

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 04.12.2018
Complaint No.	473/2018 case titled as Pooja Dhawan Vs. M/s Adel Landmarks Pvt. Ltd. & anr.
Complainant	Pooja Dhawan
Represented through	S/Shri Abhay Jain and Kamal Sharma, Advocates for the complainant.
Respondent	M/s Adel Landmarks Pvt. Ltd. & anr.
Respondent Represented through	Ms. Akshita Singh, on behalf of respondent-company.
Last date of hearing	19.9.2018
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 17.4.2014 for unit/flat No.CSM/103/K-0704, in Cosmocity Sector 103, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 54 months from the date of signing of the agreement plus 6 months grace period which comes out to be 17.4.2019.

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

Complainant/buyer has already paid an amount of Rs.31,64,439 /- 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. : 473 of 2018
First date of Hearing : 23.8.2018
Date of Decision : 4.12.2018

Ms. Pooja Dhawan
R/o: A-396, Sarita Vihar
New Delhi-110076

Complainant

Versus

1. M/s Adel Landmarks Pvt. Ltd.- Summit
Singh Bharana
R/o: C-56/41, Sector 62
Noida-201301
2. M/s Headway Buildcon Pvt Ltd.- Arvind
Kumar Birla
Address: B-292, Chandra Kanta Complex,
Shop No 8, New Ashok Nagar,
New Delhi-110096

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Abhay Jain and Kamal Sharma Advocates for the complainant
Ms. Akshita Singh On behalf of respondent company



ORDER

1. A complaint dated 22.6.2018 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 Ms. Pooja Dhawan against the respondents Mr. Summit Singh Bharana and Mr. Arvind Kumar Birla in respect of apartment/unit 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 20.9.2010 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: -

1.	Name and location of the project	"COSMOCITY", Adel Landmarks, Sector-103, Gurugram
2.	RERA registered/ not registered	Not Registered
3.	Unit no.	CSM/103/K-0704
4.	DTCP licence no.	79 of 2010 valid upto 15.10.2014
5.	Unit measuring	125.23 sq. mt.
6.	Buyer's agreement executed on	17.4 .2014
7.	Total sale price	Rs. 47,53,80
8.	Total amount paid by the complainants till date	Rs.31,64,439/-
9.	Percentage of consideration	66.56%



	amount	
10.	Payment plan	Construction link plan
11.	Date of delivery of possession Clause 10.1 - (54 months from the date of execution of buyer's agreement or grant of statutory approvals, whichever is later + 6 months grace period)	17.4.2019
12.	Delay in handing over possession till date	Pre-mature complaint
13.	Penalty clause as per buyer's agreement dated 17.4.2014	Clause 10.8 of the said agreement - respondent may terminate the agreement and refund the amount paid with simple interest @9% p.a. OR may choose not to terminate and pay compensation @Rs.10/- per sq. ft' of the super area of the said unit per month for the period of delay.

4. 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. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 17.4.2019 as per the said agreement. 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 for appearance. The respondent filed the reply on 31.5.2018



BRIEF FACTS OF THE COMPLAINT

6. That after collecting more than 66% of total sale price, the respondents suspended construction activity from July, 2014. a few site pictures taken on 18.5.2018 are attached herewith.
7. That the complainant filed FIR with economic office wing of Gurugram police. As a result, one of the directors of the respondent company was arrested and given conditional bail from hon'ble High Court on his commitment to renew the licence and start the project which has not been done yet.
8. That in a subsequent meeting arranged by Gurugram police commissioner between buyers and promoters where more than 150 allottees were present, the promoters committed to start the construction work by August, 2015, which never happened.
9. The validity of project licence no.79 dated 15.10.2010 expired on 14.10.2014 which has not been renewed so far. Also, EDC collected from buyers have not been deposited with town and country planning department.
10. That the respondent company has been diverting funds to its parent company Era Engineering Infra Ltd. And other associate companies which is evident from the investment of Rs.122.63 crores in the parent company by way of zero



coupon convertible debentures. This is annexed as annexure-10.

11. That Headway Buildcon Pvt Ltd., the licensee of Phase I cosmocity and subsidiary of Adel Landmarks 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) Ltd. This loan seems to be diverted somewhere else. Now even if respondent renews subjected licence, it cannot start construction because the bank will not allow to create any third party interest on the said land which will further jeopardize the fate of the project. If the borrower i.e. Era Infrastructure fails to pay the loan, the bank may confiscate the project land and liquidate to recover term loan and the flat buyers will loose their invested money.
12. That the parent company Era Engineering Infra Ltd is debt ridden with outstanding loans of over 10,000 crores to various banks and the RBI has directed the lead bank to refer its case to NCLT under Insolvency Act. Adel has 30.75% of the equity in Era Engineering and if the parent company goes into liquidation, the banks may make a recourse to assets of Adel Landmarks which are charged to banks against financial facilities extended to the parent company.



13. That the buyers' agreement dated 17.4.2014 contemplated possession within 60 months from date of agreement, thereby implying possession date to be 17.4.2019. Although one year is left but the possession might take minimum four years given the current status of the project.

14. ISSUES RAISED BY THE COMPLAINANT

- I. Whether the respondent should register their ongoing project which falls within ambit of RERA?**

15. RELIEF SOUGHT

The complainant is seeking the following reliefs:

- I. A penalty of 10% of the cost of the project shall be imposed on respondents under section 59(1) read with section 3(1) of RERA, 2016.**
- II. That the provisions of section 8 of RERA may be enforced.**
- III. That the hon'ble authority must take over project in their hands.**
- IV. That the complainant shall be provided refund with interest @18% for the money paid by the complainant till date.**



RESPONDENT'S REPLY

16. That the authority has no jurisdiction to entertain the present complaint. This complaint is premature as the time period for possession as per the buyers' agreement dated 17.4.2014 has not lapsed. Clause 10.1 is reproduced hereunder:

"10.1 - the developer contemplates to offer possession of the unit 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."

It is evident from this clause that the possession is to be handed over by April, 2019 and the present complaint is premature.

17. That the respondent has obtained occupancy certificate in some of its projects and has been diligent in completing its project.
18. That this authority has given time to file response to the show cause notice regarding non-registration of the project. There hasn't been any finding on this issue yet so this matter is sub-judice before this authority.
19. That the clause 19.1 of the agreement clearly states that in the event of any dispute the aggrieved party ought to invoke arbitration.



20. That the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of RERA are required to be filed before the adjudicating officer under rule 29 of Haryana RERA rules, 2017 read with section 31 and section 71 of the said Act.

21. The complainant has not approached this authority with clean hands and is guilty of misrepresentation and non-disclosure of material facts. It has been held in **S.P Chengalvaraya Naidu v. Jagannath, (1994)1 SCC 1** that-

“the courts of law are meant for importing justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

22. That the name of respondent no.1 was changed from Era Landmarks Limited to Adel Landmarks Projects Limited vide fresh certificate dated 14.12.2013 issued by ROC and then to Adel Landmarks vide fresh certificate dated 19.2.2014.

23. That the DTCP, Haryana granted licence no.79 of 2010 in favour of M/s Headway Buildcon Pvt. Ltd. And the building plans were sanctioned bearing memo no. ZP-



665/AD/RA/2014/4379 dated 3.3.2014. Moreover, the respondent company has also filed form LC-VI for renewal of the licence no.79 of 2010 dated 6.7.2017.

24. That the respondent company is in process to get project registered with RERA and the authority vide letter dated 31.8.2018 has already issued show-cause notice consequent upon non-registration of on-going project and the same is under due deliberation.
25. That the complainant on its own applied for allotment of the unit and the respondent company allotted unit no. CSM/103/K-0704 in tower-K on 7th floor admeasuring super area of 125.23 sq. mts.
26. That the company has invested in zero coupon compulsory convertible debentures of Rs.90 each being offered by Era Infra Engineering Limited as per all applicable provisions of companies act, 1956 and other applicable regulations including but not limited to approval of shareholders of the company. As on 31.3.2015 Adel landmarks owes more than Rs.95 crores to Era Infra towards pending payments of EPC work done by Era Infra on projects of company till date. Due to liquidity crunch in the company, this amount could not be repaid to Era Infra 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.

DETERMINATION OF ISSUES

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

27. With respect to the **first issue** relating to registration, the respondent was asked to register the project at the earliest. The builder has applied for registration however the project stands un-registered at the moment. The licence of the project is pending for renewal with the competent authority. As such, builder does not possess a valid licence as on date. 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.

FINDINGS OF THE AUTHORITY

28. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to



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.

29. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
30. 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.
31. In the present complaint, the complainant is seeking refund of the entire money paid till date i.e. 2,42,46,262/- along with interest from the date of provisional allotment till its realization of the payment and cancel the allotment upon entire refund.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

32. 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 17.4.2014 for unit/flat No.CSM/103/K-0704, in Cosmocity Sector 103, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 54 months from the date of signing of the agreement plus 6 months grace period which comes out to be 17.4.2019. However, counsel for the respondent submits that the complaint is pre-mature and is liable to be dismissed on this ground.
- ii. Complainant/buyer has already paid an amount of Rs.31,64,439/- 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.

- iii. 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
5.3.2011	Rs.1,05,313	Rs.87,694



1.10.2011	Rs.3,36,875	Rs.26,00,046
1.10.2011	Rs.5,05,313	Rs.3,90,070
16.5.2012	Rs.94,100	Rs.66,278.95
9.12.2013	Rs.1,00,000	Rs.53,619.93
9.12.2013	Rs.50,000	Rs.26,809.96
4.3.2014	Rs.3,50,000	Rs.1,78,821.84
1.7.2014	Rs.14,06,479	Rs.6,69,821.17
10.9.2014	Rs.3,21,672	Rs.1,46,466.52
Total	Rs.32,69,752	Rs.18,78,942.85
Total amount: 51,48,694.85/-		
Total accrued: 18,78,942/-		

33. The order is pronounced.

34. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 4.12.2018

Judgement uploaded On 05.01.2019