

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

**Complaint No. : 375 of 2018**  
**First date of hearing: 02.08.2018**  
**Date of Decision : 05.11.2018**

Mr. Rakshit verma  
R/o D-34, Seema apartments, Sector-11,  
Dwarka-110075

**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  
Shri Samir Kumar  
Shri Subhash Chander Kush

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

**APPEARANCE:**

Col. R.P.Verma

Father of the complainant in  
person

Mohd. Amir  
With Ms Tarini Bhargava

Authorized representative on  
behalf of the respondents  
Advocate for the respondents

**ORDER**

1. A complaint dated 04.06.2018 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 Mr. Rakshit Verma, 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, Gurgaon.
2.	RERA registered/ not registered.	<b>Not registered</b>
3.	Project area	10.437 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no.	79 of 2010 dated 16.10.2010
6.	Valid upto	15.10.2014
7.	License holder	M/s Headway Buildcon Pvt. Ltd.
8.	Apartment measuring	233.09sq. mt.
9.	Date of execution of apartment buyer's agreement	12.12.2013
10.	Payment plan	Construction linked payment plan
11.	Unit no.	CSM/103/E-0702
12.	Basic sale price	Rs. 98,70,845
13.	Total amount paid by the complainant till date	Rs. 55,44,975/-
14.	Date of delivery of possession as 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)	12.12.2018
15.	Delay in handing over possession till date	Premature
16.	As per penalty clause 10.7 of apartment buyer's agreement dated 12.12.2013	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 respondents for filing reply and appearance. The respondent through his counsel appeared on 02.08.2018. The case came up for hearing on 02.08.2018, 05.09.2018, 09.10.2018 and 05.11.2018. The reply filed on behalf of the respondents on 24.09.2018 has been perused.

#### **Facts of the complainant**

4. Complainant submitted that after collecting more than 56.21% of the total sale price of the flat, the respondents suspended construction activity from July, 2014, till date. 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 13<sup>th</sup> May, 2018 are provided on record.

5. The complainant submitted that numerous visits to the Noida office and telephonic enquiries yielded only false assurances, that construction work will commence shortly but that never



fructified. Further, 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.

6. 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.
7. 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 respondents always made excuses for stalled development on the project of non-availability of funds but on the other hand the respondents had enough funds to make investments into other companies.
8. That the Headway Buildcon private limited, the licensee of phase 1 Cosmocity and a subsidiary of Adel landmarks limited has



created a mortgage 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 respondents renew the subjected license, respondents cannot start construction, the mortgage bank will not allow to create any third party interest on the said land.

9. That the parent 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.
10. That the promoters do not seem to be interested in completing the project after having collected 56.21% 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.



11. That the buyers agreement dated 12.12.2013 contemplated possession of the flat within 54 months from the date of agreement, thereby implying that the possession should have been given by June 2018. Recognising the state of affairs and taking into consideration 6 months of grace period which expires in December 2018, it might take minimum four years more for 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 complainant do not foresee the possibility of completion of the project in near future.

**12. Issue raised by the complainant**

i. The main issue raised by the complainant is whether the respondent is liable to get the project in question registered under section 3 of the Act ibid?

**13. Relief sought by the complainant**

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.



### Respondent's reply

The respondents submitted various preliminary objections and submissions. They are as follow :

14. That the respondents submitted that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondents have filed a separate application for the rejection of the complaint on the ground of the jurisdiction and this reply is without prejudice to the rights and contention of the respondents contained in the said application.
15. The respondents submitted that the complainant has wilfully neglected to file the present complaint without adding another allottee, the necessary party i.e. Mrs. Anita Verma. Therefore, any alleged relief the unit cannot be granted only in the favour of the complainant. Thus, the complaint qua is liable to be rejected on this ground alone.
16. The respondents submitted that the complaint is premature as the time period agreed under the buyer's agreement dated 12.12.2013 for delivery of possession of said allotted unit has still not lapsed. The relevant clause regarding delivery of



possession of the unit is reproduced hereunder for ready reference:

*“10.1 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 offer possession of unit to allottee(s) within 54 months from the date of execution of buyer’s agreement (with grace period of 6 months) or grant of all statutory approvals, whichever is later, unless there shall be delay or failure due to force majeure conditions and reasons mentioned in the agreement...”*

17. That the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Real Estate (Regulation And Development) Act, 2016 (hereinafter referred to as the “said Act”) are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation And Development) Rules, 2017 (hereinafter referred to as the “said Rules”) read with section 31 and section 71 of the said Act and not before this learned regulatory authority under rule-28.



18. That the complainant has nowhere established that the ‘Project’ is an on-going project that ought to register before this learned authority. The ld. regulatory authority was pleased to issue a



show cause regarding the non-registration of project 'Cosmocity-I' and the respondent company after making appearance was granted time to file a response to the said show cause notice by the learned authority herein. The authority having not yet given a finding on the said issue of registration, cannot be misguided by the complainant herein who has approached this hon'ble regulatory authority presuming that the respondent company is liable to be registered. The matter once being *sub-judice* before this and the liable to be stayed and/or dismissed on this ground alone.

19. That, without prejudice to the above, clause 19.1 of the Agreement clearly stipulates that in the eventuality of any dispute with respect to the 'project', the aggrieved party ought to invoke arbitration. The respondent has also separately filed an application for rejection of the complaint on the ground that the matter is within the scope of arbitration alone and cannot be agitated in the present forum. The present reply is being filed without prejudice to the rights and contentions of the respondent contained in the said application.



20. The name of the respondents were 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.

21. 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 was approved. The respondent submitted that the building plans with respect to the subject project was approved.

22. **Determination of issues**

After considering the facts submitted by the complainant, reply by the respondents and perusal of record on file, the issue wise findings of the authority are as under:

- i. With respect to the **first issue**, 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:”*

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.”*

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 10.09.2018 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 15 days i.e. by 25.09.2018 with double the fee of registration as a penalty for applying late for



registration of the said project. 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. Leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

### Decision and directions of the authority

24. 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 10.09.2018 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 15 days i.e. by 25.09.2018 with double the fee of registration as a penalty for applying late for registration of the said project. But so far the promoter company have not complied with the directions given by the authority.

### Findings of the Authority

The authority is of the considered opinion that it has been held in a 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.

26. 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 complainant and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, 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.

27. 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 respondents in the interest of justice and fair play:



- i. Complainant has stated that project stands abandoned since August 2014. As per clause 10.1. of BBA dated 12.12.2013, committed date of delivery of possession was 12.12.2018 including six months grace period. His unit number is CSM/103/E-0702 Tower E, Cosmocity, Sector 103, Gurugram. Complainant has annexed photographs w.r.t. to status of the project and seeks refund of the paid amount of Rs.55, 44,975/- along with prescribed rate of interest @ 10.75 p.a. prevailing as on date.
- ii. Counsel for the respondents apprised the authority that license was valid upto 2014 and they have applied for renewal of the same. However, the same is still pending for renewal with the competent authority. Respondents have also applied for registration of the project with the authority which cannot be done in the absence of valid license and other formalities.
- iii. As such, keeping in view the miserable state of affairs on the part of the respondents, the authority has no option but to direct the respondents to refund the amount taken from the complainant as per the provisions of section 18(1) of the Real Estate(Regulation And Development) Act, 2016 on account of non-delivery of





possession of the flat on committed date of delivery alongwith prescribed rate of interest @ 10.75% p.a. prevailing as on date within a period of 90 days from today.

28. The order is pronounced.

29. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

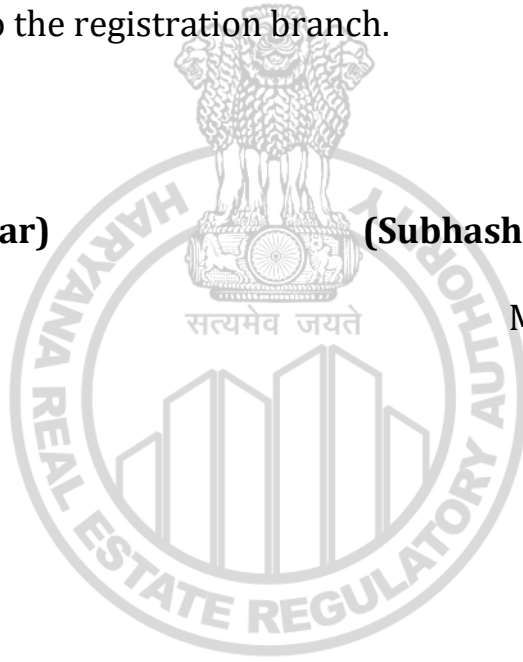
(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Dated: 05.11.2018



HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 05.11.2018
Complaint No.	375/2018 case titled as Mr. Rakshit Verma V/s M/s Adel Landmarks Ltd. & anr.
Complainant	Mr. Rakshit Verma
Represented through	Complainant in person
Respondent	M/S Adel Landmarks Ltd. & anr.
Respondent Represented through	Mohd. Amir, authorized representative on behalf of respondent-company with Ms. Tarini Bhargava, Advocate.
Last date of hearing	9.10.2018
Proceeding Recorded by	Naresh Kumari and S.L.Chanana

**Proceedings**

Arguments heard.

Complainant has stated that project stands abandoned since August 2014. As per clause 10.1. of BBA dated 12.12.2013, committed date of delivery of possession was 12.12.2018 including six months grace period. His unit number is CSM/103/E-0702 Tower E, Cosmocity, Sector 103, Gurugram. Complainant has annexed photographs w.r.t. to status of the project and seeks refund of the paid amount of Rs.55, 44,975/- alongwith prescribed rate of interest @ 10.75 p.a. prevailing as on date. Counsel for the respondent apprised the authority that license was valid upto 2014 and they have applied for renewal of the same. However, the same is still pending for

renewal with the competent authority. Respondent has also applied for registration of the project with the authority which can not be done in the absence of valid license and other formalities. As such, keeping in view the miserable state of affairs on the part of the respondent, the authority has no option but to direct the respondent to refund the amount taken from the complainant as per the provisions of section 18(1) of the Real Estate(Regulation & Development) Act, 2016 on account of non delivery of possession of the flat on committed date of delivery alongwith prescribed rate of interest @ 10.75% p.a. prevailing as on date within a period of 90 days from today.

Complaint stands disposed of in above terms. File be consigned to the Registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)