

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	76/2018 case titled as Smt. Sundeep Sandhu Vs. M/s Landmark Apartment Pvt. Ltd.
Complainant	Smt. Sundeep Sandhu
Represented through	Shri Mandeep Singh Brar-son in-law of the complainant.
Respondent	M/s Landmark Apartment Pvt. Ltd.
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 10.11.2012 inter se both the parties was signed. As per clause 12 of MoU, which reads as under:-

“That the Company 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”.

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.

Complaint is disposed of accordingly. 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. : 76 of 2018
First date of hearing: 17.04.2018
Date of Decision : 20.11.2018

Mrs. Sundeep Sandhu,
R/o. H.No. 17, New Officers Colony,
Stadium Road, Rikhy Dev Marg,
Patiala, Punjab-147001

Complainant

Versus

1.M/s Landmark Apartments Pvt. Ltd.,
Regd. Office: 85, Sector-44,
Gurgaon- 122002

2. Mr. Sandeep Chillar, Mr. Amit Chillar,
Mr. Dinesh Kumar and Mr. Ravi Dabbas,
R/o. H.no. 85, Sector-44, Gurgaon-122002

Respondents

CORAM:

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

Chairman
Member
Member

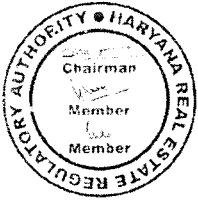
APPEARANCE:

Shri Mandeep Singh Brar
Shri Amarjeet Kumar

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint was filed on 02.04.2018 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 Mrs.



Sundeep Sandhu , against the promoter M/s Landmark Apartments Pvt. Ltd., on account of failure of the respondents to give the assured returns as per memorandum of understanding (MoU) executed on 10.11.2012 in respect of unit no. 14, 4th floor, in the project 'Landmark Corporate Center' with a super area of 150 sq. ft. and also for not handing over possession on the due date i.e. 10.11.2015 which is in violation of clause 3, 4, 12 and 14 of the MoU, and also the violation of obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"Landmark Corporate Center", Sector-67, Gurugram
2.	Office space/unit no.	14 on 4 th floor
3.	Admeasuring area of the unit/space	150 sq. ft.
4.	Nature of real estate project	Commercial Cyber Space
5.	RERA registered/unregistered.	unregistered
6.	Booking date	10.11.2012
7.	Date of execution of apartment buyer's agreement/ MoU	10.11.2012
8.	Payment plan	Assured Return
9.	Basic sale price	Rs.6,60,000/-
10.	Total amount paid by the complainant till date	Rs.6,60,000/-
11.	Percentage of consideration amount	Approx. 100 percent
12.	Date of delivery of possession	Not mentioned in the MoU dated 10.11.2012
13.	Date of delivery of assured	10.11.2015



	return as per clause 12 of Memorandum of Understanding	
14.	Delay in handing over possession till date	Cannot be ascertained from as the MoU dated 10.11.2012.
15.	Penalty clause as per apartment buyer's agreement /MoU	Not Applicable

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A memorandum of understanding dated 10.11.2012 is available on record for the aforesaid office space according to which the possession of the same was supposed to be delivered on 10.11.2015. Hence, there is a violation on the part of respondent.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 17.04.2018. The respondents appeared on 17.04.2018, 10.05.2018, 05.06.2018, 11.07.2018, 21.08.2018, 29.08.2018, 07.09.2018 and on 09.10.2018. Reply has been filed by the respondents on 10.05.2018.



Facts of the complaint

Briefly stated, the facts of the case as culled out from the complaint of complainant are that on 10.11.2012 booked an office space by paying Rs. 6,60,000/- vide cash dated 10.11.2012, in the M/s Landmark Apartments Pvt. Ltd. project named "landmark corporate center" in sector- 67, Gurugram.

5. The complainant submitted that on 10.11.2012 a MOU was executed between M/s Landmark Apartments Pvt. Ltd. and Sundeep Sandhu for the allotted office space/unit no. 14 on 4th floor of the project. As per the complainant's version, she has paid the entire sale price at the rate of Rs. 4400/- per sq. ft. for the total area measuring 150 sq. ft. of the allotted office space to the respondents and in lieu of said payment, the respondents agreed to pay Rs. 16,500/- every month as assured return to the complainant till the date of possession or 3 years whichever is earlier. As per the clause 4 of the MoU the complainant agreed to give leasing right to respondents 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. Also, as per clause 12 the final



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area on completion may increase or decrease by 10% of the tentative area agreed to be sold.

6. The complainant further submitted that office space/unit no. 14 on 4th floor was allotted to the complainant whereas as per the complainant she was supposed to be allotted unit on 1st floor. On 30.06.2014 respondents' send an allotment letter to the complainant mentioning that they have been regularly paying the assured return as per the terms and conditions of the said memorandum executed on 10.11.2012, The respondents mentions that the building in which the complainant have been allotted the office space will be completed in a couple of months and once it is completed the respondents then shall also execute and register the conveyance deed of the subject office space in favour of the complainant subject to payment of dues. The respondents mention in the letter that once they have handed over the possession and executed the conveyance deed the complainant shall be liable to pay external development charges, interest charges, interest free maintenance security charges, stamp duty/registration charges. Respondents stopped the payment of assured returns on the plea that it shall be adjusted against stamp duty, registration fee and



miscellaneous charges. The respondents further advised the complainant not to present the post-dated cheques and accordingly, these were not presented by the complainant in good faith.

7. The complainant further submitted that the respondents sent second letter dated 23.07.2015 to the complainant mentioning that the occupation certificate for the said office space will be received within three months. On 02.04.2017 the complainant sent a letter to the respondents bringing out the issue of non-payment of accumulated assured returns amounting to breach of trust. The complainant after getting no response from the respondents issued a show cause notice dated 27.11.2017 to the respondent.
8. The complainant further submitted that the complainant was paid assured returns for one year but the remaining two years assured returns amounting to Rs.3,56,400/- are pending as dues in her account without any interest. That the complainant was lured into this deal that after getting assured returns for three years shall get possession of office space and can start earning rental income, this dream is nowhere in sight even after six years. That according to the complainant the executive of



the respondents stated that the complainant shall get office space on first floor instead of forth floor and hence, this offer was accepted by the complainant. That the complainant shall be allotted 186 sq. ft. of space against 150 sq. ft., this proposal goes beyond the limit of 10% increase of space and hence, was not accepted by the complainant.

9. The complainant submitted that on 06.02.2013 another meeting took place between respondents senior executive Shri Ravi Dabbas and the complainants representative Shri M.S. Brar. The respondents insisted on allotting 186 sq. ft. of super area while the complainant was not prepared to accept more than 10% increase in the area i.e. 165 sq. ft. as per the clause 12 of the MOU.

Issues raised by the complainant are as follow:

- i. Whether the respondents intentionally denied the assured returns amounting to Rs.3,56,400/- to the complainant?
- ii. Whether the super area can be increased/decreased arbitrarily by the respondents beyond the limits laid



down in MOU without the consent of the complainant?

- iii. Whether the delay of three years in executing the project in all aspects by the respondents without any force majeure is reasonably justifiable?

Reliefs sought:

The complainant is seeking the following relief:

- i. Direct the respondents to release the pending assured return amounting to Rs. 3,56,400/- to the complainant immediately alongwith the interest of Rs.2,11,150/- @18% for the period of Feb 2014 to March 2018.
- ii. Direct the respondents to lay down the time frame within which the possession of the office space shall be handed over to the complainant and also to order the respondents to compensate complainant as deemed fit.



Respondent's reply

10. The respondents submitted that the complainant was not lured in to invest in the project of the respondent, the complainant herself approached the respondents and signed MOU on her free will and

understanding. The respondents denies that they had any mala fide intentions and the complainant after reading all the terms and conditions had signed the MoU. It is also iterated 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 the benefit of assured returns for a period of three years or the possession which ever was earlier.

11. The respondents further submitted that the complainant had invested total amount of Rs.6,60,000/- out of which the respondents had promised to give assured returns 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. The respondents even today is willing to give the remaining assured returns to the complainant alongwith the possession, however, the complainant needs to clear 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 respondents further stated that they had agreed to give the area of 165 sq. ft. to the complainant as per the MOU.



12. The respondents submitted that they had applied for occupation certificate in the year of 2015 and accordingly informed the tentative date of receiving the occupation certificate to all its buyers. In the letter of intimation of possession, the respondents never mentioned the confirmed date of receiving the OC rather it stated that OC is expected to be received within the next three months. It is also mentioned here that the construction of the office space is complete, NCC for fire has been received and the OC has already been applied.

Findings of the authority

14. We have heard learned counsel for the parties and perused the records. MoU dated 10.11.2012 inter se signed by both the parties. As per clause 12 of MoU, which read as under: -

“that the company agrees to sell the demised premises to the buyer, which is a space admeasuring the aggregate tentatively, a super area of 150 sq. ft. subject to the final confirmation of area on completion of the building in Landmark Cyber Park at the rate of Rs. 4,400/- per sq. ft. of super area, amounting to a total consideration of Rs.6,60,000/- (Rupees six lacs sixty thousand only). The final area on completion may increase or decreased by about 10% of the tentative area agreed herein to be sold. Correspondingly, the consideration amount shall also increase or decrease.”



16. An assured return of Rs. 16,500/- 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^{1/2} years. Later on, respondents stopped payment of assured return, as a result of which the complainant has filed the instant complaint. Project is not registered with the authority.

17. After hearing the arguments, it is adjudged as below:-

"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 14.08.2010, 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 and 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. 55,00,000/- 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."

18. As already decided in complaint no. 141 of 2018 titled as Brihmjeet versus M/s. Landmark Apartments Pvt. Ltd. no case is made out. Learned counsel for the respondents has given a Supreme Court Judgement 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.

19. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondents under section 59 of the Act by the registration branch.

20. Case file be consigned to the registry.



21. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 20.11.2018

