

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

Complaint no. : 492 of 2024
Date of complaint : 16.02.2024
Date of order : 16.07.2025

Anisha Agarwal,
R/o: - Flat No. 801, Tower- B-4 Aloha,
Sector-57, Gurugram-122003.

Complainant

Versus

M/s Landmark Apartments Pvt. Ltd.
Regd. office: Plot No. 65, Institutional Area,
Sector-44, Gurugram.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Pushkar Rai Garg (Advocate)
Amarjeet Kumar (Advocate)

**Complainant
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 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 provisions of the Act or the Rules and regulations made thereunder 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.	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)	250 sq.ft, 2 nd Floor (page 49 of complaint)
9.	Builder buyer's agreement	05.10.2019 (page 48 of complaint)
10.	Memorandum of settlement	05.10.2019 (page 45 of complaint)
11.	Agreement for lease arrangement	05.10.2019 (page 61 of complaint)
11.	Possession clause as per BBA	3. "That the said unit is ready for handover and the possession of the said unit shall be deemed handed over to the allottee after signing of this agreement."
12.	Due date of possession	Not required as the unit was ready to move-in property. (inadvertently mentioned as 05.10.2022 vide proceedings dated 14.05.2025)
13.	Total sale consideration	Rs.28,47,083/- (Page 60 of complaint)

14.	Amount paid by the complainant	Rs. 26,93,947/- (Page 22 of complaint)
15.	Occupation certificate	26.12.2018 (Page 27 of reply)
16.	Reminder for taking possession	14.09.2019 (page 29 of reply)
17.	Offer of possession	05.10.2019 (as per clause 3(a) of the agreement on page 51 of complaint)

B. Facts of the complaint

3. The complainant vide complaint as well as written submissions dated 03.06.2025 has made the following submissions: -
- I. That the respondent has been building residential apartments in the name of "Landmark- The Residency". That the petitioner learnt about the said project of the respondent company in 2012. Since the petitioner was looking for a unit which had all licenses and compliances cleared with the authorities. The petitioner had applied for the allotment of an apartment in the said project and her request has been accepted by the respondent and the petitioner has booked a residential floor of 2 BHK admeasuring 1350 sq.ft. in Landmark- The Residency, Sector-103, Gurugram.
 - II. That the petitioner has paid a sum of Rs.1,00,000/- vide cheque no. 553540 dated 10.08.2012 of HDFC Bank to the respondent on account of booking the apartment. It is pertinent to mention here that the service tax of Rs.43,947/- was paid by the petitioner to the respondent vide cheque no. 021485 dated 25.09.2012 of Corporation Bank. Whereas, after that there is no-where accounted the said amount by the respondent and the same has been left out.

- III. That furthermore, the respondent had been raising demand letter for the purpose of extorting money from the petitioner and the petitioner has been diligently paying against the demand letters of the respondents. The petitioner has paid a total of Rs.26,50,000/- on different dates till July, 2013.
- IV. That the respondents approached the petitioner regarding their incapacity to complete their part of agreement/trade and deliver the timely possession of the apartment in the said project to the petitioner. The respondents instead lured the petitioner and offered her to buy a serviced office in a commercial project namely "Landmark Cyber Park" in Sector-67, Gurugram which was also being developed by the respondent.
- V. That on 03.08.2013, a memorandum of understanding was executed between the parties and the respondent agreed to sell a serviced office on 5th Floor in the Landmark Cyber Park to the petitioner. The said office had a total area of 300 sq.ft. and the total consideration of the said office was Rs.26,50,000/-. The respondent had in this MOU acknowledged that the petitioner had paid 100% consideration against the purchasing of this office and nothing more has been left to pay on the part of the petitioner. The respondent further had undertaken a monthly assured return of Rs.26,500/- till the handing over the possession or 3 years from this MoU to the petitioner, but the respondent failed to comply with the obligation and had paid the assured return only for a period of 12 months from executing the MOU.
- VI. That the respondent through its letter dated 13.07.2015 had offered the possession and said that the respondent has applied for the occupation certificate for the said project. This letter shows the



malafide intention of the respondent and that the respondent has been unfaithful and playing false with the petitioner because as per the official records available with the Director, Town & Country Planning Department, the respondent has not applied only for the occupation certificate. The respondent applied for the occupation certificate on 25.04.2017 and had got the certificate on 26.12.2018.

- VII. That the respondent went silent for 4 years. The petitioner had timely approached the respondent, but it kept on delaying the possession of the office to the petitioner.
- VIII. That the respondent through its letter dated 14.09.2019 requested for taking over the possession. It must be noted that the respondent has acted malafide from the start and never before had offered to take the full possession of the office space in question.
- IX. That the respondent played falsely with the petitioner and tricked the petitioner into signing a letter dated 05.10.2019 where the petitioner seemed to be requesting the respondent builder to cancel the previous allotment of the serviced office and allot another lower grade managed office with reduced carpet area to only 250 sq.ft. on a lower floor i.e. 2nd floor. The letter also said that the petitioner had received all of her assured returns as per the MoU dated 03.08.2013, but in reality, she never ever received it. This letter is so ironic that the letter had admission on the part of petitioner that she had to pay a sum of Rs.60,849/- to the respondents even though the grade, floor and the carpet area of her office was reduced. This letter is so ironic and unimaginable where the petitioner is willingly relinquishing her right and the terms are all in the favor of the respondent company. The respondent had misrepresented willingly tricked the petitioner into signing this letter.



- X. That is not only the letter that the respondent company had prepared and got signed on 05.10.2019. Rather they also prepared a memorandum of settlement between the parties which was in lieu of the letter and through this settlement instead of returning the money on reduced carpet area and grade of office, the respondent company demanded Rs.60,849/- that is payable by the petitioner to the respondent.
- XI. That the respondent also got executed a builder buyer agreement in respect of the customized/managed office on 2nd floor admeasuring 250 sq.ft. on 05.08.2019. It must be noted that the basic sale price of the office was kept at Rs.27,08,333/- which seems to be an increased price than the earlier allotted space which was on a higher floor and had a greater carpet area.
- XII. That beside other agreements, the respondent company got a lease agreement executed on the same date i.e. 05.10.2019 where the respondent agreed to put the unit on lease on the behalf of the petitioner. It is pertinent to mention here that the respondent company did not give the possession to the petitioner and even after executing this agreement, they didn't pay a single penny to the petitioner on account of rent/lease of the space. The respondent company deliberately with malafide intention nowhere in this whole agreement mentioned about amount of monthly rent because they had never intended to comply with the terms of this agreement and this was just a way to deliver the possession to its rightful owner i.e. petitioner.
- XIII. That since the project of the respondent has failed to discharge its obligation as per numerous agreements executed and discharge their obligation towards petitioner, despite the fact that the respondent

collected the money from the petitioner for the said project by unfair trade practices and thereby, the respondent had made wrongful loss to petitioner and wrongful gain to respondent and thereby cheated the petitioner, subject to not handover of the possession of the said office and not paying the legally liability towards the petitioner and moreover demanding for illegitimate money the petitioner and the petitioner was forced to stay away from his rightful property.

- XIV. That the memorandum of understanding dated 03.08.2013 was not superseded by the memorandum of settlement dated 05.10.2019. The complainant acknowledges the execution of the memorandum of settlement, it is submitted that the settlement of assured amount was wrongly calculated, and the complainant signed the settlement under duress and undue influence from the respondent. Therefore, the settlement does not bar the complainant from raising claims for the correct amount and seeking appropriate relief. Further the respondent seeks to rely on the doctrine of novation under Section 62 of the Indian Contract Act, 1872, which allows parties to replace an old contract with a new one. However, for a novation to be valid, it must be entered into with the free and willing consent of both parties, and the new contract must provide mutual benefits. In the present case, the complainant did not willingly agree to the new terms and received no additional benefit from the memorandum of settlement. In fact, the new settlement significantly reduced the complainant's entitlements.
- XV. That the memorandum of settlement does not affect the complainant's statutory rights to claim compensation, interest on unpaid amounts as per RERA. The settlement cannot be used as a tool to evade the respondent's responsibilities under the law. Further as



per the lease agreement dated 05.10.2019, no specific amount of rent is mentioned anywhere in the agreement and no amount is paid by respondent to the complainant at all to which the respondent states that they are adjusting the dues of the respondent which as per the memorandum of settlement is Rs.60,849/- plus some amount of interest free maintenance. The complainant is not liable to pay any of the amount as explained in clause 3 whereas the respondent is liable to pay the rent as well as the interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondent to handover possession and to pay delay possession charges as per the Act.
 - II. Direct the respondent to pay pending assured return from 2013 till date.
 - III. Direct the respondent to pay rent amount as per the lease agreement dated 05.08.2019.
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 the respondent.

6. The respondent vide its reply has contested the complaint on the following grounds: -
 - i. That the complainant approached the respondent in the year 2019 and requested vide letter dated 05.10.2019 to cancel the previous allotted unit admeasuring 300 sq. ft. in Landmark Cyber Park and requested for allotment of a customised/managed office on 2nd Floor admeasuring 250 sq. ft. due to change in requirement. It is submitted that the pending assured return amounting to Rs.2,86,200/- was also adjusted towards the Basic Sale Price, development charges, FFC of the



new allotted unit. Post the said full and final adjustment, the complainant was liable to pay an amount of Rs.60,849/- alongwith pending IFMS against the new unit.

- ii. That complainant on his own free will and after conducting his own due diligence applied for allotment of space in the project namely Landmark Corporate Centre part and parcel of Landmark Cyber Park situated in Sector 67 Gurugram vide application form. Thereafter, a memorandum of understanding was executed with the complainant and the respondent for allotment of space admeasuring 300 sq. ft on 5th floor of the project of the respondent. The said MoU dated 03.08.2013 was executed between the parties determining all their rights and liabilities. The complainant as per the terms of the MoU made payment of Rs.26,50,000/- i.e. 100% payment towards the basic sale price to the respondent. However, in addition to the above, the complainant was also supposed to make other payments in the nature of EDC/IDC, maintenance, parking, other charges etc. as per the demands raised by the respondent at the time of possession. Further, as per the clause 3 of the MoU, it was specifically agreed that the respondent will pay a sum of Rs.26,500/- every month as assured return, payable quarterly till possession or 3 years whichever is earlier. Thus, there was no time limit provided under the MoU for handing over the possession of the unit.
- iii. That the respondent successfully completed the project in the year 2015 and accordingly applied for OC in April, 2015. Thereafter, the respondent after applying for the OC accordingly informed the tentative date of receiving the OC to all its buyers including the complainant vide letter dated 13.07.2015. Since the building was complete in all respects; the respondent expected the OC to be



received within a period of 3 months and accordingly also requested the complainant to clear all the pending dues of EDC and IDC.

- iv. That thereafter the complainant was duly informed regarding the pending dues at the time of intimation of possession after adjusting the pending assured returns, but the complainant thereafter did not come forward to make the balance payment.
- v. That the issue of delay in handing over the possession is not applicable in the present case, since there was no time limit provided under the MoU and time was never made an essence of the contract. That in consideration of the aforementioned facts, it becomes quite evident that the respondents 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.
- vi. That since the complainant was not coming forward to take possession of the unit, the respondent was even constrained to issue another reminder for taking over of possession vide letter dated 14.09.2019 subject to clearance of pending dues.
- vii. That thereafter the complainant approached the respondent and requested vide letter dated 05.10.2019 to cancel the previous allotted unit and requested for allotment of a customised/managed office unit on 2nd Floor admeasuring 250 sq. ft. in the same project. The complainant vide the said request letter dated 05.10.2019 also acknowledged the fact that most of the assured return was received by him in a timely manner and some instalment of assured return amounting to Rs.2,86,200/- was to be adjusted and requested for the adjustment of the said amount towards the basic sale price of the new unit.



- viii. That the respondent acceded to the request of the complainant and accordingly the parties executed a memorandum of settlement dated 05.10.2019 for getting the previous allotment cancelled and for the allotment of customised/managed office on 2nd floor on account of change of requirement. In the said agreement, the complainant has specifically stated that nothing remains due and that the previous MoU has no force of law and ceases to operate. Also, in view of the request of cancellation of previous allotment and allotment of a new office space, nothing relating to the previous MoU remains in force.
- ix. That the respondent has already on account of the new allotment made adjustments of assured return amounting to Rs.2,86,200/- and also intimated the complainant that post the said adjustment, the complainant is liable to pay an amount of Rs.60,849/- for the new unit along with IFMS charges. As such the question of assured return being due was settled once and for all while entering into the memorandum of settlement dated 05.10.2019. Therefore, it is clear that there remains nothing pending against the respondent, so far as assured return and previous allotment is concerned. However, there is still some outstanding which is due from the complainant along with other charges i.e. IFMS which remains to be paid by the complainant to the respondent. It is further pertinent to mention that on account of the memorandum of settlement dated 05.10.2019, the previous memorandum of understanding dated 03.08.2013 ceases to operate and does not have any legal effect anymore. It is further pointed out that on account of novation, the previous agreement has no force of law.
- x. That the agreement to lease arrangement was held between both the parties on 05.10.2019. It is the complainant who is delaying the unit to

be put on lease by not paying their dues as mentioned in the memorandum of settlement dated 05.10.2019.

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 submission made by the parties.

E. Jurisdiction of the authority

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

10. 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 complainant.

F.I Direct the respondent to handover possession and to pay delay possession charges as per the Act.

11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"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, —

.....

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."

12. Clause 3 of the builder buyer's agreement dated 05.10.2019 provides for handing over of possession and is reproduced below:

3. (a) *"That the said unit is ready for handover (in case of executive suites furnished as per the standard specification and in case of customized/managed offices the unit shall be furnished as per the tenants requirement individually or along with the other units contiguous or non contiguous whatsoever be the case) and the possession of the said unit shall be deemed handed over to the Allottee after signing of this agreement".*

(c) That in case of customized/managed offices the Allottee has given 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 and shall sign 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.

13. In the instant case, it is determined that a ready to move in property was offered to the complainant as the occupation certificate of the project in question was duly obtained by the respondent on 26.12.2018 and as per Clause 3(a) of the buyer's agreement dated 05.10.2019, the possession of the said unit was deemed to be handed over to the



complainant after signing of the said agreement. Further, vide clause 3(c) of the buyer's agreement, it was mutually agreed between the parties that only symbolic possession of the unit shall be handed over to the complainant as the unit in question was meant for leasing purposes only. Furthermore, vide clause 3(g) of the buyer's agreement, the complainant was obligated to take possession of the unit as per the agreement within a period of 30 days of its execution after payment of outstanding dues towards the said unit. 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. Section 19(6) & 19(7) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per Section 19(10) of the Act. The respondent vide demand notices dated 05.10.2019, demanded an amount of Rs.50,000/- and Rs.60,849/- towards IFMS and previous dues. However, the same remains unpaid till date. The Authority observed that the possession of the unit already stands offered to the complainant on 05.10.2019 and despite demand letters dated 05.10.2019, she is not coming forward to clear the outstanding dues and to take possession of the unit as per the agreement. Considering the above-mentioned facts, the Authority observes that there is no delay on part of the respondent in offering possession of the unit. Moreover, the complainant has never suffered any delay as the ready to move in property was to be handed over to her subject to payment of the balance consideration, which has not been paid by her till date. So, there is no equity in favour of the complainant. Hon'ble Apex Court has also categorically held in many judgements that the rules and procedure are handmaid of justice and not its mistress.



14. Further, proviso to Section 18(1) of the Act, 2016, provides that in case, the allottee does not intend to withdraw from the project, the promoter is liable to pay interest at the prescribed rate on the amount paid in respect of unit for every month of delay, till the handing over of the possession if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or due to discontinuance of business. However, the present case does not fall in any of the requisite conditions of Section 18 of the Act and accordingly no case for delay possession charges is made out under Section 18 of the Act read with Rule 15 of Rules, 2017 as there is no infringement of any of her rights by the respondent-promoter; but the respondent is obligated to handover possession of the unit to the complainant in terms of the buyer's agreement dated 05.10.2019, on payment of outstanding dues, as per the memorandum of settlement dated 05.10.2019.

F.II Direct the respondent to pay pending assured return from 2013 till date.

20. The complainant in the present complaint is seeking the above-said relief w.r.t the earlier unit allotted to her vide MoU dated 03.08.2013. The counsel for the complainant vide written submission dated 03.06.2025 has submitted that the complainant signed the settlement under duress and undue influence from the respondent. However, there is nothing on record which can substantiate the claim of the complainant. Further, the complainant has herself annexed the request for cancellation letter dated 05.10.2019, vide which she had requested the respondent for getting the previous allotment cancelled and for the allotment of customised/managed office on 2nd floor, after adjustment of the pending assured return towards the new allotment, due to change in complainant's requirement. The said request of the complainant was



accepted by the respondent and a memorandum of settlement was executed between them on the same date. Vide memorandum of settlement dated 05.10.2019, it was mutually agreed between the parties that the complainant acknowledges receipt of most of the payment towards assured returns and some assured returns amounting to Rs.2,86,200/- was pending and shall be adjusted towards the outstanding dues of newly allotted unit. Thereafter, a builder buyer's agreement against the unit in question was executed between the parties on 05.10.2019. Therefore, after execution of the buyer's agreement dated 05.10.2019, all the previous transactions between the parties stands superseded by the said agreement. Moreover, the said exchange of unit was made by the complainant at her free will vide letter dated 05.10.2019 and relief w.r.t the same cannot be granted at this belated stage.

F.III Direct the respondent to pay rent amount as per the lease agreement dated 05.08.2019.

21. The complainant is further seeking relief with respect to payment of lease rental as per the lease agreement dated 05.08.2019. Vide clause (b) of the agreement for lease rental dated 05.10.2019, the complainant has authorised the respondent to negotiate and finalize the leasing arrangement in respect of the unit, individually or in combination with other adjoining units, with any suitable tenant/s, for whatever period and for whatever rent and with whatever conditions as may be negotiated by the respondent with the intending lessee(s). Further, vide clause (d) of the said agreement, it was agreed that the lease document will stipulate payment of rent by the lessee to the respondent, who in turn will remit the proportionate rent to the complainant after deducting expenses/costs of managing the leasing arrangement and collection of rentals which presently work out to Rs.7/- per sq.ft. per



annum of the unit super area leased. The respondent has submitted that the complainant is delaying the unit to be put on lease by not paying their dues as mentioned in the memorandum of settlement dated 05.10.2019. After considering the above, the Authority is of view that the agreement for lease rental executed between the parties i.e. the promoter and the allottee is binding on them. Accordingly, the respondent is directed to put the unit of the complainant on lease and to pay lease rental as per the agreement for lease rental dated 05.10.2019, on payment of outstanding dues as per the memorandum of settlement dated 05.10.2019.

G. Directions of the authority

22. Hence, the authority hereby passes this order and issues 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. No case for delay possession charges as well as payment of assured return is made out.
- ii. The respondent is directed to handover possession of the unit to the complainant/allottee in terms of the buyer's agreement dated 05.10.2019, on payment of outstanding dues as per the memorandum of settlement dated 05.10.2019.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement dated 05.10.2019.
- iv. The respondent shall put the unit of the complainant on lease and shall pay lease rental as per the agreement for lease rental dated 05.10.2019, on payment of outstanding dues as per the memorandum of settlement dated 05.10.2019.



- v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.07.2025

