

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM.**

**Complaint No. :550 of 2024
Date of Decision: 29.04.2026**

Inderpal Sharma, resident of CS-91/311, VPO Rajokri, New Delhi-38.

..... Complainant.

Versus

M/s Landmark Apartment Pvt. Ltd. Landmark H.No.65, Sector-44,
Gurugram.

.....Respondent.

APPEARANCE

For Complainant: Mr. Harshit Batra, Advocate.
For Respondent: Mr. Jatin Sharma, Advocate.

ORDER

This is a complaint filed by Mr. Inderpal Sharma (allottee), under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 against M/s Landmark Apartment Pvt. Ltd. (promoter/developer).

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2. Briefly stated, according to the complainant, believing in the representation and assurances of the respondent, he (complainant) booked a 2BHM flat admeasuring 1350 sq. ft. in the project "Landmark-the Residency" Sector-103, Gurugram, being developed by the respondent and paid booking amount of Rs. 2 lakhs vide cheque dated 19.01.2011. Total sale consideration of the unit was Rs.43,20,000/-. The respondent neither issued any allotment letter to the complainant nor executed any Builder/Flat Buyer Agreement. Due date of possession was agreed to be 25.01.2014.

3. That after paying more than 45% of the total sale consideration i.e. Rs.19,49,000/-, the respondent failed to allot any specific unit to him(complainant), rather kept on demanding further payments. The respondent failed to fulfil its obligation and to provide physical possession of the unit till date even after a lapse of 13 years. The respondent not only caused financial loss to the complainant by depriving him of his hard-earned money but also forced him to face loss due to inflation in the property market during past 13 years. Occupancy certificate has not been obtained

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by the respondent and till date, it (respondent) has not offered the possession of unit.

4. That being aggrieved by the respondent's malafide activities, he (complainant) filed a complaint (No.1560/2021) before the Authority for refund of the total amount paid by him and the Authority has directed the respondent to refund the amount paid by him (complainant) along with interest @ 9.50% per annum.

5. Citing facts as described above, the complainant has sought following reliefs: -

- i. to grant compensation of Rs.one lakh for delay in refunding the amount paid by him towards the total consideration of the flat;
- ii. to grant compensation of Rs.28,25,000/- for loss of rental cost/ loss from due date of possession till June 2023 (amount disbursed from Appellate Tribunal). Justification: the minimum rental value of a flat in the same location of the project is Rs 25,000/- per month.
- iii. to pay Rs.1,00,000/- to complainant on account of deficiency in service of the respondent by not executing Agreement.
- iv. to compensate the complainant with Rs.5,00,000/- for loss of opportunity due to inflation in property market of the flat of proportionate size in the past 5 years.
- V. to compensate the complainant with Rs. 2,00,000/- for mental agony and harassment suffered by him;

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vi. to direct the respondent to award cost of litigation of Rs.3 lakhs to the complainant.

6. The respondent contested the claim of the complainant by filing a written reply. It (respondent) has challenged very maintainability of the complaint alleging that the complainant has no intention to reside in the unit in question. He (complainant) purchased subject unit with the sole motive to invest for gains. It is further averred that despite issuance of reminder, the complainant was not making the payment and ultimately it (respondent) issued a final reminder-cum-cancellation letter dated 03.03.2012. Thereafter, the complainant visited the office of the respondent and requested not to cancel the unit as he was going through some financial difficulty. The respondent acceded to request of the complainant and did not cancel his unit on the assurance that he (complainant) will clear all the dues in some time.

7. That the respondent completed the project within the reasonable time and obtained Occupation Certificate on 25.09.2020, but due to default of the complainant on account of non-payment of the dues, the respondent issued last and final reminder dated 15.10.2023 and cancelled the unit. The

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complainant instead of taking the refund or taking possession of the unit, filed a complaint (No.1560/2021) before the Authority for refund.

8. That the present complaint has been filed in the year 2024, whereas unit of the complainant was cancelled in the year 2013. The limitation to seek any compensation stood expired way back in the year 2016. As such, the present complaint being time barred is liable to be dismissed.

9. Contending all this, the respondent has prayed to dismiss the complaint.

10. Both parties filed affidavits in support of their claims. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

11. The facts that the complainant applied for allotment of a 2 BHK apartment admeasuring 1350 sq.mts. (super area) in the project being developed by the respondent, total sale consideration of said unit was Rs.57,17,900/-, out of which, he (complainant) paid a sum of Rs.19,49,000/- are admitted on behalf of the respondent. The complainant claims that the respondent did not execute Builder Buyers' Agreement (BBA) despite his request, is also not

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specifically refuted on behalf of the respondent. In Para no.13 of the complaint, the complainant alleged that it was the obligation of the respondent to allot a specific unit and to execute agreement (BBA) with respect to the same, but the respondent miserably failed to execute the same, even after the implementation of the Act. In the common reply of Para nos.12 to 14, the respondent vaguely stated that the same were wrong and denied.

12. It has been specifically denied that after the implementation of the Act, as per the Section 13 of the Act, it (respondent) was restrained from accepting more than 10% from the allottee/complainant. While Section 13(1) of the Act of 2016 specifically bars a promoter from accepting more than 10% of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale.

13. Learned counsel for the respondent vehemently contended that the complainant failed to make payment of demanded instalments and hence his client (respondent) was constrained to cancel the unit. When the respondent did not think it proper to execute an agreement (BBA) despite accepting about

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40% of the total sale consideration, it was not proper for it (respondent) to cancel the unit as the allottee was not obliged to make further payments unless an agreement for sale was executed. In this way, the complainant cannot be faulted for not making further payments.

14. So far as plea of the respondent that the complainant invested money only for gain is concerned, the Act of 2016 does not differentiate between an allottee who purchases a unit or apartment for his residence or to sell it further.

15. Admittedly, the complainant approached the Authority by filing a complaint (no.1560/2021). Same was decided by the Authority vide order dated 27.05.2022. The respondent/promoter has been directed to refund the amount received by it from the complainant after deducting 10% of the basic sale consideration of the unit along with interest at the rate of 9.50 per annum. While deciding said complaint, the Authority noted as under:

"As per clause 16 of letter of allotment, possession of said unit was to be offered within 36 months from the date of execution of BBA with grace period of 90 days. Due date for completion of project and offering possession of unit comes to 25.01.2014, but the respondent failed to carry out the construction of project which led the complainant to withdraw from

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the project and to seek refund by filing a complaint on 16.03.2021”.

16. From all this, it is clear that the Authority found fault with the respondent for failing to carry out the construction of the project, which led the complainant to withdraw from the project.

17. According to Section 18(1) of the Act of 2016, if promoter fails to complete or is unable to give possession of an apartment/plot or building-

(a) In accordance with the terms of agreement for sale or, as the case may be, duly completed by the date specified therein: or

(b)

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----- including compensation in the manner as provided under this Act.

18. In this way, when the respondent failed to complete the project and to handover the possession of the unit in time, the complainant was ^{is} thus entitled for refund of his amount along with interest as well as compensation.

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19. The complainant has sought compensation of Rs.one Lakh for delay in refunding the amount on the part of the respondent. As stated earlier, the respondent has already been directed by the Authority to refund the amount although after deduction of 10% of sale consideration. If the complainant has any grievance in this regard, the same may approach the appropriate Forum. No reason to allow any compensation in the name of delay in refunding the amount.

20. The complainant further claimed a sum of Rs.28,25,000/- for loss of rental cost/ loss from due date of possession till June 2023 i.e. date of amount, disbursed from the Appellate Tribunal. Similarly, the complainant has prayed for compensation of Rs.5 lakhs for loss of opportunity due to inflation in the property market. However, the complainant did not adduce any reliable evidence to verify as to what was the inflation in the property market. When the complainant is found entitled for compensation, his case cannot be thrown away simply for want of conclusive evidence. This Forum is legally obliged to adjudge amount of compensation keeping in view the facts of the case and prevalent circumstances.

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21. I do not find it proper to assess amount of compensation, taking criteria of prevailing rent in the area. As stated above, the complainant has paid Rs.19,49,000/-. It is not clear as to how (from which date up to which date), this amount of Rs.19,49,000/- was received by the respondent. Due date of offer of possession as noted by the Authority was 25.01.2014. In absence of information about dates of payments, this date i.e. 25.01.2014 is taken as starting date, to assess compensation.

22. According to AI overview, the residential property prices in Sector-103, Gurugram, experienced significant appreciation between January 2014 and May 2022 (order of Authority for refund), primarily driven by the development of the Dwarka Expressway (Northern Peripheral Road) and its improved connectivity to Delhi. While early development saw slow growth, the sector experienced substantial upward movement particularly in the latter half of the 2014-2022 period as infrastructure neared completion..... Property prices in this sector have shown remarkable appreciation over the past decade. Recent data indicates that prices have risen by over 100% in the last 5-10 years, reflecting high growth from 2014 levels.

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23. It is evident from the letter of allotment that basic consideration price of the unit in question was Rs.3200/- per square feet including car parking. In view of opinion of AI overview, it is presumed that the amount paid by the complainant i.e. Rs.19,49,000/- would have doubled if invested in some other similar project i.e. Rs.38,98,000/-. Considering all this, the complainant is allowed a sum of Rs.19,50,000/- (rounded up) to be paid by the respondent. It is reminded here that the complainant has already been allowed refund of paid-up amount by the Authority.

24. The complainant has requested for Rs.2 lakhs for mental agony and harassment suffered by him at the hands of the respondent. Apparently when the respondent received part payment of sale consideration, but did not bother to execute Agreement for Sale even, ultimately unit of the complainant was cancelled, all this caused mental agony and harassment to the allottee-complainant. The same is allowed Rs.2 lakhs as compensation on this count.


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25. The complainant further sought Rs.3 lakhs as cost of litigation. No court fee is required to be paid to the Authority, while filing such complaint. Even then, it is evident that the complainant was represented by a lawyer during the proceedings of this case, same is allowed a sum of Rs.50,000/- as litigation expenses.

26. The respondent is directed to pay said amounts of compensation along with interest at the rate of 11% per annum from the date of this order, till realization of amount.

27. This complaint stands disposed of accordingly. File be consigned to the record room.

Announced in open court today i.e. **on 29.04.2026**

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram.

Present: Mr. Harshit Batra, Advocate for complainant.
Mr. Jatin Sharma, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer,
29.04.2026