PROCEEDINGS OF THE DAY	15
Day and Date	Wednesday and 07.05.2025
Complaint No.	CR/637/2024 Case titled as Nitin Tuteja VS Landmark Apartments Private Limited
Complainant	Nitin Tuteja
Represented through	Shri K.B. Thakur Advocate
Respondent	Landmark Apartments Private Limited
Respondent Represented	Shri Amarjeet Kumar Advocate
Last date of hearing	26.03.2025
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings-cum-order

Order pronounced.

The present complaint has been received on 06.03.2024. The respondent has filed an application for dismissal of the complaint stating that the respondent allotted a unit bearing no. C-44 at 4th Floor measuring 3092 sq.ft. in its project named "Landmark-The Residency at Sector-103, Gurugram in favour of the complainant vide allotment letter dated 24.02.2012. In the year 2014 Mr. Jatin Tuteja cancelled the unit allotted to him and requested the respondent to adjust the amount received against the said unit with the unit in question and also requested the respondent to make Mr. Jatin Tuteja a co-owner with the complainant in the unit bearing no. C-44 at 4th floor. Accordingly, the nature of ownership was changed and was transferred in their name. Thereafter, the complainant along with Mr. Jatin Tuteja vide letter dated 26.05.2022 cancelled the unit bearing no. C-44 at 4th Floor and requested the respondent to allot a 3BHK unit admeasuring 1710 sq.ft. in the said project and also requested to adjust the amount received in the said unit. The respondent on such request vide letter dated 26.05.2022 allotted unit bearing no. A-36 at the 3rd Floor measuring 1710 sq.ft. in the name of complainant and Mr. Jatin Tuteja in the

said project and as on date the unit bearing no. A-36 subsists with the complainant. Thus, the present complaint against the surrendered unit is not maintainable as the complainant does not fall under the purview of "allottee" as defined under Section 2(d) of the Act, 2016 and the complaint is liable to be dismissed.

The complainant vide its reply to the application for dismissal of complaint has submitted that the respondent misleads the complainant and took the signature of the complainant using its dominant position. The complainant has no option other than to sign the places where they wanted.

After considering the documents available on record as well as submissions made by the parties, it is determined that vide provisional allotment letter dated 24.02.2012, a unit bearing no. C-44, measuring 3092 sq.ft. on fourth floor was allotted to complainant in the project of the respondent named "Landmark- The Residency' at Sector 103, Gurugram. Later, the complainant vide affidavit dated 05.05.2014, requested the respondent to add Mr. Jatin Tuteja a co-owner with the complainant in the said unit. Accordingly, the nature of ownership was changed and was transferred in their name. Thereafter, the complainant vide letter dated 26.05.2022, requested the respondent to cancel the allotted unit i.e. unit bearing no. C-44, admeasuring 3092 sq.ft. in the above said project and to allot a unit bearing no. A-36, measuring 1710 sq.ft. in the project named 'Landmark- The Residency' at Sector 103, Gurugram and to transfer the amount paid in lieu of unit no. C-44 to the proposed new unit i.e A-36. Accordingly, the respondent vide provisional allotment letter dated 26.05.2022 allotted unit bearing no. A-36 at the 3rd Floor measuring 1710 sq.ft. in the name of complainant in the said project and as on date the said unit subsists with the complainant.

At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

After considering the above, the authority is of the view that the complainant does not fall under the definition of 'allottee', as the unit in question does not stands in the name of complainant. Consequently, no case for refund under Section 18(1) of the Act, 2016 is made out. The present complaint stands dismissed being not maintainable. File be consigned to registry.

Ashok Sangwan
Member
07.05.2025