

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

Complaint no. : 5080 of 2021
Date of first hearing: 03.02.2022
Order Reserve On : 19.04.2024
Order Pronounced On: 17.05.2024

Geeta Rani R/o: C-24, Hill View Garden, Alwar Bye Pass Road, Bhiwadi	Complainant
Versus	
M/S Landmark Apartments Pvt. Ltd. Regd. Office: - A-11, Chittranjan Park, South Delhi-110019	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Harshit Batra	Complainant
Shri Rishi Vohra	Respondent

ORDER

1. The present complaint dated 27.12.2021 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 28 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 unit details, 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:

S. N.	Particulars	Details
1.	Name of the project	Landmark Cyber Park, Sector-67, Gurugram.
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.	N/A
8.	Unit area admeasuring	1000 sq. ft. (page no. 17 of complaint)
9.	Date of execution of MOU	07.07.2008 [Page no. 15 of the complaint]
10.	Allotment Letter	23.10.2013 (page no. 20 of complaint)
11.	Assured return clause	4. Assured Return

		That the first party will pay Rs. 47,800/- as an assured return per month payable quarterly to second party till the date of possession or 3 years. (Page no. 17 of the complaint).
12.	Due date of possession	07.07.2011 (Taken as 3 years from the date of MOU)
13.	Total sale consideration	Rs.28,00,000/- (page no. 17 of complaint).
14.	Amount paid by the complainant	Rs.25,80,000/- (As alleged by respondent)
15.	Assured return Paid	Rs.25,80,769/- (Rs. 15,48,289/- till June 2011 + 10,32,480/- excess paid till June 2013) (As per page 11 of complaint)
16	Occupation certificate	26.12.2018 (As per additional document filed by respondent)
17	Offer of possession	23.09.2019 (As per on page 47 of reply)
18.	Handing over of possession	06.10.2022 (as per document submitted during proceeding)

B. Facts of the complaint

3. That the complainant on the false promises, assurances and warranties made by the respondent's authorised representative, booked office space admeasuring 1000 sq. ft. at Rs. 2800/- per sq. ft. amounting to Rs. 28,00,000/-.
4. That thereafter, a memorandum of understanding was executed between the parties on July 7, 2008. As per clause 4 of the MOU, the complainant was to receive Rs. 47,800/- as assured returns per month payable quarterly till date of possession or 3 years.
5. That in accordance with the above-mentioned clause, the respondent started paying the assured returns from 2008 and paid till 2013, thus paid the assured returns for 5 years implying the intention of the respondent to pay the assured returns even after 3 years and hence until the date of delivery of possession of the unit, however, to the utter surprise of the complainant, the respondent stopped the payment of assured returns after June 2013.
6. That the non-payment of the assured returns has gravely hampered the complainant, both mentally and financially.
7. That the complainant had upheld her part of the obligations and made prompt payments as is also evident from the bare perusal of the MOU.
8. That no agreement had been executed by the respondent in lieu of the allotment of the unit. As per clause 8 of the MOU, the unit-buyer agreement was to be executed between the parties, however, the respondent has miserably failed in standing up to its obligations.
9. That after 5 years of having executed the MOU, the respondent gave an allotment letter dated 23.10.2013. It needs to be categorically noted that neither in the MOU nor in the allotment letter, did the respondent allot any specific unit to the complainant. The exact location of the unit

is unknown till date. Even after payment of more than the total sale consideration, no specific unit has been allotted to the complainant.

10. That that the complainant had filed a complaint bearing no. 870 of 2018 before this Hon'ble Authority in which respondent was directed to deliver the possession of the unit within 30 days from 29.05.2019 which the respondent has failed to deliver to this date. The complainant shall be filing a separate execution petition before the Hon. Authority.

11. That the complainant is not barred from filing the present complaint as the relief sought in the present complainant are entirely different from the previous complaint. The previous complaint 870 of 2018 was filed for possession of the unit whereas this complaint is for seeking the assured returns promised by the respondent.

12. That the respondent has miserably failed in fulfilling its obligation under section 11(4)(a) and has caused irreparable loss, mental agony and financial loss to the complainant. The complainant has been running from post to pillar for seeking redressal of her grievances flowing from the malicious, illegal and unlawful acts of the respondent which should rightly be noted by the Hon. Authority.

C. Relief sought by the complainant:

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

- I. Direct the respondent to pay assured returns from July, 2013 till the actual date of possession along with prescribed rate of interest.

D. Reply by the respondent

14. That the complainant booked a unit in a project developed by the respondent by the name "Landmark Cyber Park" situated in Sector 67

- Gurugram. One of the offers made by the respondent at that point of time was that the unit will have benefit of assured return for a period of three years. Thereafter the complainant entered into an MOU dated 07.07.2008 with the respondent determining all the rights and liabilities of the parties.
15. That the complainant as per the terms of the MOU made payment of Rs. 25,80,000/- i.e. 92% payment towards the basic sale price to the respondent.
 16. That in consideration of the aforementioned facts, it becomes quite evident that the respondent had already applied for grant of OC in April, 2015 when the building was complete in all respects and based on the application, occupation certificate was granted on 26.12.2018. The unit is already ready and the complainant is free to take possession after paying the necessary charges of EDC/IDC and other pending charges. The respondent was even constrained to issue another reminder for taking over of possession vide letter dated 28.05.2019 subject to clearance of pending dues. However, the complainant has neither come forward to take the possession nor has made the due payments.
 17. That the complainant instead of clearing her pending dues filed a malafide complaint namely "Geeta Rani vs. Landmark Apartments Pvt. Ltd." bearing no. 870 of 2018 before this Hon'ble Authority. That this Hon'ble Authority vide its order dated 11.04.2019 directed both the parties to handover/takeover the possession of the booked unit within a period of 30 days.
 18. That the complainant has failed to come forward to clear her dues and take over the possession of the unit and thus is in clear violation of the order passed by this Hon'ble Authority till date. It is further submitted that respondent had called upon the complainant to show the area for

handover but after her visit, she became inactive and has neither cleared her dues nor took possession. The complainant becoming inactive with respect to clearing her dues and taking possession due to which the respondent company was constrained to issue her reminder letters dated 21.09.2019 and 30.09.2019.

19. That the issue pertaining to assured return had categorically held that this Hon'ble Authority has no Jurisdiction w.r.t the same and that the complainant should approach the appropriate forum. The said order has attained finality in as much the complainant has not preferred any appeal against the said order. Thus, the present complaint is liable to be dismissed on the very threshold as the same is barred by principles of res judicata.
20. Copies of all the relevant documents have been duly 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 submissions made by the parties.

E. Jurisdiction of the authority

21. 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

22. 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

23. The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

24. 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 respondent:

F.I Objection regarding the present complaint is barred by Order 2 Rule 2 of CPC, 1908.

25. The respondent in its reply has raised a plea regarding the maintainability of present complaint and stated that the said complaint is barred by Order

2 Rule 2 of CPC, 1908. The respondent has stated that the complainant previously filed a complaint bearing no. 870 of 2018 titled as Geeta Rani Vs. Landmark Apartments Pvt. Ltd. on the same cause of action. In the said complaint, complainant intentionally relinquished the claim for assured return and as per Order 2 Rule 2 of CPC, 1908 if the cause of action of the complaint is same the plaintiff has to place all his claims before the court in one suit/complaint. Therefore, on the said grounds the complaint should be dismissed. The authority after hearing both the parties at length observed that the previous complaint bearing no. 870 of 2018 titled as Geeta Rani Vs. Landmark Apartments Pvt. Ltd. was disposed of vide order dated 11.04.2019 and as per para 34 of the said order the authority directed the complainant to approach the appropriate forum. The relevant para of the said order is reproduced hereunder for ready reference:

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."

26. Hence, the authority is of the view that the present complaint bearing no. 5080/2021 is maintainable in the eyes of law as in the earlier complaint complainant was provided with a liberty to approach the appropriate forum/adjudicating officer.

G. Findings on the relief sought by the complainant.

GI Direct the respondent to pay assured returns from July, 2013 till the actual date of possession along with prescribed rate of interest.

27. The complainant is seeking an assured return as per a memorandum of understanding (MOU) dated July 7, 2008. According to clause 4 of the MOU, the respondent company agreed to pay an assured return of

Rs. 47,800/- per month, payable quarterly to the complainant until the date of possession or for a period of 3 years. The relevant clause is reproduced hereunder for the ready reference:

That the first party will pay Rs. 47,800/- as an assured return per month payable quarterly to second party till the date of possession or 3 years.

28. It is pleaded on behalf of the complainant that the respondent has not complied with the terms and conditions of the MOU dated 07.07.2008. Though for some time i.e., till June 2013 assured return was paid but thereafter they failed to pay. Further submitted that as per clause 4 of the MOU the assured return was to be paid till the date of possession.
29. In the present matter the authority has interpreted the language of Clause 4 of the MOU as vague regarding the specific duration until which the assured return is to be provided. The authority's interprets that the assured return was to be given until three years had passed or until the date of possession, whichever occurred earlier. According to this interpretation, since the respondent has already paid the assured return totalling Rs. 25,80,769/- until June 2013, they are not liable to continue paying the assured return beyond that point.
30. Moreover, the Economic Offence Wing (EOW) of East Gurugram reviewed the matter and arrived at a similar interpretation of clause 4 of the MOU. According to their conclusion, the assured return was to be paid until the date of possession or for a period of 3 years, but the respondent company as a good gesture extended the payment of assured return beyond the stipulated 3 years, up to 5 years. Although his liability to pay assured return was upto 3yrs.
31. In view of the above, no further assured return is payable.

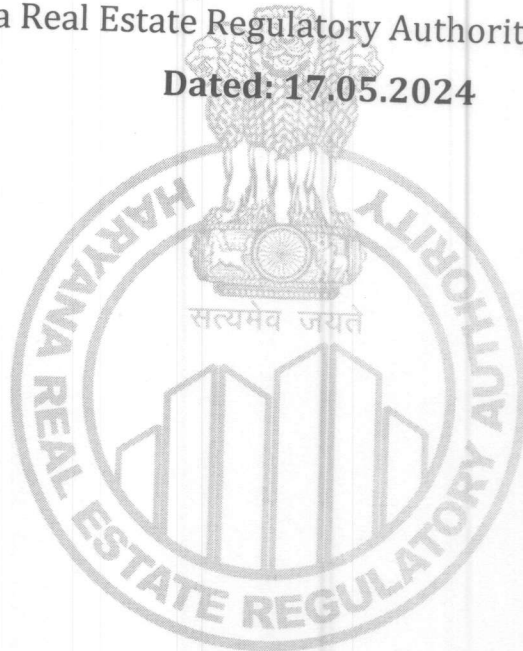
32. Complaint stands disposed of.
33. File be consigned to registry.

Sanjeev

(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2024



HARERA
GURUGRAM