

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

Complaint No. : 189 of 2018
**Date of First
Hearing : 24.05.2018**
Date of Decision : 20.11.2018

Mrs. Kanwaljeet Kaur
R/o H. No. 22146, 2nd Floor, Shadipur, New
Delhi-110008

Complainant

Versus

M/s Adel Landmarks Ltd.,
Through its Directors, Mr. Sumit Bharana, Mr.
Pravindra Kumar, Mr. Sandeep
Regd. Office: B-292, Chandra Kanta Complex,
Shop no. 8, Near Metro Pillar No.161, New
Ashok Nagar, New Delhi-110096

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant in person
Ms. Tarini Bhargava

Advocate for the complainant
Advocate for the respondents



ORDER

1. A complaint dated 24.04.2018 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 Mrs. Kanwaljeet Kaur, against the promoter M/s ADEL Landmarks Lts. and others., on account of violation of clause 10.1 of apartment buyer agreement executed on 29th July, 2013, in respect of unit with a super area of 1450 sq.ft described as below for not handing over the possession on due date i.e. 29.07.2018 which is an obligation under section 11 (4) (a) of the Act ibid.

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

1.	Name and location of the project	“Cosmo City-3”, Sector-103, Daulatabad, Gurugram
2.	Unit no.	CSM-3, 103/B-1-1401, 14th floor, tower B-1
3.	Registered/ not registered	Not registered
4.	Date of booking	Cannot be ascertained
5.	Date of apartment buyer agreement	29.07.2013
6.	Total consideration amount as per agreement dated 29.07.2013	Rs. 61,43,450/- (BSP-Rs. 50,11,200+other charges-Rs.10,32,250/-)
7.	Total amount paid by the complainant	Rs. 27,41,126/-
8.	Date of delivery of possession from the date of execution of apartment buyer agreement	29.07.2018 Clause 10.1- 54 months from the date of



		execution of the agreement, with a grace period of 6 months or grant of statutory approvals, whichever is later.
9.	Delay for number of months/ years upto date 20.11.2018	3 months 22 days
10.	Penalty clause as per flat buyer agreement dated 29.07.2013	Clause 10.7 of ABA i.e. Rs.10/- per sq.ft. of the super area per month of the delay of full one month or any part thereof in taking the possession of the said unit for the entire period of delay.

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A apartment buyer agreement is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 29.07.2018 including 6 months grace period. The promoter has not fulfilled his committed



liability by not giving possession as per the terms of the flat buyer agreement. Neither paid any compensation i.e. @ Rs.10/- per sq. ft. of the super area per month of the delay of full one month or any part thereof in taking the possession of the said unit for the entire period of delay as per apartment buyer agreement dated 29.07.2013.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 24.05.2018. The case came up for hearing on 24.05.2018, 11.07.2018, 23.08.2018, 19.09.2018, 23.10.2018 and 20.11.2018. The reply was filed by the respondent dated 06.06.2018. The complainant has filed a rejoinder dated 26.06.2018 wherein he has re-asserted the contentions raised in the complaint.

Facts of the complaint

5. Briefly stating the facts of the complainant, the complainant is a housewife and she along with her husband were looking for a residential accommodation for herself and her family members.
6. The respondent no. 1 is a company registered and incorporated under the provisions of Companies Act, 1956 and



engaged inter alia in the business of real estate and respondent no. 2 to 4 are the directors of the respondent no. 1 company.

7. In the month of December, 2011, the respondent company through its directors issued various advertisements with respect to a residential project namely COSMO CITY. It was represented by the respondent company and its directors that the project would be a very good project and will have all the basic and necessary amenities with all good infrastructure.
8. The respondent company represented that they have a good and marketable title of the land and the said project which is to be developed and constructed have all the necessary permissions received from the concerned authorities to develop and construct the project.
9. The complainant was told that the project will be completed within a period of four and half years and possession of the same will be delivered within the same time period.
10. The respondent no. 1 company sent an allotment letter dated 1st April, 2013 to the complainant thereby confirming the allotment of the said apartment.



11. The respondent has failed to develop the project and rather abandoned the project. Thus, there is no possibility in coming future to complete the project and give the possession of the unit.

12. The complainant is aware that the respondent has collected huge funds from hundreds of buyers and after collecting the said amount, have abandoned the project and defrauded hundreds of buyers including the complainant.

13. Issues raised by the complainant

- I. Whether the complainant is entitled for the return of the principle amount of Rs. 27,41,126/- along with interest there upon @ 15% p.a from the date of respective payment till the date of payment?
- II. Whether the complainant is entitled for compensation of Rs. 10,00,000/- for mental agony, litigation cost, default on behalf of the respondents etc.?

14. Relief sought

- I. Respondent No.1 to 4 be directed to pay the complainant principle amount of Rs. 27,41,126/- along with the interest thereupon @15% p.a from the date of respective payment till the date of payment.



- II. Respondent No.1 to 4 be directed to pay to the complainant compensation of Rs. 10,00,000/- towards disproportionate gain, default, mental agony, litigation cost etc.

Respondent's reply

15. The respondent submitted that the complainant has impleaded respondent no. 2 to 4 as party to the complaint which is not correct as per law. The respondent no. 1 is a developing the subject project as separate legal entity and there is no reason to make directors of the respondent no. 1 as party to the complaint. The dispute with respect to the agreement entered between the respondent no.1 and the complainant if any, is civil in nature and respondent no. 1 being separate legal entity duly incorporated under the companies act, 1956, will only be paid party to the complaint. So, it is requested by that the name of respondent no.2 to 4 be kindly deleted from array of parties.

16. The respondent submitted that 15% of the development work of the project has been completed and the project is still under progress. The developer is in process to get the project registered under RERA, 2016.



17. It was submitted by the respondent that the respondent no. 1 is doing its level best to implement the projects undertaken by the respondent no. 1 in time and to deliver good quality units to its customers along with excellent services.

18. The respondent submitted that 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. Therefore, any relief beyond the terms and conditions of the agreement is unjustified.

Determination of issues

19. In regard to the first issue raised by the complainant, the promoters have violated the agreement by not giving the possession on the due date i.e 29.07.2018 , the possession of the said unit was to be handed over within 54 months from the date of execution of the agreement with a 6 months grace period or grant of all statutory approvals, whichever is later as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:



“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

20. With respect to the **first issue**, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.45%, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed



in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

21. Regarding the **second issue** in the complaint, the complainant can seek compensation from the adjudicating officer under the RERA. Therefore, the relief sought by the complainant regarding compensation becomes superfluous

22. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

“34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

23. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act 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.”

Findings of the authority

24. The respondent admitted the fact that the project Cosmo City-3 is situated in Sector-103, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.

25. **Jurisdiction of the authority-** 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 complainant at a later stage.

26. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered



opinion that the respondent has failed to deliver the possession of the apartment number CSM-3, 103/B-1-1401, 14th floor, tower B-1 to the complainant by the committed date i.e. 29.07.2018 as per the said agreement and the possession has been delayed by 3 months 22 days till the date of decision i.e. 20.11.2018. Thus, the complainant is entitled to refund of the amount deposited by the complainant along with prescribed rate of interest.

27. The delay compensation payable by the respondent @ Rs.10/- per sq.ft. of the super area per month of the delay of full one month or any part thereof in taking the possession of the said unit for the entire period of delay as per apartment buyer agreement dated 29.07.2013 is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to



negotiate and had to accept these one-sided agreements.”

Decision and directions of the authority

28. 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) The respondent is directed to refund the amount deposited by the complainant.
- (ii) The respondent is directed to refund the amount along with prescribed rate of interest i.e 10.75% per annum within a period of 90 days from the issuance of this order.
- (iii) If the refund is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 18(1)(b) of the Act *ibid*.



29. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

30. The complaint is disposed of accordingly.

31. The order is pronounced.

32. 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

Date: 20.11.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	189/2018 case titled as Mrs. Kanwaljeet Kaur Vs. M/s Adel Landmarks Ltd. & Others
Complainant	Mrs. Kanwaljeet Kaur
Represented through	Shri Jasmeet Singh husband of the complainant in person.
Respondent	M/s Adel Landmarks Ltd. & Others
Respondent Represented through	Ms. Tarini Bhargava, Advocate for the respondent.
Last date of hearing	23.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

As per clause 10.1 of Builder Buyer Agreement executed inter se the parties on 29.7.2013, the unit booked by the complainant was to be delivered on 29.7.2018. Complainant/buyer has already paid an amount of Rs.27,41,126/- to the respondent. However, respondent has failed in fulfilling his obligation as on date. Counsel for the respondent has stated that 50% of construction work at the project is complete. It is a dismal state of affairs w.r.t. work at the project site. In these circumstances, the authority find no option but to order refund of the amount deposited by the complainant/buyer

alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order.

Accordingly, it is directed that the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order.

Complaint is disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)