

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 12.7.2018
Complaint No.	113/2018 case titled as Mr. Akash Kohli versus M/s Adel Landmark Ltd.
Complainant	Mr. Akash Kohli
Represented through	Ms. Neeta Sinha Advocate for the complainant.
Respondent	M/s Adel Landmark Ltd.
Respondent Represented through	Shri Manoj Kumar, Advocate for the respondent.

Proceedings

The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

Arguments advanced by both the learned counsel for the parties have been heard. The learned counsel for the complainant has argued that the project was scrapped and in the affidavit of the complainant, it has specifically mentioned that the amount was adjusted in the account of Mr. Kaushal Kumar Tonger. Although it is a matter of dispute whether this authority has jurisdiction or not but there seems to be no strength in the arguments advanced by the counsel for the complainant as amount stands already adjusted on his request. **The complaint is disposed of accordingly.** If the complainant has any grievance or civil dispute with the respondent or person in whose account the amount has been adjusted, they should pursue the matter before the suitable forum. Order is pronounced. Detail order will follow. File be consigned to the Registry.

Sami Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
12.7.2018

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

Complaint No. : 113 of 2018
First date of hearing : 01.05.2018
Date of Decision : 12.07.2018

Mr. Akash Kohli,
R/o. C-2/2, Janakpuri, New Delhi-110058

Complainant

Versus

M/s Adel Landmarks Ltd.
Regd office: B 39, Friends Colony (West), New
Delhi-110065

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Neeta Sinha
Shri Manoj Kumar

Advocate for the complainant
Advocate for the respondent

ORDER



1. A complaint dated 05.06.2018 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 Mr. Akash Kohli, against the promoter M/s Adel landmarks Ltd., in respect of residential apartment number GGN/AR/410 in the

upcoming project, for not handing over possession on the due date which is an 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	Upcoming project, Gurgaon Dwarka expressway, sector 104, Gurugram
2.	Type of real estate project	Residential project
3.	Apartment no.	GGN/AR/41C
4.	Apartment measuring	1590 sq. ft.
5.	RERA registered/ not registered.	Not registered
6.	Booking date	04.04.2012
7.	Date of execution of agreement to sell and purchase	31.05.2012
8.	Payment plan	Construction linked payment plan
9.	Basic Sale Price	Rs.61,69,200/-
10.	Total amount paid by the complainant till date	Rs.12,51,840/-
11.	Date of delivery of possession	Not mentioned
12.	Delay of number of years / months/ days till date	Cannot be ascertained
13.	Penalty Clause as per apartment	Not mentioned

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. An agreement to sell and purchase dated 31.05.2012 is available on record for the aforesaid apartment. Neither the respondent has delivered the



possession of the said apartment. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 01.05.2018. The case came up for hearing on 01.05.2018, 05.06.2018 and 12.07.2018. The reply filed on behalf of the respondent on 05.06.2018 has been perused. The complainant has filed a rejoinder and the same has been perused.

FACTS OF THE COMPLAINT

5. Briefly stated, the complainant submitted that, he purchased a 3BHK apartment with allotment no. bearing GGN/AR/410 in the upcoming project of Adel Landmarks ltd in which advance registration was done for a sale consideration of Rs 61,69,200/-.
6. The complainant submitted that he had purchased the said flat in re sale from Mr. Girish Shah through agreement to sell and purchase dated 31.05.2012 who had paid Rs 6,00,000/- to Adel Landmarks ltd. At the time of re-sale.
7. The complainant submitted that he purchased the flat on the basis of construction linked plan which was to be paid from time to time till the possession of the flat, and the complainant applied for transfer of the flat in his name on 07.10.2012 and



paid the 2nd instalment of 20% as per the payment plan i.e. Rs 6,34,340/-.

8. The complainant submitted that the respondent had breached the terms of the agreement by scrapping and cancelling the project and therefore the complainant is seeking refund of the money paid to the respondent along with interest at the prescribed rate.
9. The complainant submitted that he contacted the respondents to enquire about the status of the project but no satisfactory answer was received and finally in 2013 the complainant was informed that the project has been scrapped due to pending permission from the statutory body/authorities. The complainant was thereafter offered to shift to another project but even after regular follow ups no accommodation was given in another project by the respondents.
10. The complainant submitted that in 2014, he made a request for cancellation of flat and refund of entire amount with interest @ 18% p.a. for which the respondents took all the original papers along with all formalities for cancellation of the said project.
11. The complainant submitted that after a great level of harassment suffered by him, the respondent send a letter dated 16.09.2014 with registration no. GCN/AR/410 for



refund of the payment received by them and the complainant was asked in written to come to the respondent to collect the refund along with interest, but no such activity took place and the promises were false and frivolous.

12. The complainant submitted that on 01.02.2017, he was given statement of account for his unit and was shocked to still see that his refund of Rs 12,51,840/- was not processed and he on 07.10.2017 again visited the office of the respondent and gave a cancellation letter which was duly received by the respondent's staff Ms. Roshmi but till date the complainant has not received his refund along with interest at the prescribed rate.
13. The complainant submitted that the respondents promised to hand over the possession within 36 months but till date the complainant has neither received his refund nor has been shifted to another project which was duly promised by the respondent till date.
14. The complainant submitted that the above-mentioned complaint is with respect to the failure of the respondent to hand over the possession of the flat.



ISSUES TO BE DECIDED

- I. Whether the respondent is liable for cheating and defrauding the complainant for initially booking the project and later on cancelling the project?
- II. Whether the respondent is liable for not shifting the complainant to alternate accommodation which was promised by the respondent?
- III. Whether the complainant is entitled for the refund of amount of Rs 12,51,840/- along with interest @18% p.a. for which the respondents took all the original papers and other formalities?

RELIEF SOUGHT

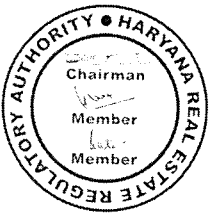
- I. Direct the respondents to refund the amount of Rs 12,51,840/- along with interest u/s 18 of RERA Act, 2016 r/w rule 15 of Haryana rules, 2017 as the sale consideration towards the said project.



RESPONDENT'S REPLY

15. The respondent admitted the fact that as the upcoming project is located in Gurgaon- Dwarka expressway in Sector 104, Gurugram, the authority has complete territorial jurisdiction to entertain the present complaint.

16. The respondent submitted that the name of their company had been changed from Era Landmarks Limited to Adel Landmarks Project Limited vide fresh certificate of incorporation consequent upon change in name dated 14.12.2013 issued by registrar of companies, NCT of Delhi and Haryana.
17. The respondent submitted that the complainant approached the respondent of their own free will and consent and also after carrying out the necessary due diligence and further after evaluating the commercial viability of the proposed project of the respondent with the other options available in the vicinity. The respondent also submitted that it was the complainant only who applied for advance registration out of his own free will and volition.
18. The respondent submitted that nothing is due or payable by the respondent to the complainant as the alleged claim by the respondent is time barred.
19. The respondent further submitted that they received a joint request from Mr. Girish Shah and the complainant for nomination against registration of proposed and future project vide letter dated 17.10.2012. The respondent confirmed the substitution of name of the complainant against the name of Mr. Girish Shah in advance registration no. GGN/AR/410.



20. The respondent submitted that it was the complainant who moved an application for cancellation of advance registration no. and submitted the affidavit for the same. The respondent further submitted that the complainant vide another affidavit requested to adjust the amount deposited of Rs 13,15,147/- to the account of Mr. Kaushal Kumar Tonger, allottee of one unit no. B2/702, Cosmocity 3, Gurgaon.
21. The respondent submitted that they were only considering for upcoming project and in terms of the application for advance registration it was clear that the advance registration form does not give the applicant any right to allotment of apartment in any project of the respondent.
22. The respondent submitted that no project was launched in 2012 as alleged by the complainant. At that time the respondents were considering to launch the upcoming project unfortunately which was never launched. Mr. Girish Shah registered under advance registration for the allotment on the condition of the project being launched.
23. The respondent submitted that it is denied that on enquiry the complainant was not given satisfactory replies. Moreover, as per the complainant's own version it is reiterated that he was informed about the project being scrapped.



24. The respondent further submitted that they did not offer any shifting as alleged by the complainant. It is denied that no accommodation or adjustment were done. Moreover, it is stated that as per the request of the complainant the amount received under advance registration no. GGN/AR/410 was adjusted in the account of Mr. Kaushal Kumar Tonger.
25. The respondent submitted that the subject claim is with respect to the upcoming project which was scrapped in 2013, therefore this authority has no jurisdiction to entertain such claim as alleged by the complainant.

ISSUES TO BE DECIDED

- I. Whether the present complaint is maintainable?
- II. Whether the alleged claim of the complainant is time barred?
- III. Whether the complainant is entitled for refund along with interest at the prescribed rate under RERA Act, 2016?

RELIEF SOUGHT

- I. To pass an order for dismissal of complaint as the present complaint is not maintainable.

REJOINDER

26. The complainant submitted that in all the signed documents he had opted for refund of his deposited amount from the project in 2013. But on the advice of channel partners of the



company, the complainant opted to take a unit in one of their launched projects in sector 103, Era Cosmo City Phase 2, Sector 103, Gurugram. The respondents instead of filling up the name of the complainant signed up for some person known Mr. Kaushal Kumar Tonger not known to the complainant without getting the signature of the complainant in the notary's register which is maintained by them as per law.

27. The complainant submitted that the respondent fraudly took the signature of the complainant by giving false assurance to transfer the property and has committed a criminal offence and the complainant had come to know about this fraud done by the respondents from the reply and document filed by the respondent. The complainant submitted that he never met or known any person by the name of Mr. Kaushal Kumar Tonger in his entire life.
28. The complainant submitted that it is a criminal offence to fraudly sell the complainants unit to Mr. Kaushal Kumar Tonger had further sell it to Mr. Vijay Jha in April 2013. It is a question of doubt that how come company has adjusted the complainant's money in another project i.e. Sector 103, Era Cosmo City unit in favour of Kaushal Kumar Tonger in September 2013. This created suspicion in the mind of the

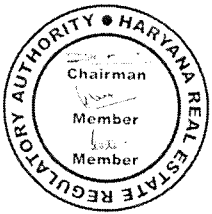


complainant that the respondents company officials are equally involved in this fraud along with Mr. Vijay Jha.

29. The complainant submitted that Mr. Vijay Jha and Mr. Mohinder Sharma kept the complainant in dark by saying that the respondent company Adel Landmarks Ltd will not refund the money of the complainant after for such a long gap/ time.
30. The complainant submitted that due to the above facts and circumstances the complainant prays for the refund of the amount.

DETERMINATION OF ISSUES

- I. In regard to the first issue raised by the complainant, the authority is not the appropriate forum to decide the issue thus the complainant may approach the appropriate forum for the above mentioned issue which is being dealt by IPC under relevant provisions.
- II. In regard to the second issue raised by the complainant, it is settled that no shifting or alternate accommodation was offered to the complainant, moreover the complainant asked to adjust the amount of Rs 13,15,147/- advance registration of GRG/AR/410 for the said allotment of flat.
- III. In regard to the third issue raised by the complainant, there is no question of refund as claimed by the complainant because the complainant in his affidavit has specifically mentioned that the amount was adjusted in the account of Mr. Kaushal Kumar Tonger. Although, it is a matter of



dispute whether this authority has the jurisdiction or not, but there seems to be no strength in the arguments advanced by the counsel for the complainant as amount stands already adjusted on the complainant's request.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

31. The complainant makes a submission before the authority u/s 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above:

34 Functions of authority

34 (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agent under this Act and the rules and regulations made thereunder

32. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.




33. Thus, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:


- I. As the project stands scrapped, the amount of the complainant was adjusted in the account of Mr. Kaushal Kumar Tonger. The authority directs the complainant that if there is any grievance or civil dispute with the respondent or person in whose account the amount has been adjusted, they should pursue the matter before the suitable forum.

34. Order is pronounced

35. File to be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2018

