

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

Complaint No. : 450 of 2018
First date of hearing: 09.08.2018
Date of Decision : 05.11.2018

1) Ms Kusum Jain
2) Mr Ashutosh Jain
R/o : H.No. F-57, Prashant Vihar, Sector-14,
Rohini, Delhi-110085

Complainants

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:

Complainant in person Advocate for the complainant

Ms Tarini Bhargava Advocate for the respondent

ORDER

1. A complaint dated 18.06.2018 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 Ms Kusum Jain and Mr Ashutosh Jain, 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 for non-registration of the project with this authority.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Cosmocity", Sector 103, Gurgaon.
2.	Nature of real estate project	Residential group housing colony
3.	DTCP license	79 of 2010
4.	RERA registered/ un registered.	un registered
5.	Apartment/unit no.	K-601, 6 th floor, K Block
6.	Apartment measuring	1828 sq. ft (3BHK)
7.	Date of buyer's agreement	17.10.2012
8.	Total Consideration	Rs. 55,66,260/-
9.	Total amount paid by the complainant till date	Rs. 42,15,922/-
10.	Date of delivery of possession (As per clause 10.1 of apartment buyer's agreement : 36 months + 6 months grace period from the date of execution of buyers agreement)	17.04.2015
11.	Delay in handing over possession	3 years 6 months 19 days
12.	Penalty clause (As per 10.2 of buyer's agreement	Rs.75/sq. m per month for the delay



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 has been filed by the respondent on 09.08.2018. The complainant has also filed a rejoinder wherein he has re-asserted the contentions raised in the complaint.

Facts of the case

4. The complainants submitted that the flat was originally booked by Mrs Usha Bhatia on 10.01.2011 vide allotment letter dated 4.10.2011. and the same unit was sold to Mr Vikas Solanki. Thereafter, the names of present complainants was substituted in place of Mr Vikas Solanki vide letter no ELL/MKTG/CN-876.
5. The complainants also submitted that they had already paid 76% of the total consideration of the flat.
6. The complainants submitted that the project site is fully abandoned with no construction taking place since a long time. It is pertinent to note that there are no labourers, construction material and operational equipment at the site, and 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.



7. The complainant submitted that the validity of project license no 79 of 2010 obtained by the respondent has already expired on 14.10.2014 and has not been renewed so far.
8. The complainant also submitted that the EDC collected by the buyers have not been deposited with the Town and country planning department.
9. The complainants submitted 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. The complainants also submitted that the Headway Buildcon private limited, the licensee of phase 1 Cosmocity and subsidiary of Adel landmarks limited has created a mortgage on the 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. The complainants also submitted that the parent respondent 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. The complainants submitted that the respondent company has already delayed the said project by more than three years from the committed date of possession and also the complainants do not foresee the possibility of completion of the project in the near future.

Issue raised by the complainant :

13. **The following issue have been raised by the complainant :**
 - i. Whether or not registration of the project is mandatory for the present complaint to fall under the purview of this act?

Relief sought:

14. 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

15. The respondent submitted that, 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 1902.2014 issued by registrar of companies.

16. The respondent also submitted that the respondent had received licence no 79 dated 2010 issued by the DTCP, Haryana in favour of M/s Headway Buildcon Pvt Ltd for the development of the residential housing colony "Cosmocity".
17. The respondent submitted that the building plans with respect to the subject project was approved.
18. The respondent submitted that on the request of the complainant, the respondent allotted the unit no CSM/103/B-0601 in Tower C on 6th floor in the said project and both the parties entered into legally binding buyers agreement dated 22.09.2014. Both the parties are bound to follow the terms and conditions of the agreement and in case of delay in possession necessary provisions for payment of compensation to allottee has been incorporated therein. Therefore any relief beyond the terms and conditions of the agreement are unjustified.
19. The respondent also submitted that according to the explanation given at the end of prescribed Agreement for sale in Annexure A of the Rules, it has been clarified that the promoter shall disclose the existing agreement for sale i.e Buyers agreement in respect of ongoing project and further that such disclosure shall 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 buyers agreement entered between them.

20. The respondent also submitted that the respondent company had not diverted any funds to its parent company and other associate companies.

Determination of issues

21. After considering the facts submitted by the complainant & the respondent and perusal of record on file, the issues wise findings of the authority is as under :

- i. **First issue** : As per section 3 of the RERA Act, 2016, It has been noted that the project is registerable but so far it has not been registered which is in violation of section 3(1) of the Real Estate (Regulation and Development) Act, 2016. The respondent is advised to do the needful at the earliest and this be treated as to why penal proceedings should not be initiated against the respondent under section 59 for violation of the section 3(1) of the act ibid, whereunder the penalty amount may extend up to 10% of the estimated costs of the project.

The license for this project was issued vide license No. 79 of 2010 dated 15.10.2010 by the office of the Director, Town and Country Planning, Haryana, Chandigarh for setting up of residential plotted colony/group housing



over an area measuring 107.85 acres. The license was issued in the year 2010 much before coming into force of the ibid Act. The Development work has not been completed accordingly. This squarely falls within the definition of on-going project under rule 2 (1) (o) of Haryana rules, 2017 and it needs to be registered. . There may be other allottees also in the project which may also be suffering because of non-construction of the project. It is unethical and un-desirable to take money from the allottees and not taking of the project. Therefore the authority is of the view that the project has not been registered although it is liable to be registered as per first proviso of Section 3 (1).

Section 59 of Act is reproduced hereunder as -

“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”

Findings of the Authority

22. Jurisdiction of the authority-

i. Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.

ii. **Territorial Jurisdiction**

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.

23. Complainant has stated that project stands abandoned since August 2014. As per clause 10.1. of BBA dated 17.12.2012, committed date of delivery of possession was 17.04 2016 including six months grace period. His unit number is K-601, K Block, 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.58,67,113/- along with 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 cannot 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 respondent is liable to refund the total consideration paid by the complainant along with interest at the prescribed rate of 10.75 % per annum.

Decision and directions of the authority

24. 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. The respondent is directed 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 along with prescribed rate of interest @ 10.75% p.a. prevailing as on date within a period of 90 days from today.



25. The order is pronounced.
26. Case file be consigned to the registry.

(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.	450/2018 case titled as Ms. Kusum Jain V/s M/s Adel Landmarks Limited & Anr
Complainant	Ms. Kusum Jain
Represented through	Shri Kamal Sharma in person on behalf of complainant.
Respondent	M/s Adel Landmarks Limited and anr
Respondent Represented through	Mohd. Amir, authorized representative on behalf of respondent-company with Ms. Tarini Bhargava, Advocate.
Last date of hearing	4.10.2018
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 17.12.2012, committed date of delivery of possession was 17.04 2016 including six months grace period. His unit number is K-601, K Block, 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.58,67,113/- 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)