



HARERA  
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana


नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा


### PROCEEDINGS OF THE DAY


Day and Date	Tuesday and 19.6.2018
Complaint No.	121/2018 case titled as Ms. Deepti Gupta versus M/s Adel Landmarks Ltd.
Complainant	Ms. Deepti Gupta
Represented through	Complainant in person
Respondent	M/s Adel Landmarks Ltd.
Respondent Represented through	Shri S.C.Gupta Advocate for the respondent.

### Proceedings

The complainant made a statement that his application is for giving directions by the Authority to the Promoter for fulfillment of his obligation in the eventuality of not handing over the possession as per the date mentioned in the agreement or sale of the allotment letter. The complainant also made a statement that he has assured before the Authority that he is not making a case for compensation. The Advocate for the respondent informed that Project is not registered and reasons are not known to him. Keeping in view the facts of the case, the Authority suomoto take cognizance that the Project is registerable and has not been registered by the Promoters. Accordingly, a show cause notice be issued by the Registration Branch as to why proceedings under Section 59 of The Real Estate (Regulation & Development) Act, 2016 be not issued against the Promoter for not registering the Project. The Promoter is directed to appear before the Authority on 9.7.2018 at 3.00 PM in the office of the Authority. The complainant has stated that he has paid a sum of **Rs. 34,02,000/-** out of the total consideration amount was **Rs.67,60,000/-** to the respondent. He also made a statement that he is not in arrears of any payment demanded by the Promoter. The complainant made a statement that he wants to withdraw from the Project. Thus, the Promoter is bound to return the amount received by him alongwith prescribed interest. Accordingly, the Promoter is directed to refund the amount alongwith prescribed interest within 45 days from the receipt of this order. Detailed order will follow. File be consigned to the Registry.

  
Samir Kumar  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
19.6.2018

  
Subhash Chander Kush  
(Member)

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

Complaint No. : 121 of 2018  
Date of Institution : 02.04.2018  
Date of Decision : 19.06.2018

Ms. Deepti Gupta, R/o 222/5, Near Arya Samaj  
Mandir, Jacobpura, Gurugram **Complainant**

Versus

M/s Adel landmarks Ltd., C-56/41, Sector-62,  
Noida, UP. **Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Ms. Deepti Gupta Complainant Advocate for the complainant  
in person  
Shri S.C.Gupta and Shri Manoj Kumar, Advocate Advocate for the respondent

**ORDER**

1. A complaint dated 02.04.2018 was filed under Section 31 of The Real Estate (Regulation & Development Act, 2016 read with Rule 28 of The Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant (Ms. Deepti Gupta) against the promoter (M/s Adel Landmarks Ltd.) on account of violation of clause 10.1 of the builder buyer agreement executed on 15.04.2015 in respect of unit as



detailed below for not being in a position to deliver the possession on the due date as the construction has not been started which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the Project	Cosmoscity 3, Sector - 103, Gurugram
2.	Unit No.	CSM 3/103/C2-1202
3.	Registered/Un-Registered	Un-Registered
4.	Total consideration amount as per agreement dated 15.04.2015	₹ 67,60,000/-
5.	Total amount paid by the complainant	₹ 34,02,000/-
6.	Percentage of consideration amount	Approx. 50 Percent
7.	Date of delivery of possession from the date of execution of the builder buyers agreement	54 Months i.e. 15.10.2019
8.	Delay of number of months/ years upto date	No delay
9.	Penalty Clause as per builder buyer agreement	Clause 10.8 i.e. Rs.10/- p.m. per sq.ft.

3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record aforementioned according to which the possession of the aforesaid unit is to be delivered on



15.10.2019 but the respondent has not started the construction work at site in full swing. The builder being in a dominating position has made a one-sided agreement. Hence, the time given by the promoter for completion is absurd. It can be foreseen that the promoter will not be able to fulfil his committed liability in the above stated circumstances.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 08.05.2018. subsequently the case came up for hearing on 07.06.2018 & 19.06.2018. the reply filed on behalf of the respondent has been perused and found to be vague and evasive. As It is contended that the parties are bound by the terms and conditions of the agreement and that the present complaint is premature as the time period agreed under the agreement for delivery of possession of unit has still not lapsed but it is also the fact that the respondent has not even started the proper construction of the project so far, even after the passage of more than 3 years. The complainant filed the rejoinder to rebut the reply filed by the respondent in which the complainant reaffirmed the contentions given in the complaint.



5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. There is no construction activity at the project. So it is not possible for the respondent company to handover the possession till given date. The learned counsel for the respondent did not rebut the arguments advanced by the complainants. The advocate for the respondent informed that project is not registered and reasons are not known to him.
6. As per agreement for sale, clause no. 10.1 the possession of the flat was to be handed over within 54 months from the date of execution of buyer agreement or the grant of statutory approvals whichever is later. The clause regarding the possession of the said flat is reproduced below:

*"10 Possession and Use*

*10.1 it is understood and agreed between the parties that based on present plans and estimates and subject to all just exceptions, the developer contemplates to give/offer possession of unit to allotment(s) within 54 months from the date of execution of the buyers agreement (with a grace period of 6 months) or grant of all statutory approvals, whichever is later, unless there shall be delay or failure due to force majeure conditions and reasons mentioned in the agreement. The said delivery date is subject to force majeure events or governmental action/inaction or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments or any other activity of allottee(s)*



*deterrent to the progress of the complex/project/residential colony. The allottee(s) is not entitled to lease out the said unit till execution of formal and proper sale deed/convenience deed and handing over of possession to the allottee(s)."*

7. As per date of execution of buyer agreement, the due date of possession would be 15.10.2019 and as far as grant of statutory approvals are concerned, the term have been drafted mischievously and is completely one sided. As held in para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:

*"..Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

8. As the possession of the flat to be delivered by 15.10.2019 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:



"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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

9. Keeping in view the present status of the project and intervening circumstances, the complainant wishes to **withdraw** from the project and as per section 18(1) of the Act, complainant has made a demand to the promoter to return the amount received by him in respect of the flat allotted to her with prescribed interest. The promoter has failed to return the amount received by him along with the prescribed interest which is an obligation on the promoter as per section 18(1). Complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required. Section 18(1) is reproduced below.



**18 (1) Return of amount and compensation -**

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.

10. The complainant makes a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**34 (f) Function of Authority -**

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.

It is requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:





**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

11. Thus, the Authority, exercising powers vested in it under section 37 of The Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to refund ₹34,02,000/- along with the prescribed rate of interest as per provision of Section 15 of the Act ibid from the date the respondent has received the amount from the complainant within 45 days of the date of this order.
12. The authority takes Suo motu cognizance that the project is registerable and has not been registered by the promoters. The authority has decided to take Suo-motu cognizance for not getting the project registered & for that separate proceeding will be initiated against the respondent.
13. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the Adjudicating Officer.




14. The order is pronounced.
15. Case file be consigned to the registry.



  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



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