

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

Date of decision: 05.03.2024

NAME OF THE BUILDER		Advance India Projects Limited and Landmark Apartments Pvt. Ltd	
PROJECT NAME		Landmark the mall	
S. No.	Case No.	Case title	Appearance
1	CR/3256/2021	Chequer Marketing Pvt. Ltd. V/s Advance India Projects Limited (Respondent no. 1) Landmark Apartments Pvt. Ltd. (Respondent no. 2)	Sh. Abhinav Bajaj (Advocate) (Complainant) Sh. Rahul Thareja (Advocate)(Respondent No. 1) Sh. Venkat Rao(Advocate) (Respondent No. 2)
2	CR/3258/2021	Geefcee Finance Ltd. V/s Advance India Projects Limited (Respondent no. 1) Landmark Apartments Pvt. Ltd. (Respondent no. 2)	Sh. Abhinav Bajaj (Advocate) (Complainant) Sh. Rahul Thareja (Advocate)(Respondent No. 1) Sh. Venkat Rao (Advocate) (Respondent No. 2)

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of 2 complaints titled 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 allottees of the project, namely, Landmark Mail situated at Sector-66, Gurugram being developed by the respondent/promoter i.e., Landmark Apartments Pvt. Ltd.. The terms and conditions of the buyer's agreements form the fulcrum of the issue involved in all these cases which pertains to the failure on the part of the promoter to deliver timely possession of the units in question, seeking possession and delay possession charges at prescribed rate of interest and unpaid assured return.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Sr. No	Complainant No., Case Title, and Date of filing of complaint	Date of MoU	Unit No.	Unit adm easuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought

1.	CR/3256/2021 chequer Marketing V/s Advance India Private Limited DOF: 06.09.2021 Reply filed on: 02.11.2022	31.01.2008 (Page 19, 23 and 27 of complaint)	Shop No. GF-18, GF-21, GF-22	Area: 520 of unit no. GF-18, 620 of unit no. GF-21 and 620 of unit no. GF-22.	Cannot be ascertained	Total Sale Consideration: Rs.50,90,800/-, Rs. 60,69,800/- and 60,69,800 (page 20, 24 & 28 of complaint) Amount Paid: - Rs.50,90,800/-, Rs. 60,69,800/- And Rs. 60,69,800/- (as per page no. 5 of the complaint)	Handover physical possession, DPC, Assured return
2.	CR/3258/2021 Geffcee finance limited V/s Advance India Private Limited DOF: 06.09.2021 Reply filed on: 02.11.2022	29.01.2008, 15.10.2007 15.10.2007 (Page 20, 24 and 28 of complaint)	UG-16 UG-17 GF-09 GF-10	520 all unit	Cannot be ascertained	Total Sale Consideration: Rs.46,28,00/- Rs. 50,90,800/- Rs. 50,90,800/- (page no. 21, 25, 29) Amount Paid: - Rs.50,90,800/- RS. 50,90,800/-, Rs. 46,28,000/- And Rs. 46,28,000/- (as per page 6 of the complaint)	Handover physical possession, DPC, Assured return

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the MoUs executed between the parties in respect of said units for not handing over the possession by the

due date, seeking possession and delay possession charges at prescribed rate of interest and unpaid assured return.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/3256/2021 Chequer Marketing Pvt. Ltd V/s Advance India Pvt Ltd and Landmark Aparments Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

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

CR/3256/2021 Chequer Marketing Pvt. Ltd V/s Advance Inida Pvt Ltd and Landmark Aparments Pvt. Ltd

S.N.	Particulars	Details
1	Name and location of the project	"Landmark the Mall" at sector 66, Gurgaon, Haryana
2	Nature of the project	Commercial
3	RERA Registered/ not registered	registered
4	Unit no.	GF-18, GF-21 and GF-22
5	Unit area admeasuring	520 sq.ft. - GF-18 620 sq.ft. - GF-21

		620 sq.ft. - GF-21
6	Date of MoU	03.01.2008 (Page 19,23 and 27 of complaint)
7	Possession Clause	That the first party will pay Rs. 98/- per sq.ft. on 520 sq.ft as a assured return in the form of monthly rent to second party till the date of possession or 3 years whichever is later
8	Due date	Cannot be ascertained
9	Total sale consideration	Total Sale Consideration: Rs.50,90,800/-, Rs. 60,69,800/- and 60,69,800 (page 20, 24 & 28 of complaint)
10	Amount paid	Rs.50,90,800/- , Rs. 60,69,800/- And Rs. 60,69,800/- (As per page no. 5 of complaint)
11	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That Landmark Apartments Pvt Ltd , launched a commercial real estate project, mostly comprising of shops, located in Sector 66, Gurugram. The said project was launched with much fervour and was marketed with boastful claims. The respondent-builders had published various web and news advertisements as well as visual advertisements so as to attract public at large to purchase shops in the said project. The complainant on the basis of the said advertisements had approached landmark and inquired about the above-referred project. Its representatives at that time informed to the complainant that the above referred project is one of the prestigious projects which is being launched in Sector 66, Gurugram.
 - II. That the complainant booked three shops (details in table - 1 below) in the project launched by landmark apartment's pvt ltd with name and style of

- 'landmark the mall'. The complete payment for the three shops was made through cheques and memorandum of understanding dated 31.01.2008 were issued for the said bookings.
- III. That the complainant issued 100% payment as demanded by landmark provision(s) pertaining to payment of assured monthly rental was also made at the rate of Rs. 98/- per sq ft for area of all three shops admeasuring 520 sq ft, 620 sq ft and 620 sq ft respectively till the completion of three years from the date of agreement or till the delivery of the possession of the allotted shops, whichever is later.
- IV. That the respondent did not explicitly mention the project completion date or date of possession to the complainant but it was informed by the respondent that the project would be completed and the shop would be handed over to the complainant within the period of three years.
- V. That landmark failed to deliver the possession of the shops booked by the complainant on the expiry of three years from the date of execution of buyer's agreement. They also started defaulting on payments of monthly assured rentals from 01.02.2013 onwards in clear violation of the MoU(s). On enquiring about the said delays, the representatives of the company started making excuses and never appeared to give a true picture and reason(s) for the delay. The complainant was left with no option but to approach authorities and courts against the company.
- VI. That landmark entered into an arrangement with another company namely Advance India Projects Limited on 31.12.2015 whereby both the companies would join hands to complete the construction of the project and deliver the possession of the shops allotted to the complainant as well as other allottees. Subsequently, the name of the project was changed from "Landmark The Mall" to "Aipl's Joy Street".

- VII. That AIPL registered the project with this Hon'ble Authority with a new name "aipl's joy street" vide registration no. 157 of 2017 dated 28.08.2017 with validity till 31.12.2020.
- VIII. That with the intention to defeat the rights of the complainant for timely possession the respondents intentionally delayed the execution of the MoU(s) to sell with respect to the above-mentioned shops. It is submitted that even after 12 years of the execution of the original MoU(s), the possession has not been handed over to the complainant, even when the project is almost ready to be delivered. Therefore, the mala fide intention of both the respondent becomes evident right from the start, as there was a deliberate delay for the purpose of obtaining unjust gains from the complainant by taking the 100% payment on one hand and intentionally delaying completion of construction of the project on the other.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
- I. Pass an order directing the respondents to immediately handover the physical possession of the shop allotted to the complainant, complete in all respects as per the terms and conditions of the buyers agreement.
 - II. Direct the respondent to pay the prescribed interest for the delay in handing over the possession
 - III. Pass an order to pay the outstanding assured monthly rental payable to the complainant
10. 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 on behalf of respondent no. 1, M/s Advance India Projects Ltd.

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11. The respondent vide reply dated 02.11.2022 contested the complaint on the following grounds: -
 - i. That it is very important to mention herein that before filing the present complaint, the complainant had earlier filed a suit for permanent and mandatory injunction regarding the same properties on identical grounds. In the said suit, respondent no. 2 had filed an application for rejection of the complaint because the said suit was wholly baseless, untenable and false. The said false suit was ultimately withdrawn by the complainant and the same was dismissed vide order dated 22.03.2017 passed by Sh. Aashish Arya, Civil Judge, Gurugram. The complainant after the said order dated 22.03.2017 has filed three different suits for permanent and mandatory injunction bearing nos. 1137/17, 1142/2017 and 1143/2017 and the same are pending adjudication on 04.11.2022 in the Court of ACJ (SD), Gurugram.. It is pertinent to mention herein that the averments in the said suits are identical to the averments of the present complaint. It is settled law that a complainant cannot file separate cases for the same cause of action before different forums at the same time and the parallel proceedings in respect of the same controversy cannot proceed. It is submitted that for the same cause of action, simultaneous proceedings cannot be filed before more than one judicial forum. As the complainant failed to secure any relief from the Civil Court in the suits earlier filed by it, hence as an afterthought, the present complaint has been filed subsequently on identical grounds. The complainant cannot avail multiple remedies regarding the same property before different Courts/ Forums/

Authorities as is being done by the complainant and the same amounts to an abuse of the process of law.

- ii. That the complainant has filed the aforesaid complaint before this Hon'ble Authority seeking reliefs in respect of shops no. GF-18, GF-21 and GF-22 in the project namely, 'AIPL Joy Street' (formerly known as 'Landmark the Mall') Sector 66, Gurugram and claimed in complaint that it had entered into the alleged memorandums of understanding with respondent no. 1 for shops no. GF-18, GF-21 and GF-22 on 31.01.2008 having tentative super area of 520 sq. ft. for shop no. GF-18 and 620 sq. ft. each for shops no. GF-21 and GF- 22.
- iii. That in the year 2015, respondent no. 1 had approached respondent no. 2 and represented that respondent no. 1 owned and possessed land measuring 3.9562 acres (approx), situated in the revenue estate of Badshapur and Maidawas, Sector-66, Gurugram and that respondent no. 1 had obtained requisite license from the Director, Town and Country Planning, Haryana, Chandigarh for developing a commercial project. respondent no. 1 disclosed that it was finding it difficult to single handedly implement, construct and market the said project. Respondent no. 1 therefore, requested respondent no. 2 to enter into a joint development agreement in respect of the said project with respondent no. 1. Respondent no. 1 had represented that the said licensed land of respondent no. 2 was free from all types of loans, liens, encumbrances, mortgages, MOUs, agreements etc. and that respondent no. 1 was having a perfectly marketable title thereto and had full authority and competence to enter into Joint Development Agreement with respondent no. 1. The respondent no. 1 had assured respondent no. 2 that respondent no. 1 consisted of honest persons who would be very fair in their dealings with

respondent no. 2 (Note :- the respondent no. 2 i.e Landmark Apartment Pvt. Ltd. is the landowner-licensee holder of the project)

12. Vide proceedings dated 22.07.2022, 17.02.2023, 09.05.2023, 19.09.2023, 21.11.2023, 06.02.2024 and 05.03.2024 the counsel for the respondent no. 2 appeared and directed to file the reply within stipulated time period . However no reply has been filed till date despite service of notices . In view of the above the defense of the respondent no. 2 was struck off for non filling of reply. No reply is filed by respondent no. 2.
13. All other averments made in the complaints were denied in toto.
14. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

15. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection 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

16. 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

17. 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) The promoter shall-

(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.

18. 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.

G. Findings on the relief sought by the complainant

- I. Pass an order directing the respondents to immediately handover the physical possession of the shop allotted to the complainant, complete in all respects as per the terms and conditions of the buyers agreement.**
- II. Direct the respondent to pay the prescribed interest for the delay in handing over the possession**
- III. Pass an order to pay the outstanding assured monthly rental payable to the complainant**

19. The above mentioned reliefs as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
20. The complaint has been filed on 06.09.2021 followed by application under section 36 & 37 of Act on 08.03.2022. Respondent no. 1 and 2 filed applications for dismissal of the complaint on 02.08.2022 and 14.10.2022, respectively. Respondent no. 2 also filed an application dated 14.10.2022 for setting aside of order dated 22.07.2022, wherein the Authority directed the respondents to maintain the status quo of the subject units. Vide aforesaid applications, it was submitted that the complainant herein has filed separate suits for specific performance of the agreements/MoUs entered between the complainant and the respondent no.2 bearing nos. 1137/2017, 1142/2017 & 1143/2017 before Sh. Aashish Arya, Civil Judge, Gurugram. Hence, the matter is sub-judice in said court. Respondent no. 2 also contended that the matter is barred by limitation as the units of the complainant were cancelled way back in 2013.
21. The complainant, vide application dated 01.05.2023, replied to the aforesaid applications and submitted that the similar application has been filed by the respondent in Civil suit(s) for rejection/non-maintainability of suit but the same has been rejected vide order dated 30.01.2023. It has been submitted that the relief sought under Civil suit is for specific performance under Specific Relief Act.
22. The authority upon consideration of documents placed on record and the averments made by both the parties opines that the cancellation of the said unit was done back in year 2013. However, the respondent never refunded back the money after cancellation of the unit accordingly the cause of action is said to be continuing and therefore the plea of respondent with


- respect to the complaint being barred by limitation is not maintainable. The respondent no. 2 was required to refund the amount as per the MOU after cancellation was made in the year 2013.
23. Furthermore, the complainant has filed separate suits before the district court, Gurugram claiming specific performance of the agreements/MoUs entered between the complainant and the respondent no.2. In the present case in hand, the complainant has sought relief under Section 31 of the RERA Act for the handover of possession and payment of the assured return as promised by the respondents.
24. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore the present complainant cannot proceed with the present complaint as the same is pending before the District Court at Gurugram and is hereby barred by the principle of Res Sub judice as provided under section Section 10 of the Code of Civil Procedure, 1908 (CPC).
25. Section 10 CPC is reproduced as under for ready reference:

....Section 10: Stay of Suit:- "No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction or before the Supreme Court

26. Though the provisions of the Code of Civil Procedure, 1908 (CPC) are, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, the principles provided therein are the important guiding factors, and the authority being bound by the principles of natural justice, equity, and good conscience has to consider and adopt such established principles of the CPC as may be necessary for it to do complete justice. Moreover, there is no bar to applying the provisions of the CPC to the proceedings under the act if such provision is based on justice, equity, and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint seeking direction for possession and delay possession interest with assured return stands dismissed as not maintainable.
27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order. True certified copies of this order be placed on the case file of each matter.
28. Files be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.03.2024