

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 04.12.2018
Complaint No.	477/2018 case titled as Ms. Ankita Chaturvedi Vs. M/s Adel Landmarks Ltd. & another
Complainant	Ms. Ankita Chaturvedi
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 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 27.5.2014 for unit/flat No.CSM/103/D-1304, 13th Floor, Block-D 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 or grant of all statutory approvals (3.3.2014) whichever is later, which comes out to be 27.5.2019.

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.36,91,679/- 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. : 477 of 2018
First date of hearing: 23.08.2018
Date of decision : 04.12.2018

Ms. Ankita Chaturvedi
C/o Dr. A.K.Choubey, Warden Bunglow, IASRI,
Library Avenue, New Delhi-110012

...Complainant

Versus

1. M/s Adel Landmarks Ltd.
Address: C-56/41, Sector-62,
Noida-201303.
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:

Ms. Ankita Chaturvedi Complainant in person

Ms Tarini Bhargava Advocate for the respondent



ORDER

1. A complaint dated 25.06.2018 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. Ankita Chaturvedi, 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 27.05.2014 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.	License holder	M/s Headway Buildcon Pvt. Ltd.



6.	RERA registered/ not registered	Not registered
7.	Apartment/unit no.	CSM/103/D-1304, 13 th floor, tower 'D'
8.	Apartment/unit area	2098 sq. ft.
9.	Payment plan	Construction linked payment plan
10.	Date of execution of apartment buyer's agreement	27.05.2014
11.	Basic sale price	Rs.71,77,920/- (as per the agreement, pg 48 of the complaint)
12.	Total consideration as alleged by the complainant	Rs.89,61,910/- (as per statement of account dated 11.07.2015 in annexure-3, pg 27 of the complaint)
13.	Total amount paid by the complainant till date	Rs.36,91,679/- (as per statement of account dated 11.07.2015 in annexure-3, pg 27 of the complaint)
14.	Date of delivery of possession as per the apartment buyer's agreement dated 27.05.2014	Clause 10.1 r/w clause 10.8- 54 months from execution of agreement + 6 months grace period or grant of all statutory approvals (approval of building plan- 03.03.2014), whichever is later i.e. by 27.05.2019
15.	Delay in handing over possession till date	Note: the complaint is pre-mature
16.	Penalty clause as per the apartment buyer's agreement dated 27.05.2014	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. An apartment buyer's agreement dated 27.05.2014 is available on record for the aforesaid unit according to which the possession of the same is to be delivered by 27.05.2019.
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 23.08.2018. The case came up for hearing on 23.08.2018 and 19.09.2018. The reply filed on behalf of the respondent on 03.10.2018 has been perused.

Facts of the complaint

6. On 04.06.2011, the complainant booked a unit in the project named "Cosmocity", Village Dhanwapur, Sector 103, Gurugram by paying an advance amount of Rs. 5,00,000/- to the respondents. Accordingly, the complainant was allotted a unit bearing CSM/103/D-1304 on 13th floor, tower 'D'.
7. On 27.05.2014, an apartment buyer's agreement was entered into between the parties wherein as per clause 10.1 r/w clause 10.8, 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 27.05.2019. The complainant made payments of all instalments demanded by the respondents amounting to a total of Rs. 36,91,679/-.

8. The complainant submitted that after collecting more than 41% 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 with the complaint.
9. 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.
10. The complainant further 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 result, 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. It is submitted that the validity of project bearing licence no. 79 of 2010 dated 16.10.2010 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.

11. The complainant submitted that the respondent company has been diverting funds to its parent company Era Engineering Infra Ltd and other associate companies as would be evident from parent company having invested Rs.122.63 crores in the parent company by way of zero coupon convertible debentures. It is noteworthy that respondent always made excuses for stalled development of the project because of non-availability of funds but on the other hand the respondent had enough funds to make investments into other companies.

12. 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 acres in favour of ICICI Bank for securing the loan taken by M/s Era Infrastructure



(India) Limited. This loan seems to have been diverted elsewhere. The said mortgage has created numerous complication in the development of the project. Even if respondent renews 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 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.

13. It is further submitted that the parent company, Era Engineering Infra Limited is a debt ridden company with outstanding loans of over Rs. 10,000/- crores to various banks. The RBI has directed the lead bank to refer its case to NCLT under Insolvency Act. Respondent no.1, Adel Landmark has 30.75 % of the equity in Era Engineering Infra Limited. Thus, it is apprehended that if the aforementioned parent company goes into liquidation, then the banks may take recourse to assets of Adel Landmark that are charged to the



banks against the financial facilities extended to the parent company.

14. The complainant submitted that not more than 20% of the project construction work appears to have been completed. Further, 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.

15. Issues raised by the complainant

The main issue raised by the complainant is:

- I. Whether it is mandatory for the respondents to get the project in question registered under section 3 of the Act ibid and the respondents are liable for not getting the same registered?

16. Relief sought

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 pass any other order.

Reply by respondent no.1

17. The respondent submitted that the complaint filed by the complainant is premature as the time period agreed under the buyer's agreement dated 27.05.2014 for delivery of possession of unit no. CSM/103/D-1304, in block/tower-D on the 13th 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 May, 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 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.
19. 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.

20. 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.

21. 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.



22. 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.
23. 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.
24. The respondent submitted that the complainant has not approached this authority with clean hands and has not disclosed material facts.
25. 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.

26. 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.

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. The respondent company has always been ready and willing to solve the grievance of the complainant.



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 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(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.”

32. 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."

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 has not complied with the directions given by the authority.

Findings of the authority

34. **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.

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.

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

38. 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. 36,91,679/- 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 04.12.2018 (date of disposal of complaint) to the complainant within a period of 90 days from the date of this order. 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
07.08.2013	Rs.10,34,100/-	Rs.5,91,843.38/-
05.09.2013	Rs.7,75,280/-	Rs.4,37,225.16/-
01.07.2014	Rs.12,86,771 (Rs.10,48,790/- + Rs.1,73,982/- +	Rs.6,12,085.06 /-



	Rs.63,999/-)	
27.12.2013	Rs.5,70,808/- (Rs.2,10,000/- +Rs.3,60,808/-)	Rs.3,02,872.62/-
05.09.2013	Rs.24,720/-	Rs.13,941.04/-
Total amount	Rs. 36,91,679/-	Rs.19,57,967.26/-
Total amount to be refunded by the respondent:	Rs.56,49,646.26 (Rs.36,91,679/- + Rs.19,57,967.26/-)	

39. The complaint is disposed of accordingly.
40. The order is pronounced.
41. 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

