause 3 of the MOU, it was specifically agreed that the respondent will pay a sum of Rs. 16,500/- every month as assured return, payable quarterly till the date of possession or 3 years whichever is earlier.



11. That on 15.12.2014, the complainant was duly informed that since as per the terms of the MOU, the allottees are liable to make the payment of EDC/IDC and other statutory charges, the assured returns cheques are kept on hold and shall be paid at the time of possession.
12. That it is pertinent to mention here that the respondent successfully completed the project in the year 2015 and accordingly applied for OC in April 2015. That the respondent after applying the OC accordingly informed the tentative date of receiving the OC to all its buyers including the complainant vide letter dated 9<sup>th</sup> of July 2015.
13. That thereafter the complainant requested for a change in the unit allotment from 4<sup>th</sup> floor to 1<sup>st</sup> floor vide its letter dated 17.05.2017 and vide another letter dated nil, the complainant also requested to enhance its allotted area from 150 sq. ft. to 186 sq. ft. and further undertook to pay the differential amount towards the increase in area.
14. That an addendum to MOU dated 05.12.2011 was executed between the parties vide which the change in the unit allotment form 4<sup>th</sup> floor to 1<sup>st</sup> floor was made. Further under the said addendum, the complainant acknowledged having received the complete assured return amount w.r.t MOU dated 05.12.2011 and also undertook to pay charges towards maintenance, parking, EDC, IDC, electric charges and other taxes levied by the Government as per the demands raised by the respondent.
15. That on 06.06.2018, demands of Rs. 6,29,977/- was raised by the respondent upon the complainant against the pending BSP, development

charges, firefighting charges. However, the complainant has failed to clear the said amount.

16. That on 04.06.2018, respondent allotted the complainant a unit bearing no. 1222 admeasuring 186 sq. ft. super area on first floor in the project.
17. That on 04.08.2018, since the complainant did not pay the demand dated 04/06.06.2018, respondent issued a reminder to clear the said outstanding amount of Rs. 6,29,977/-. However, the complainant again failed to clear the said outstanding.
18. That the project is already complete, and the respondent has also received the OC on 26.12.2018 from the Competent Authorities and thus is not a fit case of refund.
19. That thereafter a builders buyer agreement dated 10.12.2019 was executed between the parties for the allotment of executive suite no: 1222, 186 sq. ft. of super area on 1<sup>st</sup> floor of the landmark project. It is submitted that the complainant executed a builders buyer agreement dated 10.12.2019 where in it was specifically admitted that the complainant has already received the entire assured return in terms of the agreement and further stated therein that the unit is ready for the delivery of the possession. It was further stated in clause 3(g) of the agreement that the complainant shall take over the possession of the unit within a period of 30 days if not opting for a lease arrangement and that a deemed physical possession would be considered after the lapse of the said 30 days and the complainant shall be liable to make payment of all applicable statutory



dues/charges/maintenance security etc in terms of clause 2(f) and clause 2(g) of the agreement. Thereafter, demand notices were issued in 2020 and 2021 to the complainant but he did not come forward to take the possession of the unit nor did he make the payment of the due amount in terms of the agreement.

20. That the complainant is not entitled for any refund in the instant case as the unit allotted to the complainant is ready in all respects and the respondent has offered possession to the complainant but the complainant himself does not want to come forward and take the possession of the unit in terms of the agreement.
21. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

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

**F.I Direct the respondent to refund the amount of Rs. 16,50,000/- with prescribed rate of interest.**

23. The project detailed above was launched by the respondent and the complainant was allotted the subject unit on 01.12.2011 against total sale consideration of Rs. 16,50,000/-. A period of 4 years and 2 months was allowed to the respondent for completion of the project and that period



has admittedly expired on 01.02.2016. It has come on record that against the sale price of Rs. 16,50,000/-, the complainant has paid full amount i.e., Rs. 16,50,000/-to the respondent which constitutes 100% of the sale consideration.

24. The complainant was initially allotted unit on 4<sup>th</sup> floor but vide written letter dated 17.05.2017, the complainant requested to change its unit to a unit on 1<sup>st</sup> floor. It is pertinent to mention that the possession of the old unit was offered 09.07.2015 i.e., before the obtaining of occupation certificate but before the due date of possession. Following this, the complainant made a request for transfer of unit and the same was done by the respondent and the allotment letter of the new unit was issued on 04.06.2018.
25. That vide allotment letter he was allotted space admeasuring 186 sq. ft., and a reminder was also sent to complainant on 04.08.2018 and was asked to pay Rs. 6,29,977/-. However, the same was not paid till date. The BBA was then executed on 10.12.2019 wherein the possession clause read,

*““That the said unit is ready for handover and the possession of the said unit shall be deemed handed over to the Allottee after signing this Agreement”.*

Thus, the possession was deemed to be offered on 10.12.2019.

26. The complainant then approached the Authority by filing complaint on 03.02.2021 for seeking refund. They approached the authority after the due date of possession and receipt of occupation certificate (which was received on 26.12.2018)
27. Thus, keeping in view decision of Hon'ble Apex Court of land in cases ***of Maula Bux Vs. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram***

**Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136**, that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. A similar view was taken by the **Hon'ble National Consumer Dispute Redressal Commission in consumer case no. 2766 of 2017 titled as Jayant Singhal & Anr. Vs M/s M3M India Limited decided on 26.07.2022**. Even keeping in view, the principles laid down in the first two cases, the Haryana Real Estate Regulatory Authority Gurugram framed regulation 11(5) known as (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under-

**"AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"*

28. It could have retained 10% of the basic sale consideration of the unit and returned the remainder amount. Since that was not done, so now the respondent is directed to refund the paid-up amount after deducting 10% of the basic sale consideration of the unit being earnest money from the date of filing of complaint i.e., 03.02.2021 within 90 days from the date of



this order along with an interest @10.60 % p.a. on the refundable amount, till the date of realization of payment.

**G. Directions of the Authority:**

29. Hence, the Authority hereby passes this order and issues 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 is directed to refund to the complainant the paid-up amount of Rs. 16,50,000/- after deducting 10% as earnest money of the basic sale consideration of Rs. 20,46,000/-with interest at the prescribed rate i.e., 10.70% is allowed, from the date of filing of the complaint till the date of realization minus the amount i.e., Rs. 5,34,600/-already received by him by way of assured return.
- 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.

30. Complaint stands disposed of.

31. File be consigned to the registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 18.04.2023