

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 05.12.2018
Complaint No.	363/2018 Case titled as Mr. Rahul Katyal Vs M/s Adel Landmarks Ltd.
Complainant	Mr. Rahul Katyal
Represented through	Shri Surinder Singh proxy counsel for the complainant.
Respondent	M/s Adel Landmarks Ltd.
Respondent Represented through	Shri Shubankar Sehgal, proxy counsel of Ms.Tarini Bhargava, Advocate for the respondent.
Last date of hearing	13.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Shri Shubankar Sehgal, proxy counsel appearing on behalf of the respondent has filed letter of authority.

Arguments heard.

As per clause 10.1 of the Builder Buyer Agreement executed inter- se the parties on 10.6.2014 for unit/flat No.CSM/103/D-2404, Tower-D, "Cosmocity" Sector-103, Gurugram, possession of the unit booked by the complainant was to be delivered to the complainant within a period of 54 months + 6 months grace period which comes out to be 10.6.2019. Complainant/buyer has already paid an amount of Rs.35,14,604/- to the respondent. However, respondent has failed in fulfilling his obligation as on

date to deliver the possession of the unit. Complainant has submitted photographs of the project which clearly show that the project is lying abandoned, redundant and scrapped. Photographs submitted by the complainant are placed on record corroborate the facts of the case.

Counsel for the complainant has alleged that work of 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 of and the complainant is not likely to get the possession of the booked unit in near future. As such, as per section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, complainant is entitled to get the entire amount paid by him to the respondent.

However, counsel for the respondent submits that the complaint is pre-mature and is liable to be dismissed on this ground.

Keeping in view the dismal state of affairs w.r.t. work at the project site and there is no hope and scope for completion of the project and the facts and circumstances of the case, 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 this order.

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

Samir Kumar
(Member)
05.12.2018

Subhash Chander Kush
(Member)
05.12.2018

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

Complaint No. : 363 of 2018
First date of hearing: 26.7.2018
Date of Decision : 5.12.2018

Ms. Rahul Katyal
H.No. 717, Sector-B,
Urban Estate, Karnal, Haryana

Complainant

Versus

M/s Adel Landmarks Ltd
Head office: B-39, Friend's Colony West,
New Delhi- 110065

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Surinder Singh

Proxy counsel for the
complainant

Shri Shubhankar Sehgal

Proxy counsel of Ms. Tarini
Bhargava, Advocate for
respondent

ORDER

1. A complaint dated 1.6.2018 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. Rahul Katyal against the promoter M/s Adel Landmarks Ltd.in



respect of apartment/unit described below in the project 'Cosmocity I', on account of violation of the section 3 and section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 10.6.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 16.10.2019

***License valid/renewed upto-** 15.10.2014

***License holder-** M/s Headway Buildcon Pvt. Ltd.



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/D-2404, tower D on 24 th floor
5.	Apartment measuring	194.90 sq. ft
6.	Payment plan	Construction linked plan
7.	Date of execution of buyer's agreement	10.6.2014
8.	Total Sale Price	Rs.92,64,022/-
9.	Total amount paid by the complainant	Rs. 35,14,604/-
10.	Percentage of amount paid	37.93%
11.	Date of delivery of possession as per clause 10.1 of the buyer's agreement (54 months + 6 months grace period from the date of execution of buyer's agreement)	10.6.2019
12.	Delay in handing over possession till date	Pre-mature complaint
13.	As per penalty clause 10.8 of apartment buyer's agreement dated 10.6.2014	Rs.10/- sq. ft per month of the super area of the said flat.

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 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 10.6.2019. Therefore, the complaint is premature in nature.



5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent through his counsel appeared on 26.07.2018. The case came up for hearing on 26.07.2018. The reply filed on behalf of the respondent has been perused.

FACTS OF THE CASE

6. On believing the advertisement of the project by the respondent to be true, the complainant applied for allocation of the residential unit/premise and by an 'apartment buyers agreement' dated 21/01/2014, the residential unit bearing no. CSM/103/D-2404 in block/tower D on the 24rd floor admeasuring 194.90 sq. mts. @ Rs. 38,204.83 per square metres was allotted to the complainant at a basic sale price of Rs. 74,46,464/-.

7. That, as per clause 10(1) of the said agreement, the respondent was obligated to complete the construction of the residential independent floor/premises within a period of sixty months (including grace period of six months) from the date of execution of the agreement, i.e., by 10.6.2019. Further, the respondent was required to handover the possession of the



said allotted residential independent premise immediately after the completion of the construction.

8. That as per the layout plan of the project, annexed as annexure-I of the 'apartment buyer's agreement', the respondent had to complete the construction of various amenities/structures including club house, nursery school, the oval, secondary gateway, urban forest, outdoor relaxing pool, sunbathing terrace, food & beverage, tennis court, podium gardens drop off, surface parking, children's play area, ramp to basement parking, landscape buffer and community housing, apart from the residential units, on the said project of the respondent.
9. That however, the complainant visited the project site on various occasions, whereby it was evident from the progress of the project site, that the construction activity on the site has been abandoned by the respondent. Further, looking at the progress of "COSMOCITY-I" project and the other projects undertaken by the respondent and the numerous consumer disputes arising on the said projects of the respondent, it can be safely said that the construction activity is lagging way



behind the schedule and that the complainant is confident that the said project cannot be completed within the stipulated time which is hardly 8 months away from the stipulated date.

10. It is stated that the complainant has duly paid the instalments pertaining to the said unit/premise as and when demanded the respondent, in accordance to the terms and conditions of the said contract. It is stated that till date, a total amount of Rs. 35,14,604/- as against the total price of the premise i.e. Rs. 92,64,022/- has been paid by the complainant to the respondent herein.
11. That the said payments were made in lieu of booking of the unit, on completion of the excavation and on completion of ground floor roof slab, according to the scheduled payment plan of the said unit and that the total amount paid is inclusive of 37.93% of the total price, 100% of the EDC & IDC and the service tax on the such amounts, as and when demanded by the respondent.
12. That it is stated that various other projects undertaken by the respondent are subject to disputes with regard to non-performance on their part and/or failure to fulfil statutory



requirements in various projects undertaken by the respondent that has rendered them an unreliable party to the agreement. Also, several legal proceedings including warnings, notices and consumer complaints have already been issued and/or registered against the respondent.

13. That it is stated that due to the deficiency in providing services as proposed by the respondent itself in the apartment buyers agreement, the inordinate delay in completion of the said project and unreliable goodwill of the respondent, the complainant herein demands cancellation of the 'apartment buyer's agreement' and that the amount already deposited i.e. Rs. 35,14,604/- be refunded it alongwith an interest @ 15% p.a. from as and when such sums were deposited by the complainant.

14. **ISSUES RAISED BY THE COMPLAINANT**

- i. Whether the respondent/ promoter made false representations about the project in question in order to induce the complainant to make a booking?



- ii. Whether the respondent/ promoter is liable for unjustifiable delay in construction and development of the project in question?
- iii. Whether the respondent/ promoter is liable to refund the amount deposited by the complainant along with interest @15% p.a. along-with compensation?

15. RELIEF SOUGHT

In view of the above, complainant seeks the following relief:

- I. Direct the respondent to refund a sum of Rs. 35,14,604/- along with interest @ 15% per annum from the date when payments were made till realization of the amount in full;
- II. Direct the respondent to pay a sum of Rs. 10,00,000/- as a compensation to the complainant towards undue hardship and injury, both physical and mental, caused to due to the acts of omissions and commissions on the part of the respondent;



- III. Direct the respondent to pay a sum of Rs. 50,000/- to the complainant towards the cost of the litigation;
- IV. Pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

REPLY BY THE RESPONDENT

16. 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.

17. At at the outset, it is most respectfully submitted that the complaint filed by the complainant is premature as the time period agreed under the buyer's agreement dated 10.6.2014 for delivery of possession of unit no. CSM/103/D-2404, in



tower-D on the 24rd floor admeasuring 194.90 sq. mts has still not lapsed. The relevant clause regarding delivery of possession of the unit is reproduced hereunder for ready reference:

*“10.1 It is understood and agreed between the Parties that based on present plans and estimates and subject to all just exceptions, the Developer contemplates to give/offer possession of Unit to Allottee(s) **within 54 months from the date of execution of buyer’s agreement (with grace period of 6 months)** or grant of all statutory approvals, whichever is later, unless there shall be delay or failure due to force majeure conditions and reasons mentioned in the Agreement. The said delivery date is subject to force majeure events or government action/inaction or due to failure of Allottee(s) to pay in time the price of the Unit along with other charges and dues in accordance with the Schedule of payments or any other activity of the Allottee(s) deterrent to the progress of the Complex/Project/Residential Colony. The Allottee(s) is not entitled to lease out the said Unit till execution of formal & proper sale deed/ conveyance deed and handing over of possession to the Allottee (s).” (Emphasis supplied)*

The parties entered into an agreement and the parties are bound to follow the terms and conditions of the agreement. It is *prima facie* evident that the possession of the unit ought to be handed-over to the complainant by 10.6.2019 and the present grievance is suppository and speculative in nature, therefore, the complaint is liable to be dismissed as being premature in time.



18. 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.

19. 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.

20. 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.

21. 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.

22. 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 and section 31.

23. 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.



24. 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. is annexed.

25. 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 3.3.2014) 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 6.7.2017.



26. 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 31.8.2018 (received by the respondent company on 8.9.2018) 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.

27. 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.



28. That each and every averment of the complaint is wrong, false and vehemently denied.

29. 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.

DETERMINATION OF ISSUES

30. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:



27. With respect to **first issue**, the burden of proof lies on the person who asserts the existence of the facts. Therefore, the complainant has only made an assertion/ allegation without substantiating the same in material particulars. As such the issue cannot be decided.

28. With respect to the **second issue** raised by the complainant, as per clause 10(1) of buyer agreement, the possession of the unit was to be handed over within 54 months from the execution of agreement along with a grace period of 6 months. Therefore, the due date of handing over the possession shall be computed from 10.6.2014 which comes out to 10.6.2019. The clause regarding the possession of the said unit is reproduced below:

“10(1) Possession

Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this agreement, the developer contemplates to give possession of unit to allottee within 54 months from the date of execution of agreement with the grace period of 6 months.”

Accordingly, the due date of possession is 10.6.2019.

Accordingly, as the due date of possession has so far not been crossed, the interest for the delayed possession under section 18(1) of the Act has not yet accrued.



27. With respect to **third issue** raised by the complainant, keeping in view the dismal state of affairs w.r.t work at the project site, there is no hope and scope for completion of the project. The authority finds no option but to order refund of the amount deposited by the complainant/buyer along with prescribed rate of interest i.e. 10.75% per annum.

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

29. 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 obligations.

FINDINGS OF THE AUTHORITY

30. 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 14.12.2018 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.

31. 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.
32. 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.



DECISIONS AND DIRECTIONS OF THE AUTHORITY

33. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) As per clause 10.1 of the builder buyer agreement executed inter- se the parties on 10.6.2014 for unit/flat No.CSM/103/D-2404, tower-D, "Cosmocity" Sector-103, Gurugram, possession of the unit booked by the complainant was to be delivered to the complainant within a period of 54 months + 6 months grace period which comes out to be 10.6.2019. Complainant/buyer has already paid an amount of Rs.35,14,604/- to the respondent. However, respondent has failed in fulfilling his obligation as on date to deliver the possession of the unit.
- (ii) Counsel for the complainant has alleged that work of 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 of and the complainant is not likely to get the possession of the booked unit in near future. As such, as per section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, complainant is entitled to get the entire amount paid by him to the respondent.

(iii) Keeping in view the dismal state of affairs w.r.t. work at the project site and there is no hope and scope for completion of the project and the facts and circumstances of the case, the authority finds 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 this order.

(iv) 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.

Date of payment	Principal amount paid	Interest payable on paid amount @10.75% p.a. from date of payment till 4.12.2018
2.9.2013	Rs.12,80,000	Rs. 7,23,436.71
2.9.2013	Rs.1,31,388	Rs.74,258.52
2.9.2013	Rs.2,18,256	Rs.1,23,371.07
2.9.2013	Rs.1,69,755	Rs.95,955.47
2.9.2013	Rs.2,18,256	Rs. 1,23,355.
2.9.2013	Rs.29,430	Rs.16,635.56
2.9.2013	Rs.43,612	Rs.24,652.06
2.9.2013	Rs.6,744	Rs.3,812.10
2.9.2013	Rs.5,245	Rs.2,964.78



2.9.2013	Rs.6,744	Rs.3,812.10
30.3.2014	Rs.7,44,790	Rs.3,75,098
2.7.2014	Rs.6,40,164	Rs.3,04,682.99
2.7.2014	Rs.20,220	Rs.9,618.15
Sub-total	Rs.35,14,614	Rs.18,81,652.44
Total: 53,96,266.44		
Total accrued: 18,81,652.44		

34. The order is pronounced.

35. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram



Dated: 5.12.2018

Judgement uploaded 05.01.2019