

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

Complaint No. : 374 of 2018
First date of hearing: 02.08.2018
Date of Decision : 05.11.2017

Mr. Rajnish Banga
Flat no. 534, Vikas Kunj, Vikas Puri,
New Delhi-110018

Complainant

Versus

1) M/s Adel Landmarks Ltd
2) M/s Headway Buildcon Private Limited
Head office: Gautam Buddha Nagar, C-56/14,
Sector-62, Noida-201301

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shree Rajnish Banga Complainant in person

Shri Mohd. Amir Authorized representative on
behalf of the respondent

Ms Tarini Bhargava Advocate for the respondent

Brief

1. A complaint dated 04.06.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act herein after referred to HARERA, 2016 read with rule 28 of the Haryana



Real Estate (Regulation and Development) Rules, 2017 by the complainant Ms Rajnish Banga, against the promoter M/s Adel Landmarks Ltd., and M/s Headway Buildcon Private Limited in respect of apartment number CSM/103/E-0405, tower E on 4th floor in the project 'Cosmocity', 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.	Nature of the project	Residential colony
3.	RERA registered/ not registered.	Not registered
4.	Apartment/unit no.	CSM/103/E-0403, tower E on 4 th floor
5.	Apartment measuring	2098 sq. ft
6.	Payment plan	Construction linked plan
7.	Date of execution of buyer's agreement	20.12.2012
8.	Total Sale Price	Rs.98,39,430/-
9.	Basic sale price	Rs. 85,59,840/-
10.	Total amount paid by the complainant till date	Rs. 48,24,792/-
11.	Percentage of consideration amount	Approx. 49.03%
12.	Date of delivery of possession as per clause 10.1 of apartment buyer's agreement	20.06.2016



	(36 months + 6 months grace period from the date of execution of buyers agreement)	
13.	Delay in handing over possession till date	2 years 4 months 16 days
14.	As per penalty clause 10.2 of apartment buyer's agreement dated 20.12.2012	Rs.75/- sq. ft per month of the super area of the said flat.

3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondents. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 20.06.2016. Neither the respondents have delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.75/- sq. ft per month of the super area of the said flat for the period of such delay. Therefore, the promoter has not fulfilled his committed liability as on date.

4. 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 05.09.2018 and 09.10.2018. The



reply filed on behalf of the respondent has been perused. The respondents have supplied the details and status of the project along with the reply. The complainant has filed a rejoinder dated 09.10.2018 wherein he has re-asserted the contentions raised in the complaint.

Facts of the case

5. That after collecting more than 49% of the total sale price of the flat, the respondents suspended construction activity from July, 2014, till date.
6. 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.
7. Numerous visits to the Noida office and telephonic enquiries yielded only false assurances, that construction work will commence shortly but that never fructified.



8. That the aggrieved over the uncooperative attitude of the respondents and uncertain future of the project certain buyers filed FIR with the economics offences wing of Gurugram Police. As a consequence, one of the directors of the respondent's company was also arrested and given conditional bail from the hon'ble high court on the basis of his commitment to renew the licence and start the project but still the licence is not renewed.
9. 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.
10. 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.
11. 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 projects of non-availability of funds but on the other hand the respondents had enough funds to make investments into other companies.

12. 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.

13. 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.



14. That the promoters do not seem to be interested in completing the project after having collected 46% 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.

15. Even after a lapse of three years from the committed date of possession 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 complainants do not foresee the possibility of completion of the project in near future.

Issues:

16. **The following issue have been raised by the complainant:**
- i. Whether or not respondents is are under an obligation to get the project registered under real estate regulation authority?**



Relief sought:

17. 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 respondents

18. That at the very outset, it is most respectfully submitted that the complaint filed by the complainant is not maintainable and this learned regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondents have also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondents contained in the said application.

19. The parties entered into legally binding agreement. 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 have been



incorporated therein. Therefore, any relief beyond the terms and conditions of the agreement is unjustified.

20. That no cause of action has ever accrued in favor of the complainant to file the present complaint before this learned regulatory authority. The complaint being without any cause of action is liable to be dismissed at this ground alone.

21. That the respondent humbly submits before this learned regulatory authority that respondent company has developed various projects and has completed those projects. The respondent have obtained occupancy certificate in majority of its projects. Since, the respondents have been diligent in completing all its project and shall be completing the remaining projects in phased manner therefore it is humbly submitted that the COSMOCITY-I project shall be completed at the earliest.



22. 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.

23. 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.



24. That, without prejudice to the above, despite several adversities, the respondent's company has continued with the development of the said project and is in the process of completing the legal formalities as well as compliances, However, as the complainant is only a supersizing power of the learned authority and not interested in taking over the possession of the said plot, therefore the complaint is liable to be rejected. The alleged grievance of the complainant has origin and motive in sluggish real estate market.

25. 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. Section 31.



26. It is most respectfully submitted the name of the respondent No 1 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 ("ROC") and then to Adel Landmarks Limited vide Fresh Certificate in Incorporation upon Change in Name dated 19.2.2014 issued by ROC.

27. That vide a resolution passed by the Board of Directors of the respondent company Mr. Mohd. Amir, has been authorized and empowered to sign and verify the pleadings, and to move appropriate reply, in the name of and on behalf of the respondent company. It is further authorized to him to lead the evidence and to proceed further in the case. A copy of the Board Resolution authorizing Mr. Mohd.



28. That the DTCP Haryana granted license No.79 of 2010 in favor of M/s Headway Buildcon Pvt. Ltd. for development of residential group housing colony over land admeasuring 10.437 Acres of land situated in village Dhanwapur, Sector-

103, tehsil and District Gurugram which is privately named "COSMOCITY" i.e. subject project and building plans (Sanction Letter bearing memo no. ZP-665/AD/RA/2014/4379 dated 03.03.2014) with respect to the subject project was approved by DTCP. Moreover, the respondent company has already filed Form LC - VI for renewal of the license no. 79 of 2010 dated 06.07.2017.

29. That the respondent company is in process to get the project registered under Real Estate Regulation Act, 2016. It is pertinent to mention that this learned authority vide complaint no. HARERA/ GGM/ 2018/ SuoMotu/ NON-REG/ 09 dated 31.08.2018 (received by the respondent company on 08.09.2018) has already issued show-cause notice consequent upon non-registration of on-going project and the same is under due deliberation and pending adjudication by this learned regulatory authority. Thus, the subject on which this complaint has been instituted is materially and substantially already being deliberated upon by this learned regulatory authority ad hence, the present compliant is liable to be stayed and/or dismissed.



30. The respondent company is in the process of developing *inter alia*, various residential and commercial projects to the satisfaction of its customers. The respondent company is doing its level best to implement the projects undertaken by the Respondent Company in time and to deliver good quality apartments/ units and to provide excellent services to its clients/ customers.

31. That the each and every averment of the complaint is wrong, false and vehemently denied unless particularly admitted in the succeeding paragraphs

32. Application under Section 8 of The Arbitration And Conciliation Act, 2015 and its reply:-

33. The respondent filed an application submitting that the complainant in the complaint are relying upon the builder buyer agreement existing between the parties and clause 19.(2) of the agreement is a validly existing arbitration agreement between the parties. In context of clause 19(2) of the buyers agreement as well as sub-section 1 of Section 8 of the Arbitration and Conciliation Act, 2015 the present



dispute is liable to be referred to arbitration since it is a mandate of Section 8 that any dispute brought before any judicial authority under any action which is the subject matter of arbitration “shall” be referred to arbitration between the parties.

34. To this, the complainant submitted that the correct citation is the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 that came into force on 23.10.2015. It is further submitted that the respondent is misleading the authority and intentionally did not cite the correct law. The correct law is that statutory regime concerning arbitration would not be applicable where public law regime operates. There are certain disputes that were to be adjudicated and governed by statutory enactments, established for specific public purpose and to sub-serve a particular public policy. Such disputes are non-arbitrable. Arbitration clause between the parties could not circumscribe jurisdiction of the authority and the complainant has legal right to seek remedy and relief



from the authority for refund of their money with interest and compensation.

Determination of issues

35. 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:”

36. 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.”



37. 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

38. 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 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. No completion certificate/ occupation certificate or part thereof has been placed on record by the complainant . accordingly, the project falls within the definition of ongoing project and is consequently liable for non-registration.

39. 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.

40. 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 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.

41. Authority takes cognizance for non- registration.

42. The order is pronounced.

43. Complainant has stated that project stands abandoned since August 2014. As per clause 10.1. of BBA dated 20.12.2012, committed date of delivery of possession was June, 2016 including six months grace period. His unit number is



CSM/103/E-0403, situated in tower 'E' in cosmocity, Sector 103, Gurugram.

44. Complainant has annexed photographs w.r.t. to status of the project and seeks refund of the paid amount of Rs.48. 24,792/- 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.

45. 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 along with prescribed rate of interest @ 10.75% p.a. prevailing as on date within a period of 90 days from today.



46. Complaint stands disposed of in above terms
47. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member



(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.11.2017

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Monday and 05.11.2018
Complaint No.	374/2018 case titled as Mr. Rajnish Banga V/s M/s Adel Landmarks Ltd. & another
Complainant	Mr. Rajnish Banga
Represented through	Complainant in person
Respondent	M/s Adel Landmarks Ltd. & another
Respondent Represented through	Mohd. Amir, authorized representative on behalf of respondent-company with Ms. Tarini Bhargava, Advocate.
Last date of hearing	09.10.2018
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 20.12.2012, committed date of delivery of possession was June, 2016 including six months grace period. His unit number is CSM/103/E-0403, situated in Tower 'E' in 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.48,24,792/- 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)