PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 19.6.2018
Complaint No.	137/2018 case titled as Ms. Savita Sodhi versus M/s Adel Landmark Ltd. and others
Complainant	Ms. Savita Sodhi
Represented through	Shri Anil Sodhi-brother in law of complainant in person.
Respondent	M/s Adel Landmark Ltd. and others
Respondent Represented through	Shri Manoj Kumar, Advocate for the respondents.

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 for sale or 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 suo moto 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.31,18,125/-** out of the total consideration amount was **Rs.65,31,060/-** 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)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
19.6.2018

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. : 137 of 2018
Date of Institution : 06.04. 2018
Date of Decision : 19.06. 2018

1. Ms. Savita Sodhi Resident of House No. E--322 Greater Kailash-II, New Delhi

...Complainant

Versus

1. M/s Adel landmarks Ltd., 292, Block-B, Chandra Kanta Complex, Shop No. 08, New Ashok Nagar, New Delhi.
2. Headway Buildcon Pvt. Ltd., 292, Block-B, Chandra Kanta Complex, Shop No. 08, New Ashok Nagar, New Delhi.

...Respondents

CORAM:
Dr. K.K. Khandelwal — **Chairman**
Shri Samir Kumar — **Member**
Shri Subhash Chander Kush — **Member**

APPEARANCE:
Shri Anil Sodhi — Authorized representative of the complainant
Shri Manoj Kumar *(SRGR Law Offices)* — Advocate for the respondents

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Chairman
Member
Member

ORDER

1. A complaint dated 06-04-2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and

HARERA GURUGRAM

Development) Rules, 2017 by the complainant (Ms Savita Sodhi) against the promoter (M/s Adel Landmarks Ltd.) on account of violation of clause 10 of builder-buyer agreement executed on 02.04.2012 for unit no. CSM/103/D-0603, Tower–D, 6th Floor in the project "Cosmocity 1" for not giving possession on due date which is an obligation 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	Cosmocity 1, Sector - 103, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	CSM/103/ D-0603
3.	Booking amount paid by the buyer to the builder/promoter/company as per agreement	Rs. 13,43,580/-
4.	Total consideration amount as per agreement dated 02.04.2012	Rs. 65,31,060/-
5.	Total amount paid by the complainant upto date	Rs 31,18,125. /-
6.	Percentage of consideration amount	Approx. 70 Percent
7.	Date of delivery of possession as per the builder-buyer agreement	36 Months i.e. 02. 04. 2015
8.	Delay of number of years/months upto date	3 Years, 3 months

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9.	Penalty Clause as per builder buyer agreement dated 02.04.2012	Sub clause 2 of Clause 10 of BBA i.e. Rs.75/- per square mt. per month.
10.	Cause of delay in delivery of possession	No valid reason explained by the promoter for the delay.

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 for Unit No. CSM/103/ D-0603 in the project "Cosmocity 1", sector 103, Gurugram according to which the possession of the aforesaid unit was to be delivered on 02. 04. 2015. The respondent no. 1 has not delivered the possession till 19.06.2018. The promoter being in a dominating position has made a one-sided agreement. The promoter has not fulfilled his committed liability as on date. Neither he has delivered the possession of the unit no. CSM/103/ D-0603 as on date to the purchaser nor has paid any compensation i.e. @ Rs. 75 Sq. mt of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 02.04.2012.

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4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The legal counsel of the respondents appeared on 15.05.2018.

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The case came up for hearing on 15.05.2018 & 19.06.2018. The reply has been filed on behalf of the respondents which has been perused. It has been contended by the respondents that they have not violated any commitments in the agreement and that the progress of the project was hampered as the complainant along with other allottees defaulted in making the payments. This contention is found to be vague and evasive.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. It was argued that there is no construction activity at the project site. Only 25% of the construction has been achieved, so it is not possible for the respondent no. 1 to handover the possession in the near future. The counsel for the respondents informed that project is not registered and reasons are not known to him.

6. As per clause no. 10 of the agreement for sale, the possession of the flat was to be handed over within 36 months from the date of execution of builder buyer agreement (with a grace period of 6 months. As per date of execution of buyer agreement, the due date of possession was 02.04.2015. As far as the penalty clause in case of delay in possession is concerned which is Rs. 75/sq. mt. per month, it is held to be one-sided. As per para 181 in case of *Neelkamal Realtors*

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Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017), 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."*

7. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the Adjudicating Officer. From the conduct of the respondents as well as the terms and condition of builder buyer agreement, the respondents have failed to give possession of the space, as per Builder Buyer Agreement which is in violation of Section 11 (4) (a).

8. Keeping in view the present deplorable status of the project, 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 her in respect of the flat allotted to her with prescribed rate of interest. The promoter has failed to return the amount received by him along with the prescribed rate of interest

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which is an obligation on the promoter as per the provision of section 18(1). Complainant reserves her right to seek compensation from the promoter for which he/she shall make separate application to the adjudicating officer, if required.

9. Thus, it is held that the respondents are directed to refund Rs. 31,18,125/- along with prescribed rate of interest from the date the respondents have received the amount from the complainant within 45 days of the date of this order.

10. The authority takes Suo-moto cognizance that the project is registerable and has not been registered by the promoters. The authority has decided to take Suo-moto cognizance for not getting the project registered & for that, separate proceeding will be initiated against the respondents.

11. The order is pronounced.

12. Case file be consigned to the registry.

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(Samir Kumar)
Member

(Subhash Chander Kush)
Member

19.12.2018

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

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