

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

Complaint no. : 1498 of 2024
Date of filing : 18.04.2024
Date of order : 04.04.2025

1. Prashant Chibber
R/o: Apartment, E-021, Enigma
Apartments, Sector-110, Dwarka
Expressway, Gurugram, Haryana-122017
2. Hema Gupta
R/o: H. No. 969/31, Ward No. 29, Laxman
Vihar, Phase-I, Gurugram, Haryana.

Versus

M/s. Landmark Apartments Pvt. Ltd.
Address: Landmark House-85, Sector-44,
Gurugram-122002, Haryana

Complainants

Respondent

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Ms. Aarti Bhalla and Shri Sharvan Kumar (Advocates)
Shri Amarjeet Kumar (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainants 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.

A. Project and unit related details

2. The details of the complaint, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and details of the project are given in the table below:

S. N.	Particulars	Details
1.	Name of the project	"Landmark Corporate Centre", at Landmark Cyber Park, Sector 67, Gurugram, Haryana
2.	Nature of the project	Cyber Park
3.	DTCP	97 of 2008 dated 12.05.2008 Valid up to 11.05.2020 Licensed area- 8.3125 acres
4.	RERA Registered/ not registered	Registered vide no. 61 of 2019 dated 25.11.2019 Valid up to 26.12.2018 Registered area- 4.48125 acres
5.	Application form dated	23.10.2012 [Page 11 of application dated 26.07.2024]
6.	Old unit no. and area	Executive Suit Unit at 4 th floor admeasuring 150 sq. ft. [As per mou dated 26.10.2012 at page 19-20 of complaint]
	Present unit no. and area	Customised/Managed Office at 2 nd floor admeasuring 150 sq. ft. [As per MOU dated 18.10.2019, page 41 of complaint]
7.	Date of execution of MOU	26.10.2012 [Page 18 of complaint]

8.	Assured Return clause as per MOU dated 26.10.2012	3. That the Buyer has paid the entire Basic Sale price to the Company @ Rs.10670/- per sq. ft. for the total area admeasuring 150 sq. ft. and the Company has agreed to pay Rs.16,500/- (Rupees Sixteen Thousand Five Hundred Only) every month as assured return to the buyer which shall be payable quarterly, till the date of possession or 3 years whichever is earlier. [Page 20 of complaint]
9.	Leasing clause as per MOU dated 26.10.2012	4. That the Second Party has agreed to give leasing right for 9 years to First Party after possession. The First leasing right of the above said property will be with First Party for the locking period which is 9 years. First Party will pay Rs.110/- Per Sq. Ft. as rent to Second Party for 9 years. Rent will appreciate 15% after every 3 years. [Page 20 of complaint]
10.	Possession clause	N/A
11.	Due date of possession	N/A
12.	Occupation certificate	26.12.2018 [Page 34 of complaint]
13.	Reminder for taking possession and clearing due amounting to Rs.13,98,017/-	07.09.2019 [Page 36 of complaint]
14.	Request by the complainants to cancel the allotment of executive sit and allot customised/managed office on 2 nd floor vide letter dated	01.10.2019 and 18.10.2019 [Page 38 and 39 of complaint]

15.	Memorandum of settlement (in respect of unit at 2 nd floor)	18.10.2019 Stating all the previous AR has been adjusted against the new allotted unit and Rs. 18,762/- is due from the allottees to the respondent [Page 41 of complaint]
16.	BBA confirming allotment of unit on 2 nd floor	31.12.2019 [Page 24 of application dated 26.07.2024]
17.	Agreement for lease agreement	31.12.2019 (Page 43 of complaint)
18.	Basic consideration sale	Rs. 16,00,500/- [As per clause 3 of MOU dated 26.10.2012, page 20 of complaint and clause 2(a) of BBA dated 31.12.2019, page 25 of application dated 26.07.2024]
19.	Total consideration sale	Rs.16,83,750/- [As per payment plan of BBA dated 31.12.2019, page 35 of application dated 26.07.2024]
20.	Amount paid by the complainants	Rs. 16,00,500 /- [Page 23 & 24 of complaint]
21.	Legal notice sent by the complainants seeking refund, return on investment, etc.	23.09.2021 [Alleged by the complainants on page 6 of complaint, however, no document placed on record.]

B. Facts of the complaint

3. The complainants have made the following submissions:

- That the respondent floated a project namely "Landmark Corporate Centre" situated at Sector 67, Gurugram. The complainants came across one of such advertisement and got interested in a commercial project with assured returns and rentals. The scheme introduced by the respondent to the complainants sounded profitable and lucrative.

Upon application for allotment in the said project, the complainants were allotted "THE EXECUTIVE SUITES" on 4th Floor, admeasuring 150 sq. ft. in the said project for price of Rs.10,670- per sq. ft. and in this regard, a Memorandum of Understanding dated 26.10.2012 was executed inter se parties. The complainants have paid total consideration of Rs.16,00,500/- vide two cheques dated 21.10.2012 and 22.10.2012. As per clause 3 of the MOU dated 26.10.2012, the respondent was under obligation to pay Rs. Rs.16,500/- per month till the date of possession or 3 years whichever is earlier. Further, as per clause 4 of the said MOU, the complainants agreed to give the leasing rights of the said property, on a rent of Rs. 110/- per sq. ft. for next 9 years to the respondents and the rent would appreciate @ 15% every 3 years after that. The respondent had confirmed the possession much before 3 years as the project was launched before 2008. The respondent assured verbally that it will ensure that the complainants get the possession very soon and then will start getting the rent for the next 9 years as per the clause no. 4 of the MOU dated 26.10.2012.

- b. That the respondent paid assured return till October 2015 and since then, there has been no payment done by the respondent. The complainants continued to visit the office of the respondent seeking refund of their hard-earned money invested in the project of the respondent. All communication to the respondent has gone in vain.
- c. That the respondent vide letter dated 07.09.2019 raised illegal demands amounting to Rs. 13,98,017/-. When the complainants went to the office of the respondents, they threatened the complainants that if this outstanding is not cleared, the previous payment shall also be forfeited and the allotment of the property shall also be cancelled. The

authorized representative of the respondent tried to convince the complainants that the lockable space on the 4th floor on which the complainants have been allotted their space is not being able to be put on rent. It was suggested by the authorized representative of the respondent that they should change their floor and instead of a lockable space they should take a space which can be jointly given to a bigger tenant who needs the entire floor. Left with no other option, the complainants agreed to change from 4th floor to 2nd floor and signed certain documents & BBA but the complainants' copy was never provided back to them after the signatures.

- d. That the complainants yet again visited the said property and were shocked to see that the entire property was all put on rent. The complainants felt cheated by the respondent as they were not paying the rent despite receiving regular rentals and now the complainants realized the reason of the respondents for not providing the documents of the Builder Buyer Agreement.
- e. That having no other option, the complainants through their counsel Mrs. Aarti Bhalla, Advocate sent a legal notice dated 23.09.2021 to the respondent in which the respondent was directed to pay the due refund, return on investment/ rent and damages along with interest @ 24% p.a. to the complainants within a time period of 7 days. But the respondent neither replied to the legal notice nor refunded the amount to the complainants. The said complaint was also filed before the Hon'ble HRERA Authority for the refund vide complaint number RERA-GRG-2019-2022. When the respondent was summoned before the Authority, they filed the reply along with the new Builder Buyer Agreement which was not shared with the complainants. The

complainants had no choice but to get the said complaint withdrawn with the intention of filing fresh complaint against the respondent using the documents provided by the respondents in the written statement of the previous complaint filed.

- f. That the respondent obtained the occupation certificate from the competent authority on 26.12.2018 but the complainants were never informed about the same. Thereafter, vide letter dated 07.09.2019, the respondent created undue pressure on the complainants by raising an illegal demand of Rs. 13,98,017/-. It is pertinent to mention here that the respondent has not sent any previous communication for taking possession. When the complainants approached the respondent's office, the respondent offered the complainants to cancel the property on 4th floor and to book another property on 2nd floor by adjusting previous amount paid and pending assured return against the new unit by making the complainants sign two letters. In this regard a Memorandum of settlement for the 2nd floor was signed on 18.10.2019 whereby an amount of Rs. 52,500/- which was pending from the respondent towards the complainants was adjusted and there was a payment of Rs.18,762/- due from the complainant to the respondent against the EDC, IDC etc. against the new allotted unit. It is pertinent to highlight that the amounts raised in the letter dated 07.09.2019 of Rs.13,98,017/- was nowhere mentioned in the settlement agreement w.r.t 150 sq. ft. from fourth floor to the second floor. This clearly shows the mala fide intention of the respondent and how they manipulate the emotions and the money of the complainants/buyers.
- g. That the complainants approached the respondent for their rentals, the respondent pointed out that 4th floor has been put on rent and the

previous builder buyer agreement shall be in force and the complainants shall remain the owner of the property of the 4th floor as per the MOU date 26.10.2012. The complainants raised the question of the return on investment which was adjusted against the exchange of property at 2nd Floor, to which the respondent authorized representatives informed that the amount shall be refunded back to the complainants. But the respondent did not pay even a single dime to the complainants. Hence, this complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondent to refund the entire amount i.e., Rs.16,00,500/- paid by the complainants along with interest as per the provisions of the Act.
- ii. Direct the respondent to pay return on investment/rent @ Rs.16,500/- per month Since October 2015 till the final date of realisation to the complainants.
- iii. To pay compensation amounting to Rs.10,00,000/- on account of mental agony and damages.
- iv. Litigation cost of Rs.1,00,000/-.

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. Application for dismissal of complaint by the respondent

6. By virtue of an application dated 26.07.2024 for dismissal of complaint, the respondent has pleaded as under:

- i. That in the year 2010-2011, the respondent after availing all necessary approvals from the competent authority, the respondent launched a project namely, "Landmark Corporate Centre", Sector 67, Gurugram, Haryana offering the benefit of assured return till date of possession or

3 years whichever was earlier. The complainants booked a unit in the said project by paying an amount of Rs.16,00,500/- towards the same price and a MOU dated 26.10.2012 was executed inter se parties. Vide letter dated 23.09.2014, the respondent an office space measuring 150 sq. ft. on 4th floor of the project. In the year 2015, the respondent successfully completed the project and applied for occupation certificate on 17.04.2015. After applying the same, vide letter dated 23.07.2015 the respondent informed all the allottees about the tentative date of receiving the OC. After receiving OC on 26.12.2018, the respondent sent a reminder for offer of possession vide letter dated 07.09.2019 to the complainants. The complainants did not pay the outstanding amounts and on the contrary, requested the respondent for change in office space on 2nd floor vide letter dated 18.10.2019. Thus, vide Memorandum of Settlement dated 18.10.2019, the respondent allotted customised/managed office unit admeasuring 150 sq. ft. on the second floor of the said project and while changing the unit, adjusted the remaining assured return amounting to Rs.52,500/- in the new allotted unit and Rs.18,762/- still stood payable by the complainants. Pursuant to signing of Memorandum of Settlement dated 18.10.2019, the complainants as well as the respondent signed a Builder Buyer Agreement and an Agreement for lease arrangement for arranging lease on dated 31.12.2019. At the time signing of BBA dated 31.12.2019, the complainants had already taken possession of the unit allotted to the complainants as per clause 3 of BBA which states "*...and the possession of the said unit shall be deemed handed over to the Allottee after signing of this agreement.*" Thus, the present complaint is liable to

be dismissed as the complainants are already in possession of the unit and thus, the prayer of the complainants become infructuous.

- ii. That the complainants have not approached this Hon'ble Authority with clean hands and has suppressed facts in order to illegally enrich the complainants. The complainants have earlier filed a complaint against the respondent in 2021 later on in the year 2023, the said complaint was withdrawn by the complainants and the same is evident from the order dated 12.07.2023 passed by the Authority. Thus, the present complaint is barred by the principles of Res-Judicata as the said complaint was withdrawn without the leave of the Authority.
 - iii. That the present complaint is barred by limitation as it is an admitted facts that the occupation certificate for the project and the unit in question was received in the year 2018 and the complainants have already taken possession of the unit allottees to the complainants in the year 2019 and the present complaint has been filed by the complainants after a period of almost 5 years. Thus, the present complaint filed by the complainants is time barred and merits summary reject at the very outset.
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 these undisputed documents and submission 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 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.

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 of the authority

12. The respondent has raised an objection that the present complaint is barred by the principle of *res judicata* as the complainants had previously filed a complaint bearing no. 2019-2022 in respect of same cause of action and the same was later withdrawn by the complainants without the leave of the Authority.

13. The authority observes that a complaint bearing no.2019-2022 was filed by the complainants before the Authority and the same was disposed of vide order dated 12.07.2023. The relevant order is reproduced as under:

"The counsel for the complainant wishes to withdraw the complaint. Allowed to do so.

In view of above, the complaint stands disposed off. File be consigned to the registry."

14. Section 11 of the Code of Civil Procedure, 1908 (CPC) deals with the principle of res judicata and the same is reproduced as under for ready reference:

*"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and **has been heard and finally decided by such Court.**"*

15. Further, the authority further place reliance on **State of Uttar Pradesh & Anr. v. Jagdish Sharan Agrawal & Ors.**, (2009) 1 SCC 689 wherein Hon'ble Apex Court held that where the matter has not been decided on merit earlier, the doctrine of res judicata is not applicable.
16. In the present matter also, the complaint bearing no. 2019-2022 was not decided on merits rather it was withdrawn by the complainants without the leave of the court. Consequently, the said order dated 12.07.2023 cannot operate as res judicata.
17. However, the Authority observes that the withdrawal of a suit by a plaintiff under the CPC is governed by a well-defined set of rules that aim to balance the rights of the plaintiff, the defendant, and any co-plaintiffs involved. While the plaintiff enjoys the right to withdraw their suit, this right is subject to various conditions and limitations. One such restriction is stated under Order XXIII Rule 1, sub-rule (4) which is reproduced as under:

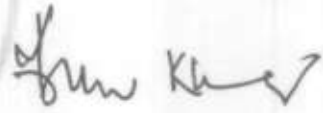
"(4) Where the plaintiff-

(a) ...

- (b) *withdraws from a suit, or abandons part of a claim without the permission referred to, in Sub-rule (2), he shall be liable for such costs as the Court may award and **shall be precluded from instituting any fresh suit** in respect of such subject-matter or such part of the claim/”*

18. It is pertinent to mention here that as per the aforesaid provisions, if the plaintiff wishes to withdraw the suit and file a fresh one, they must seek the court's permission and without such permission, the plaintiff risks being barred from pursuing the same cause of action in the future. In the present case, the complainants herein did not take the leave of the court while withdrawing the complaint bearing no. 2019/2022 and now have instituted present complaint on same cause of action and seeking same reliefs. Thus, the present complaint is barred on the principles and provisions under Order XXIII Rule 1, sub-rule (4), Civil Procedure Code, 1908.
19. The complaint as well as applications, if any, stands dismissed.
20. File be consigned to registry.

Dated: 04.04.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM