

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

Complaint no. : 3938 of 2024
Date of filing of complaint: 22.08.2024
Date of Order: 23.12.2025

Dilip Gupta
R/o: C3-3064, Vasant Kunj, South West
Delhi-110070
Complainant

Versus

M/s Landmark Apartments Private
Limited
Regd. Office at: Landmark House, Plot no.
65, sector-44, Gurugram, Haryana-122003
Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini
Chairman
Member

APPEARANCE:

Sh. Maninder Singh (Advocate)
Sh. Jatin Sharma (Advocate)
Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement to sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Landmark Cyber Park"
2.	Location of the project	Sector-67, Gurugram, Haryana.
3.	Nature of the project	Commercial
4.	RERA registered/not registered	Registered Vide registered no. 61 of 2019 Dated-25.11.2019
5.	Area of the project	4.48125 acres
6.	DTCP license and validity	License no. 97 of 2008 dated 12.05.2008 valid up to 11.05.2020
7.	Unit no.	GF-33, Ground floor (As per page no. 9 of the application for dismissal of complaint)
8.	Unit area	1175 sq. ft. (As per page no. 18 of the complaint)
9.	Memorandum of understanding	14.09.2015 (As per page no. 33 of the complaint)
10.	Allotment letter	14.09.2015 (As per page no. 9 of the application for dismissal of complaint)
11.	Buyer's agreement	03.07.2019 (As per page no. 16 of the complaint)
12.	Possession clause	3. Possession of "the said unit" a) That the said unit is ready for handover in all respect as bare shell and the possession of the said unit/IT space shall be deemed handed over to the allottee after signing of this agreement. (As per page no. 20 of the complaint)
13.	Due date of possession	03.07.2019 (Note: As per possession clause)
14.	Total sale consideration	Rs.1,50,20,328/- (As per payment plan on page no. 24 of the complaint)
15.	Total amount paid by the complainant	Rs.1,39,91,292/- (As per page no. 35 of the complaint)

16.	Occupation certificate	26.12.2018 (As per annexure A-2 of application of dismissal of complaint)
17.	Offer of possession	Not offered
18.	Physical handover of unit	18.02.2020 (As per page no. 15 of the application for dismissal of complaint)
19.	Maintenance agreement	18.03.2023 (Not executed) (As per page no. 16 of the application for dismissal of complaint)

B. Facts of the complaint:

3. That the complainant has made following submissions:
- I. That the respondent had always advertised itself as a very ethical business group that lives onto its commitments in delivering its housing/commercial projects as per promised quality standards and agreed timelines. The respondent while launching and advertising any new housing/commercial project always commits and promises to the targeted consumer that their dream home/commercial units will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
 - II. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects/commercial projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his dream commercial



project. The respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home/ commercial project will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the instalments of commercial projects like in the case of other builders in market.

- III. That in year 2011, the respondent through its marketing executives and advertisement done through various medium and means approached the complainant with an offer to invest and buy a commercial unit in the proposed project of the respondent, which the respondent was going to launch the project namely "Landmark Cyber Park", which is situated at Sector-67, Gurugram. The respondent had represented to the complainant that the respondent is very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed commercial unit on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the flat buyer's agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing

- them to be true had agreed to the proposal of the respondent to book the commercial unit in the project of the respondent.
- IV. That thereafter, the respondent has issued allotment as well as executed a builder buyer's agreement in favour of the complainant for two commercial units in the same project and for which the respondent has taken Rs.1,43,68,203/- from the complainant and assured the complainant through the builder buyer's agreement to handover the possession after completing the construction of the unit till 36 months from the date of the execution of the builder buyer's agreement. However, the respondent did not fulfilled its promise and did not handover the possession till a very long period of time, abandoned the project and left the construction work of the project, the allottees approached the respondent through various means then in the year 2019, the respondent executed a fresh builder buyer's agreement dated 03.07.2019 and in which the respondent assured to handover the peaceful physical possession of the unit to the complainant within 30 days.
- V. That the respondent acting cleverly and having a dominant position over the gullible allottees manipulated the situation and offered the complainant, one unit bearing no. 33 admeasuring 1175 sq. ft. super area in ground floor in the captioned project instead of the agreement in respect of two units and adjusted the amount paid by the complainant for two units within the cost of the single unit and did not compensate the complainant for causing delay in constructing and handing over the possession of the subjected unit for almost 5 years.
- VI. That thereafter on 23.03.2023, the respondent issued no-dues certificate and given mere paper possession to the complainant and took one year's advance maintenance charge from the complainant and assured the complainant to get the conveyance deed registered in favour

of the complainant within a few days but the respondent did not fulfill its promise till date.

- VII. That as on today, the unit in question is still incomplete and finishing work is still needed to be done inside the unit and the complainant cannot use it or lease it to any tenant without the registration of the conveyance deed in their favour. The complainant upon time and again requested the respondent for the same but the respondent keep ignoring the requests over one pretext or the other.
- VIII. That the respondent sent a maintenance agreement to the complainant in which all the arbitrary and one-sided conditions were mentioned which are unacceptable in any form or manner by the complainant, the respondent knowing the fact that that they have not provided the physical possession over the conveyance deed and did not complete the finishing work inside the unit in question. Hence, the complainant denied to sign the arbitrary maintenance agreement and requested the respondent to correct it and make it fair and square. But the respondent did not pay any heed to the bona-fide requests of the complainant and in turn sent a demand notice for an amount of Rs.24,52,384/- which is unjustified and illegal.
- IX. That even otherwise, the respondent in its agreement clearly mentioned that the respondent will charge for the maintenance once every quarter only but the respondent in its demand letter dated 05.07.2024 mentioned the maintenance for every month and the respondent has charged the maintenance for total super area which should be for the carpet area only as per the law and the respondent has mentioned previous dues also knowingly the fact that the complainant haven't occupied the unit or never rented out the unit to anyone and neither the subjected unit is in a usable state or condition.

- X. That even as of today also, the condition of the unit in question is still as it is and no electricity as well as no water connection or supply was ever provided to the complainant even after charging for the same since a long period of time. By that, it is evident that the unit is nowhere near can be stated as 100% completed and not in usable condition and that does not make the complainant liable for paying the maintenance charge or the respondent is not in a position to charge for maintenance.
- XI. That the respondent, acting on a dominant position while having an upper hand is threatening the complainant to impose unreasonable interest over the outstanding dues as per the respondent and will not execute the conveyance deed in its favour. Then it shall cause irreparable loss and injury to the complainant.
- XII. That the respondent has cheated the complainant and misappropriated the hard-earned money of the complainant by causing a delay of almost 10 years and again fooled him by executing a fresh builder-buyer's agreement without compensating him for the delay in delivery of the unit and cut-short the space for the amount paid by him by making one unit out of the two in total and now as on today, unreasonably pressurizing him to pay unwarranted maintenance charges and outstanding dues despite the absence of any legal or contractual obligation to pay the same whatsoever.
- XIII. That the conduct on the part of respondent regarding delay in delivery of possession of the said unit has clearly manifested that the respondent never ever had any intention to deliver the said unit on time as agreed. It has also cleared the dust on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said unit on basis of its false and frivolous promises, which the respondent never intended to



fulfil. The respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.

- XIV. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said unit, which amounts to unfair trade practice, which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said unit basis its false and frivolous promises and representations about the delivery timelines aforesaid commercial project.
- XV. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his unit on time agreed. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondent has made the life of the complainant miserable socially and financially as all his personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no-fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises, which lured his to buy a commercial unit in the aforesaid project of the respondent.

XVI. That the cause of action accrued in favor of the complainant and against the respondent in 2011 when the complainant had booked the said unit and it further arose when respondent failed /neglected to deliver the said unit on the agreed date. It further arose when the respondent raised the illegal demand vide letter dated 05.07.2024 The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not withdraw the illegal and arbitrary demand raised despite failure to provide the possession of the subjected unit to the complainant.

XVII. That the complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to withdraw the illegal and arbitrary demand letter dated 05.07.2024 and waive off all the outstanding maintenance dues raised frivolously against the complainant in respect of the subjected unit.
 - ii. Direct the respondent to execute the conveyance deed in favour of the complainant for the unit in question.
 - iii. As per direction of RERA, commercial unit should be charged at carpet area whereas the respondent did not comply with Act of 2016. Hence, action is requested and respondent should be directed to charge for carpet area and refund should be provided to complainant.
 - iv. In BBA area mentioned of unit is 1175 sq. ft. approximately builder should mention exact "Carpet area and Super area" and word approximately should not have been used.

5. The authority issued a notice dated 22.08.2024 of the complaint to the respondent by speed post and also on the given email address at maltigupta68@gmail.com, rajesh.grewal@landmarkgoc.com and advmanindersingh24@gmail.com. The delivery reports have been placed in the file. The counsel for the respondent put in appearance on 20.03.2025, 16.10.2025 and 23.12.2025 but did not file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defence of the respondent and decide the complaint on the basis of merits. However, on 20.03.2025, the respondent has filed an application for dismissal of complaint on the ground that the maintenance and related services are managed by Landmark CyberPark Pvt. Ltd. and the respondent has no role in the maintenance of the unit post-handover. Moreover, the complaint is barred by limitation as the unit was handed over way back in 2020 and the complaint was filed in 2024.
6. 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 complainant.

D. Jurisdiction of the authority:

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

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.

D.II Subject matter jurisdiction

8. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

9. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on relief sought by the complainant:

E.I Direct the respondent to withdraw the illegal and arbitrary demand letter dated 05.07.2024 and waive off all the outstanding maintenance dues raised frivolously against the complainant in respect of the subjected unit.

11. The complainant was allotted a unit no. GF-33, Ground floor in the project of respondent "Landmark Cyber Park" in Sector-67, Gurugram vide allotment letter dated 14.09.2015 for a total sale consideration of Rs.1,50,20,328/-. A buyer's agreement was executed between the complainant and the

respondent on 03.07.2019 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.1,39,91,292/-.

12. In the present complaint, the respondent has obtained the occupation certificate on 26.12.2018 from the competent authority and thereafter, the complainant has taken the physical handover of the unit on 18.02.2020. Thereafter, the respondent has sent a maintenance agreement dated 18.03.2023 to the complainant and the same was duly received by the complainant though the same is not executed as per the documents placed on record. The respondent has issued maintenance bills in accordance with the agreed terms but the complainant has failed to pay the same. The Authority is of the view that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per clause 15, that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee.
13. Keeping in view the facts above, the Authority deems fit that the demands raised by the respondent w.r.t maintenance charges are valid and the respondent is right in demanding maintenance charges at the rate prescribed therein at the time of physical handover of possession. The complainant is under an obligation to pay the arrears of maintenance charges at the prescribed rate of interest.

E.II Direct the respondent to execute the conveyance deed in favour of the complainant for the unit in question.

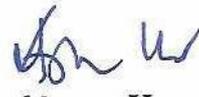
14. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
15. The possession of the subject unit has already been offered after obtaining occupation certificate on 26.12.2018 and the same was taken by the complainant on 18.02.2020. So, the respondent is directed to get the conveyance deed executed within a period of two months from the date of this order.
- E.III In BBA area mentioned of unit is 1175 sq. ft. approximately builder should mention exact "Carpet area and Super area" and word approximately should not have been used.**
- E.IV As per direction of RERA, commercial unit should be charged at carpet area whereas the respondent did not comply with Act of 2016. Hence, action is requested and respondent should be directed to charge for carpet area and refund should be provided to complainant.**
16. The above sought relief(s) by the complainant are taken together being inter-connected.
17. In the buyer's agreement dated 03.07.2019, it has been mentioned that the unit allotted to the complainant with an area admeasuring 1175 sq. ft. (super area) but carpet area has not been mentioned anywhere. In the Act of 2016, super area has no where been defined, the Act only talks about the carpet area. Even the clause 1.2 model buyer's agreement talks about carpet area only and the cost of the apartment is to calculated on the basis of the carpet area of the allotted unit. Thus, the respondent is directed to specify the carpet area of the unit and give a revised cost of the apartment on the basis of the carpet area of the unit and refund the excess amount paid by the complainant on the basis of the super area.

F. Directions of the Authority:

18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges by the complainant within 2 months from the date of this order.
 - ii) The complainant is directed to pay the arrears of maintenance charges at the prescribed rate of interest as per the agreed terms.
 - iii) The respondent is directed to specify the carpet area of the unit and give a revised cost of the apartment on the basis of the carpet area of the unit and refund the excess amount paid by the complainant on the basis of the super area.
 - iv) The respondent shall not charge anything which is not a part of the buyer's agreement.
19. Complaint as well as application(s), if any stands disposed of accordingly.
20. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 23.12.2025