

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

**Complaint No. : 223 of 2018**  
**Date of Institution : 03.05.2018**  
**Date of Decision : 19.06.2018**

Mr. Tarun Mendiratta  
R/o H.No. 2/334, Subhash Nagar,  
New Delhi-110027.

**Complainant**

Versus

M/s ERA Landmarks Ltd.  
(Now: M/s ADEL Landmarks Ltd.)  
Office Address: Tower 1, C-56/41,  
Near Amrapali, Sector 62, Noida,  
Uttar Pradesh.

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Ajay Kumar  
Shri Manoj Kumar

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 03.05.2018 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, Mr. Tarun Mehndiratta, against the promoter, M/s ERA Landmarks Ltd. (Now: M/s ADEL Landmarks Projects Ltd.), on account of



violation of clause 10.1 of the Builder Buyer Agreement executed on 23.07.2013 in respect of apartment described as below for not handing over possession on the due date, 23 January 2018 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-3", Sector-103, Gurugram.
2.	Flat/Apartment/Unit No.	CSM3/103/B3-1902, 19 <sup>th</sup> floor, Block: B3.
3.	Registered / Not	Not Registered.
4.	Total consideration amount as per agreement dated 23.07.2013	Rs.57,33,750/-
5.	Total amount paid by the complainant till date	Rs.26,80,126/-
6.	Date of delivery of possession as per Builder Buyer Agreement (54 Months from the date of execution of the BBA)	23 January 2018
7.	Delay of number of years / months/ days till date	4 months 28 days.
8.	Penalty Clause as per builder buyer agreement dated 23.07.2013	Clause 10.8 of the Agreement i.e. the developer may terminate this agreement whereupon the developers liability shall be limited to the refund of the amounts paid by the allottee with simple interest @ 9% per annum for the period such amounts were lying with the developer and the developer shall not be



		liable to pay other compensation. However, the developer may choose not to terminate this agreement in which event the developer agrees to pay compensation @ Rs.10/- per sq. ft. of the super area of the said unit per month for the period of such delay beyond 60 months.
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3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered to the complainant by 23<sup>rd</sup> January 2018. The respondent company has not delivered the possession till 19.06.2018. Neither they have delivered the possession of the said unit as on date to the purchaser nor have terminated the said agreement whereupon the developers liability shall be limited to the refund of the amounts paid by the allottee with simple interest @ 9% per annum for the period such amounts were lying with the developer and the developer shall not be liable to pay other compensation or not to terminate the Agreement in which event the developer agrees to pay



compensation @ Rs.10/- per sq. ft. of the super area of the said unit per month for the period of such delay beyond 60 months as per Clause 10.8 of builder buyer agreement dated 23.07.2013.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 05.06.2018. The case came up for hearing on 05.06.2018 and 19.06.2018. The reply has been filed on behalf of the respondent on 05.06.2018 which has been perused. 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. The complainant submitted that the respondent miserably failed to hand over the possession of the said unit within the stipulated time. The complainant also submitted that till date no construction work has started on the aforesaid site.

The respondent contended that the parties are bound by the terms and conditions of the Builder Buyer Agreement and in case of delay in handing over possession, necessary



provisions for payment of compensation to allottee has been incorporated therein and any relief sought beyond the terms and conditions of BBA are unjustified. The respondent further submitted that 15% development work has been completed and the project is still under progress and the respondent is considering to get the project registered under the Real Estate (Regulation and Development) Act, 2016.

6. As per clause 10.1 of the Builder Buyer Agreement, the possession of the flat was to be handed over within 54 Months from the date of execution of the builder buyer agreement (with a grace period of 6 months) or grant of all statutory approvals, whichever is later. The clause regarding the possession of the said unit is reproduced below:

*"10.1 Possession and use*

*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 allottee(s) within 54 months from the date of execution of the buyers agreement (with a grace period of 6 months) or grant of statutory approvals, whichever is late, 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 changes and dues in accordance with the schedule of payments or any other activity of the 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/ conveyance deed and handing over of possession to the allottee(s)."*

7. Accordingly, the due date of possession was 23 January 2018. As per clause 10.8 of builder buyer agreement, if the construction and development of the said complex is abandoned or the developer is unable to give possession within 60 months (including grace period of 6 months) from the date of execution of this agreement, the developer may terminate the said agreement whereupon the developers liability shall be limited to the refund of the amounts paid by the allottee with simple interest @ 9% per annum for the period such amounts were lying with the developer and the developer shall not be liable to pay other compensation or not to terminate the Agreement in which event the developer agrees to pay compensation @ Rs.10/- per sq. ft. of the super area of the said unit per month for the period of such delay beyond 60 months is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of Neelkamal Realtors 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."*

8. As the possession of the flat was to be delivered by 23<sup>rd</sup> January 2018 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

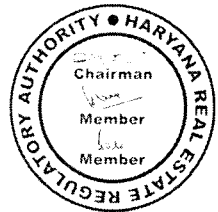
*"11.4 The promoter shall—*

*(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. 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.*

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.*

10. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable on demand to the allottee under section 18(1) to return the amount received by him in respect of the said apartment with interest at such rate as may be prescribed, in case the allottee wishes to withdraw from the project. Section 18(1) is reproduced below:

*"18.(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.*


The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

11. In the present complaint, the complainant is seeking refund of the amount paid along with prescribed rate of interest and intends to withdraw from the project. 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 him with prescribed rate of interest.
12. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.
13. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that



the promoter is duty bound to return the amount received by him along with prescribed interest as the project is only 15% complete. Therefore, the complaint is allowed.

14. Thus, the Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the direction to the respondent to refund the total amount received by the promoter i.e. Rs.26,80,126 along with prescribed interest @ 10.15 p.a. within 90 days from the receipt of this order.
15. The authority suo motu takes cognizance under section 3 of the Act ibid that the project is registerable but has not been registered by the promoters and for that separate proceedings will be initiated against the respondent.
16. The order is pronounced.
17. 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