BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**7 of 2025**
Date of complaint	**:**	**13.01.2025**
Date of order	**:**	**12.11.2025**

Div Bhargava and Shveta Bhargava,
Both R/o: - B-5/138, Safdarjung Enclave,
New Delhi-110029. **Complainants**

Versus

M/s Landmark Apartments Pvt. Ltd.
Regd. office: A-11, Chittranjan Park,
South Delhi, Delhi-110019. **Respondent**

CORAM:
Ashok Sangwan **Member**

APPEARANCE:
Nitin Yadav (Advocate) **Complainants**
Amarjeet Kumar (Advocate) **Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees 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 complainants, 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.	MoU between original allottee and respondent	06.02.2012 (Page 16 of complaint)
9.	Addendum of MoU	18.09.2017 (page 20 of complaint)
10.	Endorsement in favour of complainant	18.09.2017 (as admitted by respondent at page 2 of reply)
11.	Unit area admeasuring (Super area)	2360 sq.ft., 6th Floor (Page 30 of complaint)
12.	Builder buyer's agreement	08.08.2019 (Page 29 of complaint)
13.	Due date of possession	06.02.2015 [Calculated as per ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]***
14.	Total sale consideration	Rs.69,58,500/- (Page 39 of complaint)

15.	Amount paid by the complainant	Rs.61,32,500/- (Page 30 of complaint)
16.	Occupation certificate	26.12.2018 (Page 21 of the reply)
17.	Offer of possession	08.08.2019 (as per clause 3(a)(e) of the agreement on page 31 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the complainants booked a commercial space admeasuring 2000 sq. ft. in the project of the respondent namely "Landmark Cyber Park" at Sector 67, Gurgaon, Haryana.

II. That the respondent and complainants entered into a Memorandum of Understanding dated 06.02.2012. It is pertinent to mention that prior to the booking the respondent offered the complainants that if 100% of basic sale price is paid to the respondent then the respondent shall pay an assured rent of Rs.1,17,000/- to the complainants for the period of construction that was represented to the complainants as 3 years. The complainants accepted the offer of respondent and accordingly paid 100% BSP of the unit to the respondent.

III. That the respondent pursuant to the MoU dated 06.02.2012, allotted commercial space measuring 2000 sq.ft. to the complainants without specifying the floor. However, the respondent through their representative gave verbal assurance that whichever floor would be rented out, the said floor shall be allotted to the complainant. However, when the entire ground floor of the said commercial space was rented out, the respondent failed to give possession/assign the ground floor space to the complainants.

IV. That the respondent had promised and represented that the possession shall be handed over in three years from date of execution of MoU dated 06.02.2012 and the same is reflected from clause 4 of the MoU. However, the respondent did not deliver the possession and has unduly and unjustifiably delayed the project.

V. That the respondent by virtue of MoU dated 06.02.2012 was under an obligation to pay monthly assured return of Rs.1,17,000/- to the complainants, however the respondent failed to make the aforesaid payment and kept on gaining time on one pretext or the other. The respondent finally in 2017 offered the complainants to enhance the commercial space against adjustment of payable/pending assured return. The complainants finding themselves to be in a totally helpless situation accepted the offer of the respondent and accordingly agreed for execution of an addendum dated 18.09.2017 to the originally executed MoU dated 06.02.2012. As per the addendum to MoU the respondent enhanced the area by 360 sq.ft. against adjustment of Rs.26,32,500/- which was the pending/payable assured return. It is pertinent to mention that just before the execution of the addendum to MoU the respondent further demanded payment of Rs.8,26,000/- towards the enhanced area, thereby making total sale consideration of enhance area i.e. 360 sq.ft. as Rs.34,58,500/-. The respondent pursuant to receipt of payment of Rs.8,26,000/- the respondent issued a "no dues certificate" dated 28.09.2018 along-with allotment letter.

VI. That the respondent has charged Rs.35,58,500/- for enhanced area i.e. 360 sq.ft. only and whereas the respondent charged Rs.35,00,000/- as BSP for allotting commercial space of 2000 sq.ft. The aforesaid fact reflects that the respondent enjoyed dominant position and coerced the complainants to accept offers which were highly detrimental to the interests of the complainants.

VII. That the complainants had booked the said unit with hope and belief that the possession will be handed over timely, however on account of inordinate delay on part of the respondent, the entire purpose of the said booking has now been frustrated.

VIII. That the complainants got issued notice dated 29.07.2024, however, despite receipt of the same, the respondent has neither complied the notice, nor has given any response.

C. Relief sought by the complainants:

4. The complainants have 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 cost of litigation.

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's father namely Vijay Bhargava with a sole motive to invest and for gains filled the application from dated 03.02.2012 and thereafter entered into a Memorandum of Understanding dated 06.02.2012 and booked an IT space/unit in "Landmark Cyber Park" admeasuring 2000 sq. ft. As per clause 4 of the said Memorandum of Understanding the respondent had to pay Rs.1,17,000/- as assured return per month payable quarterly to second party till the date of possession or 3 years whichever is earlier.

ii. That thereafter in year 2016 in order to increase the gains, Mr. Vijay Bhargava surrendered/cancelled the unit allotted to him under the Memorandum of Understanding dated 06.02.2012 and opted for a bigger unit in the same project. It is imperative to mention here that in this regard Mr. Vijay Bhargava executed an addendum of memorandum of understanding dated 18.09.2017. It is further submitted that in accordance with Clause (b) of the addendum to the memorandum of undertaking, the pending assured return was adjusted against the new unit allotted to the complainant, measuring 2360 sq. ft. It is pertinent to mention that on 18.09.2017, Mr. Vijay Bhargava transferred the ownership of the said unit in favour of the complainant through endorsement. Thereafter the respondent issued allotment letter dated 28.09.2017 to the complainant and allotted a unit admeasuring 2360 sq. ft. on 6th Floor in the project.

iii. That the respondent after heavy investment completed the project applied for Occupation Certificate on 17.04.2015 and the competent authority was pleased to issue occupation certificate on 26.12.2018.

iv. That after being fully satisfied with the allotment the complainants executed a builder buyer's agreement for the new unit with enhanced are on 08.08.2019 with the basic sale price of Rs. 61,32,500/- and other charges (EDC & IDC) of Rs.8,26,000/- and the total price of the apartment coming out to be Rs.69,58,5000/-.

v. That the buyer's agreement was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said agreement.

vi. That in accordance with clauses 3(a) and 3(g) of the buyer's agreement executed between the parties on 08.08.2019, the possession of the unit was deemed to have been handed over to the allottee upon execution of the said agreement. Furthermore, in the event the allottee fails to take possession of the said unit within one month from the date of execution, the intending allottee(s) shall be liable to pay penalty charges to the developer/company at the rate of Rs.5/- per sq. ft. of the super area of the unit, per month, for the entire duration of such delay.

vii. That the builder buyer's agreement was executed on 08.08.2019 and the present complaint was filed by the complainant after a period of almost 5 Years. Thus, the present complaint filed by the complainant is barred by the law of limitation since the complainant has failed to file the complaint within a period of 3 years from the date of cause of action which in present case happened to be in the year 2022 and is liable to be dismissed solely on this ground without even going into the merits of the present complaint.

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 complainants.

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

11. In the present complaint, the complainants intend to continue with the project and are 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. **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.***

13. In view of the above-mentioned reasoning, the date of execution of MoU i.e. 06.02.2012 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 06.02.2015.

14. In the instant case, the original allottee i.e. Mr. Vijay Bhargava was allotted an IT space/unit admeasuring 2000 sq.ft. in the project of the respondent named "Landmark Cyber Park", Sector-67, Gurugram vide Memorandum of Understanding dated 06.02.2012. On 18.09.2017 an addendum to memorandum of understanding dated 06.02.2012 was executed between the Mr. Vijay Bhargava and the respondent, vide which the pending assured return was adjusted against the new allotted unit allotted measuring 2360 sq.ft. in the said project and on the same date i.e. 18.09.2017, Mr. Vijay Bhargava transferred the ownership of the said unit in favour of the complainants through endorsement. The respondent completed the construction and development of the project and got the OC/CC on 26.12.2018. Thereafter, a builder buyer's agreement dated 08.08.2019 against the unit/space measuring 2360 sq.ft. super area on 6th floor was executed between the complainants and the respondent for a total sale consideration of Rs.69,58,500/-, against which the complainants have paid a sum of Rs.61,32,500/- till date. Vide Clause 3(a) of the buyer's agreement, it was provided that the possession of the said unit was deemed to be handed over to the complainants after signing of the said agreement. Further, vide clause

3(g) of the buyer's agreement, the complainants were 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.

15. The respondent vide reply has raised an objection that the present complaint is barred by limitation since the complainants have failed to file the complaint within a period of 3 years from the date of cause of action which in present case happened to be in the year 2022. After going through the documents available on record as well as submissions made by the parties, the Authority is of view that the law of limitation does not strictly apply to the Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights*". Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

16. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in ***MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020*** has held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

17. In the present matter the cause of action arose on 08.08.2019, when the offer of possession of the unit/space was made by the respondent. The complainants have filed the present complaint on 13.01.2025 which is 5 years 5 months from the date of cause of action. Therefore, after taken into consideration the exclusion period from 15.03.2020 to 28.02.2022 as observed by the Hon'ble Apex above, it is determined that the relief sought by the complainants regarding delay possession charges has not been filed within a reasonable time period and is thus declined.

18. The complainants are seeking further relief with respect to handover of possession. The Authority observes that Section 19(6) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale to take physical possession of the apartment/unit. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and get the conveyance deed executed in favour of the complainants. Whereas, as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. It is further observed that the occupation certificate for the project in question has already been obtained by the respondent. Therefore, in view of the above, the complainants are liable to pay the outstanding dues and take possession of the unit.

19. In view of the above, the respondent is directed to handover possession of the allotted unit/space and to get the conveyance deed of the allotted unit/space executed in favour of the complainants in terms of Section 19(6) read with Section 17(1) of the Act of 2016, on payment of outstanding dues, stamp duty and registration charges as applicable within three months from the date of this order.

F.II Cost of litigation.

20. The complainants are seeking above mentioned relief w.r.t compensation. ***Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*** has held that an allottee is entitled to claim compensation and litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. Directions of the authority

21. 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. The relief sought by the complainants seeking regarding delay possession charges is declined as the same has been sought after a period of 5 years 5 months from the date of cause of action, which is beyond a reasonable time period.

   ii. The respondent is directed to supply a copy of the updated statement of account within a period of 30 days to the complainants.

   iii. The complainants are directed to pay outstanding dues within a period of 60 days from the date of receipt of updated statement of account.

   iv. The respondent is directed to handover possession of the allotted unit/space and to get the conveyance deed of the allotted unit executed in favour of the complainants in terms of Section 19(6) read with Section 17(1) of the Act of 2016, on payment of outstanding dues, stamp duty and registration charges as applicable within three months from the date of this order.

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.

22. Complaint stands disposed of.
23. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.11.2025