

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

Complaint no.	:	639 of 2024
Date of complaint	:	06.03.2024
Date of order	:	07.05.2025

Nirmal Tuteja, R/o: A-II/303, Param Puneet Apartments, Plot No. 27, Sector 6, Dwarka, New Delhi-110075.	Complainant
Versus	
M/s Landmark Apartments Private Limited Regd. office: Plot No. 65, Sector-44, Gurugram, Haryana-122002.	Respondent

CORAM:	
Ashok Sangwan	Member
APPEARANCE:	
K.B Thakur (Advocate)	Complainant
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 allottee 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.	Unit no.	Not allotted
8.	Unit area admeasuring (Super area)	2000 sq.ft., 5 th Floor (Page 29 of complaint)
9.	Builder buyer's agreement	12.08.2019 (Page 27 of complaint)
10.	MoU	25.06.2008 (Page 38 of complaint)
11.	Due date of possession	25.06.2011 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
12.	Total sale consideration	Rs.1,19,10,000/- (Page 37 of complaint)
13.	Amount paid by the complainant	Rs.1,08,00,000/- (Page 40 of complaint)
14.	Assured return clause	4. That the first party will pay Rs.54/- per sq.ft. on 2000 sq.ft. as a assured return in the form of monthly rent to the Second Party till the date of possession or 3 years or upto 1st leasing.
15.	Assured Return paid by respondent	Rs. 43,71,084/- (Page 2 of reply)
16.	Occupation certificate	26.12.2018 (as per DTCP website)

17.	Offer of possession	12.08.2019 (as per clause 3(a) & 3(g) of the buyer's agreement at page 28 and 30 of complaint)
-----	---------------------	---

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the parents of the complainant were approached by the respondent for purchasing a super area of 2000 sq.ft. in IT Park, situated at Sec 67, Gurgaon amounting to total consideration of Rs.1,08,00,000/-. Based on the various representations made by the respondent, the complainant executed a Memorandum of Understanding dated 25.06.2008 and paid an amount of Rs.1,08,00,000/- with the condition that the respondent will pay Rs.54/- per sq.ft. on 2000 sq.ft. per month as a assured return in the form of monthly rent to the complainant till the date of possession or 3 years or upto 1st leasing. The respondent had committed and assured that the project will be completed within 3 years from the date of MoU.
- II. That the agreement contained various one sided and arbitrary clauses, but the complainant could not negotiate on any of the clauses, since the respondent had already collected total consideration of the unit. That any disagreement with the respondent regarding the said arbitrary and one-sided terms of the agreement would have led to cancellation of the space and forfeiture of the paid money.
- III. That the respondent failed to handover the possession of the unit within the promised time period. It is submitted that the complainant followed up with the respondent through various meetings and telephonic conversations with its representatives, enquiring about the status of construction of the project and seeking an affirmative date of possession of the unit. However, the respondent kept the complainant in the dark by giving false assurances as to the status of construction of the project.

- IV. That the respondent did not honour its commitment as per the MOU signed with the complainant. Thus, the entire purpose of booking the unit in the project of the respondent has been utterly frustrated. In view of the inordinate delay on the part of the respondent in offering possession of the unit, the complainant seeks termination of the agreement and a refund of his hard-earned money @10.75% per annum.
- V. That the complainant has ever since been trying to contact the respondent to request them to cancel the unit and seek refund of the amounts paid by her, but to the utter disappointment of the complainant, he has not received any amount towards the refund till date.
- VI. That the inordinate delay in handing over possession to the complainant, is a shameful attempt by the respondent to usurp huge amount of money from the allottees and thereafter not delivering possession on time. It is respectfully submitted that the respondent is liable to compensate the complainant by paying adequate interest and damages towards financial loss and mental agony and hardships caused to the complainant which has frustrated the reason for booking the said unit.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
a) Direct the respondent to refund the paid-up amount alongwith interest.
b) Litigation cost.
5. 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 respondent:

6. The respondent vide reply dated 20.05.2024 contested the complaint on the following grounds:
- i. That the complainant along with her husband with a sole motive to invest and for gains signed an MoU dated 25.06.2008 and booked a unit in

"Landmark Cyber Park" admeasuring 2000 sq. ft. That the respondent was liable to pay assured return till 3 years, but the respondent has paid excess returns for 3 quarters to the complainant till June 2013 and to the tune to Rs.43,71,084/- as per MoU dated 25.06.2008.

- ii. That the respondent acting on the assurances given to the complainant, completed the project in time and the same is evident from the letter dated 29.05.2019 wherein the respondent has requested the complainant to clear its dues (if any) and also intimated the complainant that the respondent has begun the registration of the conveyance deed for the space booked in Cyber park and requested the complainant to come forward and complete all the paper work formalities.
- iii. That the complainant on 12.08.2019 had entered into a builder buyer's agreement and took the possession of the unit allotted to the complainant. Relevant para of the builder buyer's agreement dated 12.08.2019 is reproduced herein for the sake of readiness:

"3. Possession of "the said Unit"

- a) *That the said unit is ready for handover in all respect as bare shell and the possession of the said unit / IT space shall be deemed handed over to the Allottee after signing of this agreement.*
- b) *That the Allottee shall have an option to give the leasing rights of the said unit to the Company /Developer to lease the said unit individually or along with other unit contiguous or non contiguous after signing the lease arrangement agreement (Annexure - B) separately along with this agreement. That the Allottee shall never get the physical possession of the unit after entering into the lease arrangement agreement and shall keep their unit in the lease pool option only."*

Thus, it is evident that the complainant has already taken possession of the unit and the present complaint seeking refund is not maintainable.

- iv. That the complainant has wilfully agreed to the terms and conditions of the agreement and is now at this belated stage has raised issues and concerns regarding his contractual obligations.

v. That the complainant has failed to disclose that she in possession of the said unit.

7. 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:

8. 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

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee's 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.

11. 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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund the paid-up amount alongwith interest.

12. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest from the date of payment until realization under Section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building: -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided 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 the possession, at such rate as may be prescribed."

13. **Due date of handing over possession:** The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a**

time period of 3 years would have been reasonable for completion of the contract.

14. In view of the above-mentioned reasoning, the date of execution of MoU i.e. 25.06.2008 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit/space comes out to be 25.06.2011.
15. **Admissibility of refund:** On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent has completed the construction and development of the project and got the OC/CC on 26.12.2018. It is observed that vide clause 3(a) and (e) of the buyer's agreement dated 12.08.2019, it was mutually agreed between the parties that the respondent will give possession of the said unit in raw/bare shell condition and the same is ready for handover in all respects and shall deemed to be handed over to the complainant on the date of its execution. Furthermore, vide clause 3(g) of the buyer's agreement, the complainant was obligated take physical possession of the unit within 30 days after signing of the that agreement. Thus, the said BBA which was executed after obtaining OC/CC can be termed as offer of possession in view of the above said terms of the BBA. However, the complainant is not willing to continue with the project and is seeking refund of the entire paid-up amount along with interest by filing the present complaint dated 06.03.2024. The authority observes that Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is a case where the promoter has already offered possession of the unit after obtaining occupation certificate. Moreover, the allottee has approached the authority seeking withdrawal from project after obtaining of occupation/completion certificate by the respondent. The allottee has not produced any credible

evidence of having sought refund/withdrawal from the project after the due date of possession and only when agreement was executed and demand for due payment was raised, she has filed a complaint before the authority.

16. In the instant case, there is a delay in handing over the possession by the respondent as the due date of possession was 25.06.2011, whereas the offer of possession was made in terms of the BBA on 12.08.2019, after obtaining the occupation/completion certificate on 26.12.2018 and thus, becomes a case to grant delay possession charges. The authority observes that interest of every month of delay at the prescribed rate of interest could be granted to the complainant/allottee in terms of Section 18(1) of the Act, 2016 had she wished to continue in the project. However, the complainant wishes to withdraw from the project and has sought refund of the paid-up amount along with interest vide present complaint dated 06.03.2024.
17. The authority observes that right under Section 18(1)/19(4) of the Act, 2016 accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to her, it can be inferred that the allottee has tacitly consented to continue with the project. The promoter has already invested in the project to complete it and has offered possession of the allotted unit. Now, when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the Section 18 of the Act. Further, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate.

18. This view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)**, wherein the Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. Relevant para of the said order is reproduced under for ready reference:

"(i) We are of the view that allottees at Serial Nos. 1 and 2 in Chart A are obligated to take possession of the apartments, since the construction was completed, and possession offered on 28.06.2019, after the issuance of Occupation Certificate on 31.05.2019. The Developer is however obligated to pay Delay Compensation for the period of delay which has occurred from 27.11.2018 till the date of offer of possession was made to the allottees."

19. In view of the above, no case for refund under Section 18(1) of the Act, 2016 is made out and the present complaint stands dismissed being not maintainable.
20. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.05.2025

HARERA
GURUGRAM