

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 04.12.2018
Complaint No.	312/2018 case titled as Mr. Harish Kumar Dham Vs. M/s Adel Landmarks Ltd. & anr.
Complainant	Mr. Harish Kumar Dham
Represented through	Shri Abhay Jain Advocate for the complainant.
Respondent	M/s Adel Landmarks Ltd. & anr.
Respondent Represented through	Ms. Akshita Singh on behalf of Ms. Tarini Bhargava, Adv for the respondent-company
Last date of hearing	4.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is not registered with the authority.**

Arguments heard.

As per clause 10.1 of the Builder Buyer Agreement executed inter-se the parties on 28.3.2013 for unit/flat No.CSM/103/D-1004, 10<sup>th</sup> Floor, Block-D in Cosmocity village Dhanwapur, Sector 103, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 36 months from the date of signing of the agreement plus 6 months grace period which comes out to be 28.9.2016. Complainant/buyer has already paid an amount of Rs.35,95,799 /- to the respondent. Counsel for the complainant has alleged that work at the project is stand still since October, 2014 and it is nowhere near completion. Project is not registered

and the respondent/builder is not in possession of a valid licence. As such, proceedings under section 59 of the Real Estate (Regulation & Development) Act, 2016 for imposing penalty for violation of section 3 (1) of the Act be initiated against the respondent. Since the project is not either under construction nor there are any chances of its being taking off, as such, the complainant/buyer is not likely to get possession of the flat in near future. As such, as per section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, complainant is entitled to get the deposited amount paid by him to the respondent.

Accordingly, the respondent is directed 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 this order.

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

Samir Kumar  
(Member)  
4.12.2018

Subhash Chander Kush  
(Member)  
4.12.2018

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

**Complaint no. : 312 of 2018**  
**First date of hearing: 19.07.2018**  
**Date of decision : 04.12.2018**

Mr. Harish Kumar Dham  
H.no. 858, Pocket E, Sector 21,  
Gurugram-122016.

**Complainant**

**Versus**

1. M/s Adel Landmarks Ltd.  
Address: C-56/14, Sector-62,  
Noida-201301.
2. M/s Headway Buildcon Private Limited  
Regd. office: B-292 Chandra Kanta Complex,  
Shop no. 8, New Ashok Nagar,  
New Delhi-110096.

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Abhay Jain Advocate for the complainant  
Ms. Akshita Singh on behalf of Advocate for the respondent  
Ms. Tarini Bhargava

**ORDER**

1. A complaint dated 22.05.2018 was filed 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 Mr. Harish



Kumar Dham, against the promoters M/s Adel Landmarks Ltd. and M/s Headway Buildcon Pvt. Ltd. in respect of apartment described below in the project 'Cosmocity', on account of violation of the section 3 of the Act ibid.

2. Since, the buyer's agreement has been executed on 28.03.2013 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -
  - **Nature of the project- Residential project.**
  - **DTCP license no.- 79 of 2010 dated 16.10.2010**
  - **License valid/renewed upto- 15.10.2014**
  - **License holder- M/s Headway Buildcon Pvt. Ltd.**

1.	Name and location of the project	"Cosmocity", Village Dhanwapur, Sector 103, Gurgaon.
2.	Project area	10.437 acres
3.	RERA registered/ not registered.	<b>Not registered</b>
4.	Apartment/unit no.	CSM/103/D-1004, 10 <sup>th</sup> floor, block 'D'
5.	Apartment measuring	2098 sq. ft.
6.	Payment plan	Construction linked payment plan



7.	Date of execution of buyer's agreement	28.03.2013
8.	Basic sale price as per the said agreement	Rs.61,05,180/-
9.	Total consideration as alleged by the complainant	Rs.73,84,770/-
10.	Total amount paid by the complainant till date as per the receipts attached with the complaint	Rs.35,95,799/-
11.	Percentage of consideration amount	Approx. 48.69%
12.	Date of delivery of possession as per clause 10.1 of the buyer's agreement (36 months + 6 months grace period from the date of execution of buyer's agreement i.e. 28.03.2013)	28.09.2016
13.	Delay in handing over possession till date of decision	2 year 2 months 6 days
14.	Penalty clause as per the buyer's agreement dated 28.03.2013	Clause 10.2 of the said agreement i.e. Rs.75/-sq. mt. per month for the delay in offering possession.

4. 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 respondent. A buyer's agreement dated 28.03.2013 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 28.09.2016. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor



they have paid any compensation @ Rs.75/- sq. mt. per month for the delay in offering possession. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 23.08.2018. The case came up for hearing on 19.07.2018, 23.08.2018 and 04.12.2018. The reply filed on behalf of the respondent on 04.10.2018 has been perused.

#### **Facts of the case**

6. The complainant submitted that after collecting more than 48% of the total sale price of the said unit, the respondents suspended construction activity from July 2014 till date. The project site shows that the project is fully abandoned with no construction taking place since long. There are no labourers, construction material and operational equipment at the site. Also, the 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 13.05.2018 are annexed to the complaint.
7. The complainant submitted that numerous visits to the Noida office and telephonic enquiries yielded only false assurances



that construction work will commence shortly but that never fructified.

8. The complainant submitted that aggrieved over the uncooperative attitude of the respondent 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 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. The validity of project licence no. 79 dated 15.10.2010, which expired on 14.10.2014 has not been renewed so far. EDC collected from buyer has not been deposited with the Town and Country Planning Department.
9. The complainant submitted that in view of numerous complaints received from the home buyers, Town and Country Planning Department put the respondents on notice for cancellation of their various licenses and even barring them from promoting any project in Haryana.
10. The complainant submitted that DTCP granted license to Headway Buildcon Private Ltd. but the marketing of the project and collection of booking amount, instalments and EDC, etc. was done by group company Era Landmarks Ltd.



(name subsequently changed to Adel Landmarks Ltd.), without getting the license transferred in their own name. Furthermore, the marketing of the project was undertaken and amount collected from the buyers in the year 2011 onwards much prior to the building plan approval was conveyed by DTCP to Headway Builders vide memo no. ZP-bb5/AD(RA)2014/4379 dated 03.03.2014. Both these acts on the part of respondent no.1 as well as respondent no.2 were in violation of the terms and conditions of the license as well as building plan approval rule in force.

11. The complainant submitted that the buyer's agreement dated 28.03.2012 contemplated possession of the flat within 36 months from the date of agreement, thereby implying that the possession should have been given by 28.03.2015. 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 licence has not been complied with so far, the respondent may not be able to complete the project in near future.

12. The complainant 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.

13. The complainant submitted 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 Headway Buildcon Pvt. Ltd. This loan seems to have been diverted elsewhere. The said mortgage has created numerous complications in the development of the project. Even if respondent were to renew the subjected license, respondent cannot start construction as the mortgagee bank will not allow to create any third party interest on the said land which is, in this case ICICI Bank, who has title deed of the project land as collateral against the mortgage value, which is Rs.200 crore, further it will jeopardize the fate of the project. If the borrower "in this case Era Infrastructure (India) Ltd" fails to repay the loan taken by ICICI bank, then bank may confiscate the project land and liquidate to recover the term loan and all flat buyers will lose all the money invested.

**Issue to be decided:**

14. The main issue raised by the complainant is whether the



respondent is liable to get the project in question registered under section 3 of the Act ibid?

**Reliefs sought:**

15. The complainant is seeking the following reliefs:
- i. Penalty upto 10% of the total estimated cost of the project shall be imposed on the respondents under section 59(1) of the Act ibid.
  - ii. The complainant is seeking enforcement of section 8 of the Act ibid i.e. obligation of authority consequent upon lapse of registration and thereby, hon'ble authority must take over the project in their hands or the authority may order for refund with interest @18% of the money paid by the complainant till date.

**Reply**

16. The respondent 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 respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction.



17. The respondent submitted that 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 are unjustified.

18. The respondent submitted 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.

19. The respondent humbly submits before this learned regulatory authority that respondent company has developed various projects and has completed those projects. The respondent has obtained occupancy certificate in majority of its projects. Since, the respondent has 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.

20. The respondent submitted 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. 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 the authority and the same is liable to be stayed and/or dismissed on this ground alone.



21. The respondent submitted 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.

22. The respondent submitted that, without prejudice to the above, despite several adversities, the respondent 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.

23. The respondent submitted that the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Act *ibid* are required to be filed before the adjudicating officer under rule-29 of the Rules *ibid* read with section 31 and section 71 of the said act and not before this learned regulatory authority under rule-28.



24. The respondent submitted that 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.

25. The respondent submitted that the DTCP, Haryana granted license no.79 of 2010 in favour 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.



26. The respondent submitted that the respondent company is in process to get the project registered the Act ibid. 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 and hence, the present compliant is liable to be stayed and/or dismissed.

27. The respondent denied that the construction has been suspended since July 2014 and the complainant be put to strict proof thereof. The respondent submitted that the license of the respondent company has been lapsed therefore the respondent company is awaiting the renewal of the license to develop the project at the earliest.



28. The respondent submitted that order passed by Hon'ble Punjab and Haryana High Court and submitted that the orders has been duly complied with and the respondent company is diligently working towards the development of the project at the earliest.

29. The respondent submitted that the company has invested in Zero Coupon Compulsory Convertible Debentures (ZCCCD) of Rs.90 each, being offered by Era Infra Engineering Limited as per all applicable provisions of the Companies Act, 1956 and other applicable regulations including but not limited to approval of shareholders of the company through resolution passed in their extra ordinary meeting held on 29.12.2014. Further, the respondent submitted that as on 31.03.2015 Adel Landmarks Limited owes more than Rs.95 crore to Era Infra Engineering Limited towards pending payments of EPC work done by Era Infra Engineering Limited on the projects of the company and till date, due to liquidity crunch in the company, this amount could not be repaid to Era Infra Engineering Limited. So, in any case the company has not utilized the funds beyond the scope of availment terms and further this





investment in ZCCCD was done with aim of accrual of capital gains and value creation in best interest of the company and its stakeholders. The averments regarding mortgage to ICICI bank are admitted however, the grievance is already before the authority and awaiting the deliberations and decision of this learned authority.

30. The respondent filed an application submitting that the present complaint is barred by the law of arbitration. That as per clause 19 of the said agreement, in case of any deemed dispute between the parties which has not been resolved for more than 60 days, the same shall be adjudicated by arbitration. Therefore, the complainant having submitted and agreed himself to dispute resolution through arbitration was required to invoke arbitration under section 11 of the Arbitration and Conciliation Act, 1996 rather than to appear and seek relief before this authority. That as per section 8 of the Arbitration and Conciliation Act, 1996, the dispute between the parties ought to be referred to arbitration and accordingly as per the Act, the authority ought to refer the parties to arbitration and as per section 5 of the Arbitration and



Conciliation Act,1996, the courts are barred from entertaining a dispute if the agreement has an arbitration clause.

### Determination of issue

31. 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.”*

32. 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.”



33. 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 and the concerned branch of the authority has already initiated penal proceedings against the respondents.

### **Findings of the authority**

34. The authority has complete subject matter 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

35. 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.
36. 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. Therefore, the application filed by the respondent for rejection of complaint on the ground of arbitration clause stands dismissed.



37. As per clause 10.1 of the buyer's agreement executed inter-se the parties on 28.3.2013 for unit no. CSM/103/D-1004, 10<sup>th</sup> floor, block-D in Cosmocity, Village Dhanwapur, Sector 103, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 36 months from the date of signing of the agreement plus 6 months grace period which comes out to be 28.9.2016. Complainant has already paid an amount of Rs.35,95,799/- to the respondent. Counsel for the complainant has alleged that work at the project is stand still since October 2014 and it is nowhere near completion. Project is not registered, and the respondent is not in possession of a valid licence. As such, proceedings under section 59 of the Act ibid for imposing penalty for violation of section 3(1) of the Act ibid be initiated against the respondent. Since, the project is not either under construction nor there are any chances of it being taking off, as such, the complainant is not likely to get possession of the flat in near future. As such, as per section 18(1) of the Act ibid, complainant is entitled to get the deposited amount paid by him to the respondent.



### **Direction and decision of the authority**

38. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and

Development) Act, 2016 hereby direct the respondent to refund the entire paid amount of Rs.35,95,799/- along with prescribed rate of interest @10.75% p.a. from the date of each payment till 04.12.2018 (date of disposal of complaint) to the complainant within a period of 90 days. Interest component in a tabular form is given below:

Date of payment	Principal amount paid	Interest payable on paid amount @ 10.75% p.a. from date of payment till 04.12.2018
04.10.2011	Rs.5,50,000/- (Rs.2,00,000/ + Rs.3,50,000/)	Rs.4,24,080.12
11.02.2012	Rs.6,40,646/- (Rs.6,14,000/- + Rs.26,646/-)	Rs.4,69,444.31
19.03.2012	Rs.2,91,000/-	Rs.2,10,064.12
05.10.2012	Rs.1,18,458/-	Rs.78,533.60
13.12.2013	Rs.2,00,000/-	Rs.1,07,028.77
31.03.2014	Rs.17,77,659/-	Rs.8,94,759.21
21.04.2014	Rs.18,036/-	Rs.8,966.61
<b>Total</b>	<b>Rs.35,95,799/-</b>	<b>Rs.21,92,876.74/-</b>



<b>Principal amount</b>	<b>Rs. 35,95,799/-</b>
<b>Interest accrued</b>	<b>Rs.21,92,876.74/-</b>
<b>Total amount to be refunded to the complainant by the respondent.</b>	<b>Rs.57,88,675.74/-</b>

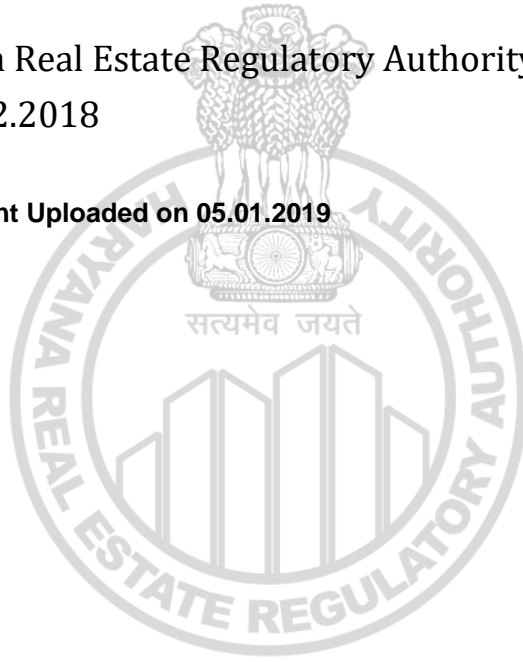
39. The order is pronounced.
40. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated:04.12.2018

Judgement Uploaded on 05.01.2019



HARERA  
GURUGRAM

