

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

Complaint No. : 84 of 2018
Date of Institution : 21.03.2018
Date of Decision : 20.11.2018

1. Mr. Mandeep Singh Brar R/o Flat No. 12-C,
22 No. Phatak, City Centre Apartments,
Patiala- 147001, Punjab

...Complainant

Versus

1. M/s Landmark Apartment Pvt. Ltd.
 2. Sh. Sandeep Chhillar
 3. Sh. Amit Chhillar
 4. Sh. Dinesh Kumar
 5. Sh. Ravi Dabbas
- Regd. Office: A-11, C.R. Park, New Delhi

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant in person
Shri Amarjeet Kumar

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 21.03.2018 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. Mandeep Singh Brar) against the promoter (M/s Landmark Apartment Pvt. Ltd.) on account of violation of Clause 3 of the Memorandum of Understanding executed on 27.02.2012 for Executive Suit, 4th Floor in the project “Landmark Corporate Centre” for not giving assured returns and possession of the unit which is an obligation of the promoter 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	Landmark Corporate Centre, Sector-67, Gurugram
2.	Unit No.	Executive Suit, 4 th Floor
3.	Unit area	150 sq. ft.
4.	Applied for OC	In 2015 (alleged by the respondent in the reply)
5.	Basic Sale Price	Rs. 6,60,000/-
6.	Total amount paid by the complainant	Rs. 6,60,000/-
7.	Memorandum of understanding executed	27.02.2012
8.	Assured return to be paid as per MOU	Clause 3 of MOU, Rs.16,500/- every month which shall be payable quarterly till the date of possession or 3 years whichever is earlier.



9.	Registered/ not registered	Not registered
10.	Builder buyer's agreement	Not executed
11.	Date of delivery of possession	Cannot be ascertained
12.	Cause of delay in delivery of possession as stated by the respondent.	Waiting for occupation certificate from the competent authority and the respondent alleges that they have applied for OC in 2015 itself but the same has not been granted till date.

3. As per the details provided above, which have been checked as per record of the case file, a memorandum of understanding and an allotment letter are available on record for the above-mentioned Unit according to which the promoter was required to pay Rs. 16,500 p.m. assured returns to the complainant. The promoter has failed to give the assured returns and has neither delivered the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 17.04.2018. The



case came up for hearing on 10.05.2018, 05.06.2018, 11.07.2018, 21.08.2018, 29.08.2018, 07.09.2018 and 09.10.2018.

FACTS OF THE CASE

5. A memorandum of understanding was executed between the parties on 27.02.2012. The relevant clauses which have direct bearing on the case are as follows:

(a) Clause 3: Complainant paid entire sale price in lump sum at the rate of Rs. 4400 per sq. ft. for area adm. 150. Sq. ft. and that the promoter agreed to pay Rs. 16,500 p.m. as assured return till the date of possession or 3 years whichever is earlier.

(b) Clause 4: The complainant agreed to give leasing right to the respondent after possession for nine years at the rate of Rs. 110 per sq. ft. as rent which shall appreciate by 15% after every three years.

(c) Clause 12: The final area on completion may increase or decrease by 10% of tentative area agreed to be sold.

(d) Clause 14: Respondent received the payment of Rs. 2,60,000 on 25.02.2012 and Rs. 4,00,000 on 27.02.2012.



6. The complainant has referred letter dated 30.06.2014 sent by the respondent company wherein the respondent has stated that they will deliver the possession of the said unit and execute the registered conveyance deed in few months. Thereafter, the respondent stopped paying assured returns on the plea that it shall be adjusted against the stamp duty, registration fee and miscellaneous charges.
7. Further, the complainant has cited letter dated 18.07.2015 issued by the respondent company wherein the respondent informed that they had applied for occupation certificate for the said project which was expected to be granted in the next 3 months i.e. tentatively by October 2015.
8. In December 2017, the complainant arranged a meeting with the officials of the respondent company wherein the complainant got to know that the company had received fire NOC in April 2017 which implies that the promises made by the respondent company for giving possession in the year 2014 was a decoy to deny assured returns to complainant for one and half years thus causing wrongful gain to the respondent.



9. In another meeting with the officials of the respondent in February, 2018, the management of respondent insisted on allotting 186 sq. ft. of super area to the complainant while the complainant was not ready to accept more than 10% increase in the area i.e. 165 sq. ft. as provided in clause 12 of the memorandum of understanding.

ISSUES RAISED BY THE COMPLAINANT

- i. Whether the assured return amounting to Rs. 2,67,300 intentionally denied by the respondent to the complainant?
- ii. Whether the super area can be increased/decreased arbitrarily by the promoter beyond the limits laid down in the MoU without the consent of the complainant?
- iii. Whether the delay of 3 years in executing the project in all aspects by the respondent without any force majeure is within the norms of market trend?



RELIEF SOUGHT BY THE COMPLAINANT

- i. To direct the respondent to release the pending assured returns amounting to Rs. 2,67,300 along with interest of Rs. 1,78,400 @18% for the period December 2013 to March 2018.
- ii. To compensate the complainant for the wilful delay of 3 years in order to avoid paying assured returns/rental income.

REPLY BY THE RESPONDENT

10. It has been contended by the respondent that the time was not the essence of the contract for delivering the possession however, it was mutually agreed between the parties that the complainant will be entitled to the benefit of assured returns for a period of 3 years or till possession whichever is earlier. The complainant had invested a total amount of Rs. 6,60,000 out of which the respondent had promised to give assured returns of Rs. 5,34,000 within a period of 3 years, thus time was not the essence of the contract.



11. The respondent further stated that they are willing to give the remaining assured returns to the complainant along with possession after the complainant clears the statutory dues to the tune of Rs. 1,55,559 in addition to the stamp duty and registration charges which will be levied at the time of transfer of the said unit. The complainant has failed to pay the statutory dues which was already agreed between the parties.
12. The respondent has further contended that it is upto the complainant to either adhere to a bigger unit as proposed by the respondent or to take possession of 165 sq. ft. However, because of change in the market trend, it was important to have a bigger unit so that leasing becomes easy for the unit.
13. The respondent submitted that the respondent had applied for OC in the year 2015 and in the said letter of intimation of possession, the respondent never confirmed the date of receiving the occupation certificate. Further, the construction of the property is complete, NOC for fire has been received, however, the respondent is waiting for the official order from the competent authority.



14. That as per MOU, it was agreed that the developer will pay Rs. 16,500/- every month as assured return, payable quarterly till the date of possession or 3 years whichever is earlier. That it is pertinent to mention here that time was not the essence of the contract for delivering the possession, however it was mutually agreed upon that the complainant will be entitled to benefit of assured returns for a period of 3 years or the possession which ever was earlier. That it is pertinent to mention here that the complainant had invested a total amount of Rs.6,60,000/- out of which the respondent had promised to give a assured return of Rs.5,34,000/- i.e almost 80% of the invested amount within a period of 3 years and thus it is quite evident that time was not the essence of the contract.

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Findings of the authority

15. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & 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.

16. The authority takes suo-moto cognizance that the project is registerable and has not been registered by the promoters. The authority has decided to take suo-moto cognizance for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act.



Directions of the authority

17. 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 in the interest of justice and fair play:

- i. MOU dated 27.02.2012 inter se both the parties was signed. As per clause 12 of MoU, which reads as under:-

That the Developer agrees to sell the demised premises to the Buyer, which is a space admeasuring the aggregate tentatively, a super area of 150 sq. feet subject to final confirmation of area on completion of the building in Landmark Cyber Park at the rate of Rs.4400/- per sq. ft of Super area, amounting to a total consideration of Rs.660000/- (Rupees Six lacs Sixty Thousand only). The final area on completion may increase or deceased by about 10% of the tentative area agreed herein to be sold. Correspondingly, the consideration amount shall also increase or decrease”.

- ii. An assured return of Rs.16500/- per month was to be given to the complainant. However, no date of actual possession of the office space booked by the complainant has been mentioned in the MOU. However, the respondent / builder could not honor the provisions of this clause for more than 1 ½ years. Later on, respondent stopped payment of assured return, as a result of which the complainant has filed the instant complaint. Project is not registered with the authority. After hearing the arguments, it was adjudged in the order



dated 7.8.2018 passed in complaint No.141 of 2018 titled as Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd. which is as under:-

“The complainant has made a complaint dated 15.5.2018 with regard to the refund of the assured return of Rs.55,000/- per month. As per Clause 4 of the Memorandum of Understanding dated 14.8.2010, the complainant is insisting that the RERA Authority may get the assured return of Rs.55,000/- per month released to him. A perusal of the Real Estate (Regulation & Development) Act, 2016 reveals that as per the Memorandum of Understanding, the assured return is not a formal clause with regard to giving or taking of possession of unit for which the buyer has paid an amount of Rs.55 Lakhs to the builder which is not within the purview of RERA Act. Rather, it is a civil matter. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project, as per the provisions of Section 18 (1) of the Act. As such, the buyer is directed to pursue the matter with regard to getting assured return as per the Memorandum of Understanding by filing a case before an appropriate forum/Adjudicating Officer”.

- iii. As already decided in complaint No.141 of 2018 titled as Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd. no case is made out. Counsel for respondent has given a Supreme Court Judgment dated 25.7.1997 vide which he has pleaded the doctrine of precedent. Since the authority has taken a view much earlier as stated above, the authority cannot go beyond the view already taken



18. Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.
19. The order is pronounced. Case file be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Date: 20.11.2018



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PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	84/2018 case titled as Mr. Mandeep Singh Brar Vs. M/s Landmark Apartment Pvt. Ltd. & Others
Complainant	Mr. Mandeep Singh Brar
Represented through	Complainant in person
Respondent	M/s Landmark Apartment Pvt. Ltd. & Others
Respondent Represented through	Shri Amarjeet Kumar, Advocate for the respondent.
Last date of hearing	9.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

MoU dated 27.02.2012 inter se both the parties was signed. As per clause 12 of MoU, which reads as under:-

“That the Developer agrees to sell the demised premises to the Buyer, which is a space admeasuring the aggregate tentatively, a super area of 150 sq. feet subject to final confirmation of area on completion of the building in Landmark Cyber Park at the rate of Rs.4400/- per sq. ft of Super area, amounting to a total consideration of Rs.660000/- (Rupees Six lacs Sixty Thousand only). The final area on completion may increase or deceased by about 10% of the tentative area agreed herein to be sold. Correspondingly, the consideration amount shall also increase or decrease”.

An assured return of Rs.16500/- per month was to be given to the complainant. However, no date of actual possession of the office space booked by the complainant has been mentioned in the MoU. However, the respondent/builder could not honour the provisions of this clause for more than 1 ½ years. Later on, respondent stopped payment of assured return, as a result of which the complainant has filed the instant complaint. Project is not registered with the authority. After hearing the arguments, it was adjudged in the order dated 7.8.2018 passed in complaint No.141 of 2018 titled as Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd. which is as under:-

“The complainant has made a complaint dated 15.5.2018 with regard to the refund of the assured return of Rs.55,000/- per month. As per Clause 4 of the Memorandum of Understanding dated 14.8.2010, the complainant is insisting that the RERA Authority may get the assured return of Rs.55,000/- per month released to him. A perusal of the Real Estate (Regulation & Development) Act, 2016 reveals that as per the Memorandum of Understanding, the assured return is not a formal clause with regard to giving or taking of possession of unit for which the buyer has paid an amount of Rs.55 Lakhs to the builder which is not within the purview of RERA Act. Rather, it is a civil matter. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project, as per the provisions of Section 18 (1) of the Act. As such, the buyer is directed to pursue the matter with regard to getting assured return as per the Memorandum of Understanding by filing a case before an appropriate forum/Adjudicating Officer”.

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Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
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