

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

Date of decision: 17.05.2023

Name of the Builder		Landmark Apartments Private Limited	
Project Name		Cyber Park	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/3506/2021	Kailash Kumari Marwah vs. Landmark Apartments Private Limited	Complainant in person with Advocate Ashok Saini Shri Amarjeet Kumar
2.	CR/5322/2022	Landmark Apartments Private Limited vs. Kailash Kumari Marwah	Shri Amarjeet Kumar Respondent in person with Advocate Ashok Saini

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of two complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottee of the project, namely, Landmark Cyber Park being developed by the respondent/promoter i.e.,

Landmark Apartments Private Limited. The terms and conditions of the application form, fulcrum of the issues involved in the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges, possession.

A. Project and unit related details

3. Both the cases relate to two allotted unit. One among these is filed by the allottee and the other one is filed by the builder, so far deciding both the cases, the facts of first case are being taken. But before that the particulars of the project, the details of the sale consideration, the amount paid by the complainant, the date of proposed handing over the possession, delay period, if any are being given in the tabular form.

S. N.	Particulars	Details
1.	Name of the builder	Landmark Apartments Pvt. Ltd.
2.	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.	Unit no.	LCC- 020 & LCC-021, Executive suite



		(As alleged by the complainant in the facts) (Page no. 07 of the complaint)
8.	Unit area admeasuring	105 sq. ft. (Page no. 31 of reply)
9.	Date of application form	14.01.2010 (Page no. 33 of the reply)
10.	Possession clause in allotment letter	10. Possession That the possession of area shall be offered by the company within 36 months from the date of signing of the agreement to sell. [emphasis supplied] (Page 34 of the reply)
11.	Due date of possession	14.01.2013 (No builder buyer agreement has been executed inter-se parties, but a similar document containing rights and liabilities of both the parties has been placed on record)
12.	Basic sale consideration	Rs.9,50,000/- For each unit (As per on page 32 of reply)
13.	Amount paid by the complainant	LCC-020: - Rs. 9,47,042/- LCC-021: -Rs. 9,47,042/- (As alleged by the complainant in the

		facts on page 11 of complaint)
14.	Occupation certificate	26.12.2018 (As per on page 79 of reply)
15.	Offer of possession	03.09.2019 (As per on page 84 of reply)

B. Facts of the complaint

4. That the respondent is engaged in the business of real estate and constructions of the commercial as well as residential group housing societies. Somewhere around year 2010, the respondent through its directors had launched a scheme for sale of commercial space in a multi-storey building in the name & style known as "Landmark Corporate Centre (a part of Landmark Cyber Park)" (hereinafter called as "the project") on a parcel of land situated in Sector-67, Gurugram, Haryana. In the month of January 2010, the respondent through its representative Mr. Ravi Ranjan approached/contacted the complainant for sale of the commercial unit and assured the complainant that the said project will be completed within a period of three years from the date of execution of the application form, with a grace period of six months.
5. Believing the representations & assurance of the respondent to be true and correct and in the lookout for commercial space for herself and her family, on 14.01.2010, the complainant booked two executive suites (furnished) in commercial space unit measuring 105 Sq. ft., and super built-up area is 105 Sq. ft. In the said project at the pre-launching stage as advance registration unit no. LCC-020 & LCC-021 vide receipts cum acknowledgement dated 14.01.2010 and



on the basis of the above said booking, the respondent has allotted and confirmed the unit no. no. LCC-020 & LCC-021 to the complainant in the project. She on 26.04.2010 received a letter with a subject allotment of executive suite in the said project but the same letter was found to be a demand letter as per its content.

6. Many times he requested for execution of builder buyer agreement in order to make payment as demanded by the respondent time to time and she also suggested to the respondent that demanding payment without valid agreement is not lawful but the respondent instead of providing signed agreement to her, threatened her that if he will not make the payment as per demand letter he will be charged heavy penalty and' interest on the delayed payment and the respondent will also cancel the unit registered in the name of complainant and forfeit the money paid by the complainant. Under pressure & coercion, the complainant deposited the demanded payment of both units i.e., LCC 020 & LCC 021 to the respondent well within time vide receipts dated 18.06.2010 total' amount. Rs.9,47,042 of each unit.
7. Again on 19.08.2013, the complainant sent a letter to the respondent for acknowledging the letter sent by her after a long period of 8 years, the respondent sent a letter dated 31.10.2018 along with calculation sheet for merger the units thereby the respondent will allot one executive suite of 180 Sq. Ft. area after merger of both the units the complainant had to pay a sum of Rs. 9,32,678/- which she did not accept.
8. on 21.11.2018, the complainant replied to the letter dated 31.10.2018 thereby she explained that she booked two no's of executive suites with minimum area of 105 Sq. Ft. on 14.01.2010 vide application no. 1205 & 1220 under customer Id. Lcc-020 & 021 and against the above said units she has paid a sum of

Rs.9,47,042/- of each unit and Rs.47,500/- is balance to be paid at the time of possession of the above said units.

9. On 25.01.2019 the respondent sent letter for intimation of completion of project and advice to look for other options like upgrade of 180 sq. ft. instead of 105 sq. ft. two units and the respondent clearly refused to deliver the possession of the units booked by the complainant. On 05.02.2019, the complainant intimated that she has not received the possession letter from the respondent and requested the respondent to confirm the identification of the units allotted to her.
10. On 07.09.2019 the respondent sent letter for taking possession but in the said letter it was not explained by the respondent that possession of which units are handed over by the respondent. Further, the respondent raised outstanding demand Rs.6,12,109/- without providing the statement of account. The respondent further warned that in case the complainant failed to deposit the balance amount they will cancel the units and forfeit the payment of the complainant. The complainant telephonically as well as through letters 23.09.2019, 02.02.2021, 01.03.2021 contacted respondent for possession of the above said property but the respondent has failed to respond the calls as well as letters of the complainant.
11. Thus, this complaint.

C. Relief sought by the complainant:

12. The complainant has sought following relief(s):
 - i. Direct the respondent to pay the interest at the prescribed rate 24% per annum for causing delay in delivery of possession of two executive suites on the amount deposited by her from the due date till its full realisation.

- ii. Direct the respondent to handover the possession of above LCC 020 & LCC 021 two executive suites to her upon setting off the amount of interest along with all additional facilities and as per quality standards promised and execute all the necessary required documents in respect of the said executive suites in favour of her.
 - iii. Direct the respondents to pay the complainant a sum of Rs.5,00,000/- towards the litigation expenses for this complaint.
13. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

14. The respondent has contested the complaint on the following grounds:
- i. That the present complaint is not maintainable as this Hon'ble Authority has no jurisdiction to deal with a violation under Sec 12, 14, 18 and 19 of the RERA Act, 2016.
 - ii. That the complainant on her own free will and understanding applied for the booking of two units in Landmark Corporate Centre, a part and parcel of Landmark Cyber Park, Sec 67 Gurugram vide two application forms dated 14th January 2010. The application form contained the indicative terms of allotment. The Complainant opted for the instalment linked payment plan for both the units. The details of the units allotted to the complainant are as follows:



LCC 20- Rs. 9,50,000/- (BSP) plus applicable charges, EDC, IDC, FFC, IFMS and taxes.

LCC 21- Rs. 9,50,000/- (BSP) plus applicable charges, EDC, IDC, FFC, IFMS and taxes.

- iii. That the complainant had taken the copy of the buyer's agreement for both the units for execution at her end however, the complainant did not execute the same for reasons best known to her. The respondent raised the various demands as per the payment plan opted by the complainant. It is submitted that the complainant had approached the respondent to either merge the 2 units/booking and allot a bigger unit admeasuring approx. 180 sq. ft. and transfer the funds as she was facing a financial difficulty. The respondent as a goodwill gesture was ready and willing to accede to the request of the complainant and also showed her the available options to finalize a unit. However, the complainant did not come forward to finalize the unit or complete the paper formalities regarding change of unit. It is submitted that the respondent approached the complainant on various occasions to come forward and select the unit, however the complainant failed to come forward despite repeated requests. That the complainant defaulted in making timely payments despite being well aware that as per clause 6 of the application form making timely payment was the essence of the transaction. As a result of which the respondent was constrained to issue reminder letters dated 03.09.2014 for both the units. Thereafter, due to conduct of the complainant the respondent No.1 was constrained to issue final reminder letter against the booking. That since the building was complete in all respects; the respondent expected the OC to be received within a period



of 3 months. That despite the said intimation the complainant failed to approach the respondent and make any payments as per the agreed term. That the complainant has failed to disclose that he was duty bound under the executed application form to clear his outstanding dues at the time of intimation of possession. That it is pertinent to mention here that since the respondent had applied for the OC and since there was no objections raised by the Competent Authorities, a deemed OC was already existing in favor of the respondent.

- iv. That the project is already complete, and the respondent has also received the OC from the competent Authorities. That the present case is not a fit case for awarding delay possession charges since the complainant has been in constant breach of the terms and condition of the application form i.e., taking over of possession after clearance of its lawful dues and also did not execute the buyer's agreement. That thereafter the complainant again approached the respondent only in 2018 and post discussion letter dated 31.10.2018 was issued to the complainant.
- v. The occupation certificate was granted on 26.12.2018 by the Competent Authorities. That the complainant has failed to disclose another letter dated 25.01.2019 which was issued to the complainant informing her that the units booked by her are ready for handover. In the said letter it was also stated that pursuant to her request the respondent is ready and willing to allot unit admeasuring 180 sq.ft. and requested the complainant to come forward and execute the necessary documentation. That thereafter the respondent had again sent a letter dated 03.09.2019 for reminder of taking over of possession.

- vi. However, the complainant has failed to select the unit and has failed to clear her outstanding dues till date. It is submitted that the complainant has approached the Hon'ble Authority with malafide intention to restrain the respondent from claiming its lawful dues.
- vii. That the application form/provisional allotment was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said application form/provisional allotment. The said application form/provisional allotment was duly signed by the complainant after properly understanding each and every clause contained in the application form/provisional allotment.
- viii. That the complainant has approached the Hon'ble Authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the purported complaint would not have arisen. It is settled law as held by the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath 1994(1) SCC(1)** that non-disclosure of material facts and documents amounts to a fraud on not only the opposite parties but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in **Dilip Singh Vs State of UP 2010-2-SCC-114** and **Amar Singh Vs Union of India 2011-7-SCC-69** which is also been followed by the Hon'ble National Commission in the case of **Tata Motors Vs Baba Huzoor Maharaj being RP No. 2562 of 2012 decided on 25.09.2013**.
- ix. That it is further submitted that this is a composite complaint in respect of two units (executive suites) booked by the complainant with the

respondent. The complainant entered into two separate application form with the respondent in respect of each of the aforesaid two commercial units. A composite complaint in respect of two separate allotments is not maintainable under the RERA Act since each booking constituted a separate contract giving rise to an independent cause of action. There is no provision in the RERA Act for clubbing of the causes of action arising out of two separate contracts, even if the said causes happen to be against the promoter. Therefore, the present complaint is liable to be dismissed on the same threshold.

15. 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 based on these undisputed documents.

E. Jurisdiction of the authority

16. The respondent has raised a preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

17. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

18. 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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

19. So, in view of the provisions of the Act of 2016 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 relief sought by the complainant:

- i. **Direct the respondent to pay the interest at the prescribed rate 24% per annum for causing delay in delivery of possession of two executive suites on the amount deposited by the complainant from the due date till its full realisation.**



- ii. **Direct the respondent to handover the possession of above LCC 020 & LCC 021 two executive suites to the complainant upon setting off the amount of interest along with all additional facilities and as per quality standards promised and execute all the necessary required documents in respect of the said executive suites in favour of the complainant.**

20. The complainant is seeking possession and delay possession charges at the prescribed rate and proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 17.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

23. The definition of term 'interest' as defined under section 2(za) of the act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

25. On consideration of documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of date of provisional allotment/application form on 14.01.2010 (as the agreement has not been executed), the possession of the subject apartment was to be delivered i.e., by 14.01.2013. The occupation certificate of the project was received on 26.12.2018.



26. The respondent contended that he has already offered the possession to the complainant vide letter dated 03.09.2019 and further, sent many reminders demanding outstanding amount payable by her, but she has not come forward to fulfil either of the two. On the contrary, the complainant alleged that she neither received any letter of possession nor intimation w.r.t. clarification of the units allotted. Secondly, it is observed that the present complaint pertains to two commercial units belongs to single complainant only. The respondent took a plea on this ground and contended that the said complaint is not maintainable, but it has not pressed this issue in court proceedings and also in cross complaint which was filed by respondent-builder, instead it seeks the relief that the complainant-allottee be directed to take the possession of two units which are ready and in the state of being occupied which means respondent-builder is raising two different contentions at the same point of time which anyways doesn't make his stand clear. Subsequently, it is unfair at this stage to dismiss this complaint only on the ground that it pertains to two units. So accordingly, the Authority is of the view that the said complaint is very well maintainable. Accordingly, the complainant is entitled for the delayed possession charges as there is failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 14.01.2013 till date of grant of OC i.e., 26.12.2018 plus two months which comes to 26.02.2019 at



prescribed rate i.e.,10.70 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

F. II Direct the complainant-allottee to pay balance consideration and delayed interest.

28. The complainant has paid 99.6 % of sale consideration and for the remaining amount she is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and thereafter payment of such dues, if any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement

F.III Direct the respondents to pay the complainant a sum of Rs.5,00,000/- towards the litigation expenses for this complaint.

29. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, 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.

✓

G. Directions of the authority

30. 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 function entrusted to the authority under section 34(f):

- i) The respondent shall pay delayed possession charges at the prescribed rate of interest i.e., 10.70 %p.a. for every month of delay on the amount paid by complainant to them from the due date of possession i.e., 14.01.2013 till date of OC i.e., 26.12.2018 plus two months which is 26.02.2019.
- ii) The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges for the delayed period and thereafter payment of such dues, if any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications agreed.
- iii) The promoter shall not charge anything which is not part of the application form/provisional allotment.
- iv) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



- v) The respondent is directed to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order.
- vi) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

31. A copy of this order be placed in the connected case bearing no. CR/5322/2022.
32. Both the complaints stand disposed of.
33. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2023

HARERA
GURUGRAM