



**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**

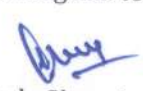
Day and Date	Tuesday and 19.6.2018
Complaint No.	150/2018 case titled as Mrs. Mamresh and Mehar Chand Versus M/s Adel Landmark Ltd.
Complainant	Mrs. Mamtesh and Mehar Chand
Represented through	Both the complainants in person with Shri Amit Kumar Srivastav, Advocate.
Respondent	M/s Adel Landmark Ltd.
Respondent Represented through	Shri Manoj Kumar, 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.28,27,740/-** out of the total consideration amount was **Rs.58,39,000/-** 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)

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16

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

Complaint No. : 150 of 2018  
Date of Institution : 09.04.2018  
Date of Decision : 19.06.2018

1. Mrs. Mamtesh

**Complainant**

2. Mr. Mehar Chand both Resident of House  
No. 784, Block-B, Lakshman Vihar, Phase-  
2, Shani Mandir Road, 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:**

Shri Sanjeev Sharma  
Shri Dheeraj Kapoor

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 09.04.2018 was filed under Section 31 read with Rule 28 of The Real Estate (Regulation & Development Act, 2016 by the complainant (Mrs. Mamtesh & Mr. Mehar Chand) against promoter (M/s Adel Landmarks Ltd.) on account of violation of clause 10 of buyer's agreement executed on 06.07.2013 for unit no. CSM/103/B2-0301 in



project cosmos city 3 i.e. 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 of the Project situated in	Cosmos City 3, Sector - 103, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	CSM/103/B2-0301
3.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 5,50,000/-
4.	Total consideration amount as per agreement dated 06.07.2013	Rs. 58,39,000/-
5.	Total amount paid by the complainant upto date	Rs. 28,27,740/-
6.	Percentage of consideration amount	Approx. 50 Percent
7.	Date of delivery of possession from the date of builder as per buyer agreement execution of agreement (With 6	54 Months grace period i.e. 5 January 2018
8.	Delay for number of months/ years upto date	5 Months



9.	Penalty Clause as per builder buyer agreement dated 06.07.2013	Sub clause 8 of Clause 10 i.e. Rs.10/- per square ft of BBA
10.	Cause of delay in delivery of	No valid reason explained possession as per the assertion of the builder.

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/B2-0301 sector 103 Gurugram in the project cosmos city 3 according to which the possession of the aforesaid unit was to be delivered on 05 January 2018. The respondent company has not delivered the possession till 19.06.2018. The builder 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/B2-0301 as on date to the purchaser nor has paid any compensation i.e. @ Rs. 10 Sq. ft of the super area said unit per month for the period of the such delay as per builder buyer agreement dated 06.07.2013.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.



The respondent appeared on 15.05.2018. The case came up for hearing on 15.05.2018 & 19.06.2018. The respondent has filed his reply which has been perused. He has given a vague and evasive reply. It is contended that the parties are bound by the terms and conditions of the agreement and present complaint is premature as the time period agreed under the agreement for delivery of possession of unit has still not lapsed. The complainant filed the rejoinder to rebut the reply filed by the respondent in which the complainants 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. Not even the basic foundation has been dug, 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 the possession of the flat was to be handed over within 54 months from the date of execution of buyer agreement (with a grace period of 6 months) or grant of statutory approvals. As per date of

execution of buyer agreement, the due date of possession was 05.01.2018. and as far as grant of statutory approvals are concerned, the term have been drafted mischievously and is completely one sided. As per para 181 of Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017), the Bombay HC bench held that:

181. ".....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."

From the conduct of the respondent as well as from the documents on record, the respondents have failed to give possession of the flat, as per Builder Buyer Agreement which is in violation of Section 11 (4) (a).

7. 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, complainants have made a demand to the promoter to return the amount received by ~~them~~ in respect of the flat allotted to them 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 their right to seek compensation from the promoter for which he/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.*



8. The complainant made 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.*

The complainant 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.*

9. Thus, by exercising powers of Authority as vested u/s 37 the Authority directs the respondent to refund Rs. 28,27,440 along with prescribed interest from the date the respondent has received the amount from the complainant within 45 days of the date of this order.
10. The matter came to the knowledge of the authority 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 proceedings will be initiated against the respondent.
11. 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.

12. The order is pronounced.
13. Case file be consigned to the registry.



  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

  
(Dr. K.K. Khandelwal) 19/6  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

