

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 04.12.2018
Complaint No.	367/2018 case titled as Ms. Priya Vs. M/s Adel Landmarks Ltd.
Complainant	Ms. Priya
Represented through	Shri Surinder Singh, proxy counsel for the complainant.
Respondent	M/s Adel Landmarks Ltd.
Respondent Represented through	Ms. Akshita Singh, on behalf of Ms. Tarini Bhargava, Adv. for the respondent-company.
Last date of hearing	13.9.2018
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 21.1.2014 for unit/flat No.103/D-2305 Block/Tower D, 23rd floor, Cosmocity -I, 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 21.1.2019. Complainant/buyer has already paid an amount of Rs.36,90,158/- to the respondent.

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

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 entire 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. : 367 of 2018
First date of hearing: 26.07.2018
Date of decision : 04.12.2018

Ms. Priya
W/o Sh. Ashok Kumar, H. No. 81, Block-E,
Sector/Ward No. 30, Sirsa, Haryana - 125055 **...Complainant**

Versus

M/s Adel Landmarks Ltd.
Registered Office at: B-39, Friends Colony
(West), New Delhi- 110065
Head Office at: B-24, Sector-3, Noida, U.P. -
201301 **...Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Mr. Achin Mittal Advocate for the complainant
Ms Tarini Bhargava Advocate for the respondent



ORDER

1. A complaint dated 01.06.2018 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 Ms. Priya

against the promoter M/s Adel Landmarks Ltd. on account of violation of clause 10.1 of the apartment buyer's agreement executed on 21.01.2014 for unit no. CSM/103/D-2305 on 23rd floor in tower 'D', admeasuring 194.90 sq. mtrs. in the project "Cosmocity" on account of violation of section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 21.01.2014 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: -

1.	Name and location of the project	"Cosmocity", Village Dhanwapur, Sector 103, Gurugram
2.	Project area	10.437 acres
3.	Nature of the real estate project	Group housing colony
4.	DTCP license no.	79 of 2010 dated 16.10.2010 Note: The license expired on 14.10.2014 and it has not been renewed
5.	RERA registered/ not registered	Not registered



6.	Apartment/unit no.	CSM/103/D-2305, 23 rd floor, tower 'D'
7.	Apartment/unit area	194.90 sq. mtrs.
8.	Payment plan	Construction/development linked payment plan
9.	Date of execution of apartment buyer's agreement	21.01.2014
10.	Basic sale price	Rs.73,77,230/- (as per the agreement, pg 15 of the complaint)
11.	Total consideration	Rs.95,07,390/- (as per statement of account dated 09.11.2017, annexure-2, pg 39 of the complaint)
12.	Total amount paid by the complainant till date	Rs.36,90,158/- (as per statement of account dated 09.11.2017, annexure-2, pg 41 of the complaint)
13.	Date of delivery of possession as per the apartment buyer's agreement dated 21.01.2014	Clause 10.1 r/w clause 10.8- 54 months from execution of agreement + 6 months grace period or grant of all statutory approvals, whichever is later i.e. by 21.01.2019
14.	Delay in handing over possession till date	Note: the complaint is pre-mature
15.	Penalty clause as per the apartment buyer's agreement dated 21.01.2014	Clause 10.8-Rs. 10/- per sq. ft. of super area of 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 have been provided by the complainant and the respondents. A buyer's agreement

dated 21.01.2014 is available on record for the aforesaid unit according to which the possession of the same is to be delivered by 21.01.2019.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared through his counsel on 26.07.2018. The case came up for hearing on 26.07.2018 and 13.09.2018. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainant booked a unit in the project named "Cosmocity", Village Dhanwapur, Sector 103, Gurugram. Accordingly, the complainant was allotted a unit admeasuring 194.90 sq. mtrs. bearing no. CSM/103/D-2305 on 23rd floor, tower 'D'.
7. On 21.01.2014, a buyer's agreement was entered into between the parties wherein as per clause 10.1, the possession should have been offered within 54 months + 6 months grace period from execution of agreement or grant of all statutory approvals, whichever is later, i.e. by 21.01.2019. The complainant made payments of all instalments demanded by the respondents amounting to a total of Rs. 36,90,158/-.



8. The complainant submitted that she 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 the project in question 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.
9. The complainant submitted that the respondent having made promises to the complainant herein as per the agreement and fully utilising the amounts as deposited while failing to act in accordance and is thereby guilty of indulging in unfair trade practices and misrepresentation for the sole purpose of duping the complainant of her hard-earned money.
10. The complainant further submitted 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.

11. **Issues raised by the complainant**

The main issues raised by the complainant are:

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

12. **Relief sought:**

The complainant is seeking the following reliefs:

- I. Direct the respondent to refund a sum of Rs. 36,90,158/- along with interest @ 15% per annum from the date when payments were made till realization of the amount in full;

Respondent's reply

13. The respondent submitted that the complaint filed by the complainant is premature as the time period agreed under



the buyer's agreement dated 21.01.2014 for delivery of possession of unit no. CSM/103/D-2305, in block/tower-D on the 23rd floor admeasuring 194.90 sq. mts. has still not lapsed. It is *prima facie* evident that the possession of the unit ought to be handed-over to the complainant in January, 2019 and the present grievance is suppository and speculative in nature, therefore, the complaint is liable to be dismissed as being premature in time.

14. The respondent submitted that no cause of action has ever accrued in favour 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 on this ground alone.
15. The respondent submitted that respondent company has developed various projects and has completed those projects. The respondent has obtained occupancy certificate in majority of its projects. Therefore, it is humbly submitted that the project in question shall be completed at the earliest.
16. The respondent submitted that the complainant has nowhere established that the project in question is an on-going project that ought to be registered before this learned authority. A show cause notice was issued 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.

17. The respondent submitted that, without prejudice to the above, clause 19.1 of the agreement clearly stipulates that in 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.

18. The respondent submitted that despite several adversities, they have continued with the development of the said project and are in the process of completing the legal formalities as well as compliances. The alleged grievance of the complainant has origin and motive in sluggish real estate market.



19. The respondent submitted that the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and section 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.
20. The respondent submitted that the complainant has not approached this authority with clean hands and has not disclosed material facts.
21. The respondent submitted that the name of the respondent 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.
22. 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. The respondent submitted that the respondent company is in process to get the project registered under the act *ibid*.

Determination of issues

23. Regarding **first issue** raised by the complainant, the authority is of the view that the complainant has failed to furnish any concrete documents or any material particulars in order to prove any false representations on the part of the respondent to induce the complainant to make booking of the unit in question.
24. Regarding **second issue** raised in the complaint, as per the agreement dated 21.01.2014, the due date of possession is 21.01.2019. Thus, the complaint is pre-mature. However, the counsel for the complainant alleged that the work at the project is standing still since October, 2014 and it is nowhere near completion. Keeping in view the status of the project, the authority is of the view that the respondent has delayed the construction and development of the project in question.



25. Regarding **third issue** raised in the complaint, since the project is neither under construction nor there are any chances of its being taking off, the complainant is entitled to refund of the principal amount paid along with interest at the prescribed rate of 10.75% per annum.

Findings of the authority

26. **Jurisdiction of the authority-** 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.

27. 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.

28. 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.

29. After considering the facts submitted by both the counsel of the parties and perusal of record on file, the authority is of the view that the said project is not saved under section 3(2)(b) of the Act *ibid* and is covered under the definition of “on-going projects” as defined under rule 2(1)(o) of the rules *ibid* which provides as under:



“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.”

30. 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. This omission on their part is violation of 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:”

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.”

31. The counsel for the complainant has alleged that work at the project is stand still since October 2014 and it is nowhere near completion. Since the project is neither 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. Thus, the authority is of the view that as per section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, complainant is entitled to get the refund of entire amount paid to the respondent along with interest at the prescribed rate.

Decision and directions of the authority

32. 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 respondents:

- (i) The respondent is directed to refund to the complainant the principal sum of Rs.36,90,158/- paid by her along with interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant. The interest



will be given from date of receipt of payments till actual realization of the deposited amount within 90 days from the date of this order.

33. The complaint is disposed of accordingly.
34. The order is pronounced.
35. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch to initiate proceedings against the respondent u/s 59 of the Act.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:04.12.2018

Judgement Uploaded on 08.01.2019

