

PROCEEDINGS OF THE DAY

Day and Date	Monday and 05.11.2018
Complaint No.	451/2018 case titled as Ms. Preeti V/s M/s Adel Landmarks Limited & Anr
Complainant	Ms. Preeti
Represented through	Mr Kamal Sharma, Advocate
Respondent	M/s Adel Landmarks Limited & Anr
Respondent Represented through	Mohd. Amir, authorized representative on behalf of respondent-company with Ms. Tarini Bhargava, Advocate.
Last date of hearing	04.10.2018
Proceeding Recorded by	Naresh Kumari and S.L.Chanana

Proceedings

Counsel for the complainant submits that project is lying abandoned since 2014 when the license of the builder has expired. However, as per clause 10.1 of the BBA dated 03.01.2015, committed date of handing over possession of the flat comes to 03.01.2020 including 6 months grace period. Counsel for the respondent has stated that the prayer of the complainant is premature. Respondent/builder is directed to get the license renewed and hand over the possession of the flat on the committed date. Respondent is also directed to get their project registered with the authority within 10 days failing which penal proceedings under section 59 of the Real Estate(

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Regulation and Development) Act, 2016, shall be initiated against the respondent .

Complaint stands disposed off in above terms. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint No. : 451 of 2018

First date of hearing: 09.08.2018

Date of Decision : 05.11.2018

Ms Preeti,

R/o. E- 999, Saraswati Vihar,

Delhi- 110034

Complainant

Versus

1) M/s Adel Landmarks Ltd

2) M/s Headway Buildcon Private Limited

Head office : B-24, Sector 3 , Noida-201301

Respondents

CORAM:

Dr. K.K. Khandelwal

Chairman

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Complainant in person

Advocate for the complainant

Mohd. Amir, Ms. Tarini

Advocate for the respondent



ORDER

1. A complaint dated 18.06.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Ms. Preeti, against the promoter M/s Adel Landmarks Ltd., and M/s Headway Buildcon Private Limited on account of violation of the section 3 of the RERA Act, 2016 ibid.
2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Cosmocity", Sector 103, Gurugram.
2.	RERA registered/ not registered.	Not registered
3.	DTCP License number	79 of 2010
4.	Apartment/unit no.	CSM/103/D-0705, tower D on 7 th floor
5.	Apartment measuring	194.91 sq. mt.
6.	Date of execution of apartment buyer's agreement	03.01.2015
7.	Basic sale price	Rs. 67,53,800
8.	Total amount paid by the complainant till date	Rs. 37,61,935
9.	Date of delivery of possession as	03.01.2020



	per clause 10.1 of apartment buyer's agreement (54 months + 6 months grace period from the date of execution of buyers agreement or grant of all statutory approvals, whichever is later)	
10.	Delay in handing over possession till date	Premature complaint
11.	As per Penalty clause 10.7 of apartment buyer's agreement dated 03.01.2015	Rs.10/- per sq. ft per month of the super area of the said flat.

3. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 09.08.2018. The case came up for hearing on 09.08.2018 & 23.08.2018. The reply filed on behalf of the respondent has been perused. The complainant has filed a rejoinder dated 30.08.2018 wherein he has re-asserted the contentions raised in the complaint.



FACTS OF THE CASE:

4. That after collecting more than 56% of the total sale price of the flat, the respondents suspended construction activity from July, 2014, till date.
5. That the project site shows the project fully abandoned with no construction taking place since long. There are no labourers, construction material and operational equipment at the site, partially raised structures are in decaying stage losing structural strength. The project site office is completely in disarray with broken furniture and woodwork. A few site pictures taken on 13th May, 2018 are provided on record.
6. That numerous visits to the Noida office and telephonic enquiries yielded only false assurances, that construction work will commence shortly but that never fructified.
7. That in view of numerous complaints received from the home buyers, the town and country planning department put the respondents on notice for cancellation of their various license and even barring them from promoting any project in Haryana.



8. That the validity of project license no 79 dated 15.10.2010 which expired on 14.10.2014 has not been renewed so far. EDC collected by the buyers have not been deposited with the Town and country planning department.
9. That the respondent company has been diverting fund to its parent company Era Engineering Infra Ltd and other associate companies as would be evident from parent company having invested 122.63 crores in the parent company by way of zero coupon convertible debentures, it is noteworthy that respondent always made excuses for stalled development on the project of non-availability of funds but on the other hand the respondent had enough funds to make investments into other companies.
10. That the Headway Buildcon private limited, the licensee of phase 1 Cosmocity and a subsidiary of Adel landmarks limited has created a mortgaged on its entire parcel of land of 10.437 acre in favour of ICICI Bank for securing the loan taken by M/s Era Infrastructure India Limited. This loan seems to have been diverted elsewhere. The said mortgage created numerous complication to the



project development, even if respondent renew the subjected license, respondent cannot start construction, the mortgage bank will not allow to create any third party interest on the said land.

11. That the parents company Era Engineering Infra Limited is debt ridden company with outstanding loans of over 10,000 crores to various banks. The reserve bank has directed, the lead bank to refer its case to National Company Law Tribunal under Insolvency Act. .
12. That the promoters do not seem to be interested in completing the project after having collected 76% of the total sale consideration from the buyers, as not more than 20% of the project construction work appears to have been completed. Even EDC paid by the buyers has not been deposited with the government.
13. Even after a lapse of three years from the committed date of possession it might take minimum four years more completion of the project even if the construction is resumed immediately. But since the basic requirement of renewal of license has not been complied with so far, the complainants



do not foresee the possibility of completion of the project in near future.

ISSUE RAISED BY THE COMPLAINANT:

14. **The following issue has been raised by the complainant:** Whether or not the respondent is under an obligation to get the project registered under the provision of the Real Estate (Regulation and Development) Act, 2016?

RELIEF SOUGHT BY THE COMPLAINANT:

15. The following relief has been sought:
- i. Penalty of 10% of estimated cost of the project shall be imposed on the respondent no 1 and the said respondent be directed to register the project.

REPLY BY THE RESPONDENT:

The name of the respondent was changed from Era Landmarks Limited to Adel Landmarks Projects Limited vide fresh Certificate in incorporation upon change in name dated 14.12.2013 issued by registration of companies for Delhi and Haryana and then to Adel landmarks limited vide fresh



- certificate in incorporation upon change in name dated 19.02.2014 issued by registrar of companies.
17. The DTCP, Haryana granted licence no 79 dated 2010 in favour of M/s Headway Buidcon Pvt Ltd for development of the residential housing colony "Cosmocity". The building plans with respect to the subject project were approved.
18. It is submitted that in case of delay in delivery of possession of the unit by the respondent appropriate provisions has been agreed under the buyer's agreement. The explanation given at the end of the prescribed agreement for sale of the rules, it has been clarified that the promoter shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure not affect the validity of such existing agreement executed with its customers. Therefore, both the parties are bound to follow the terms and conditions of the buyer's agreement entered between them.
- The respondent also submitted that the respondent company had not diverted any funds to its parent company and other associate companies.

DETERMINATION OF ISSUES:



20. After considering the facts submitted by both the counsel of the parties and perusal of record on file, the finding of the authority on the issue is that as per proviso to section 3(1) of the Act *ibid*, ongoing project on the date of commencement of this Act have to be registered with the authority. Proviso to section 3(1) of the Act *ibid* which provides as under:-

“Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”

21. Rule 2(o) of the Rules *ibid*, defines ongoing project as a project for which development works are going on and for which no completion/ part occupation certificate has been granted on or before publication of these rules. Rule 2(o) is reproduced as hereunder:

“on going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on



or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules."

Keeping in view the above facts and as per the records of the authority, the project is registerable under section 3 of the Act ibid and the respondents have not registered the project with the Haryana Real Estate Regulatory Authority as on date. Consequently the above act on their behalf is a punishable offence under section 59(1) of the Act ibid. Section 59(1) provides as under:-



“If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.”

22. The authority issued show cause notice against the promoter company taking cognizance for non-registration vide memo no. HARERA/GGM/2018/SUO-MOTU/NON-REG/09 dated 31.08.2018 giving them an opportunity of personal hearing on 23.08.2018 to explain as to why penalty should not be imposed upon them, during the personal hearing, the promoter was also directed to apply for registration of the project in question in the new format within 10 days i.e. by 15.11.2018 failing which penal proceedings under section 59 of the Real Estate (Regulation and Development) Act, 2016 shall be initiated against the respondent. But so far the promoter company have not complied with the directions given by the authority.

FINDINGS OF THE AUTHORITY:

23. The application filed by the respondent for rejection of complaint raising preliminary objection regarding



jurisdiction of the authority stands dismissed. 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.

24. The amendment of Sec. 8 of the Arbitration and conciliation act does not have the effect of nullifying the ratio of catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the



complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the supreme court in civil appeal number 23512-23513 of 2017 and as provided under article 141 of the Constitution, the law declared by the supreme court shall be binding on all courts within the territory of India and accordingly the authority is bound by the aforesaid view.

25. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
26. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

DECISION AND DIRECTIONS OF THE AUTHORITY

27. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

28. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- i. The respondent/builder is directed to get the license renewed and hand over the possession of the flat by the committed date.
- ii. The respondent is also directed to get their project registered with the authority within 10 days failing which penal proceedings under section 59 of the Real Estate (Regulation and Development) Act, 2016 shall be initiated against the respondent



29. The order is pronounced.

30. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Date: 05.11.2018



HARERA
GURUGRAM

