

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 05.12.2018
Complaint No.	320/2018 Case titled as Ms. Puja Bahri Vs M/s Adel Landmarks Ltd.
Complainant	Ms. Puja Bahri
Represented through	Shri Varun Budhiraja, Advocate for the complainant.
Respondent	M/s Adel Landmarks Ltd.
Respondent Represented through	Shri Shubankar Sehgal, Proxy counsel of Ms Tarini Bhargawa for the respondent.
Last date of hearing	26.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Shri Varun Budhiraja, Advocate appeared on behalf of the complainant and filed power of attorney.

Arguments heard. As per clause 10.1 of the Builder Buyer Agreement executed inter-se the parties on 29.5.2013, for unit/flat No.CSM/103/E-1103, Tower-E, "Cosmocity" Sector-103, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 36 months + 6 months grace period which comes out to be 29.11.2016. Complainant/buyer has already paid an amount of Rs.45,94,210/- to the respondent. However, respondent has failed in fulfilling his obligation as on date. Complainant has submitted photographs of the project which clearly show that the project is lying abandoned,

redundant and scrapped, photographs of which are placed on record which 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. Respondent/builder is not in possession of a valid licence. Project is not registered, 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 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.

Keeping in view the dismal state of affairs w.r.t. work at the project site 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. : 320 of 2018**  
**First date of hearing : 19.07.2018**  
**Date of decision : 05.12.2018**

Ms Puja Bahri  
R/o 30, Bhera Enclave, Paschim Vihar, New  
Delhi

**Complainant**

Versus

M/s Adel Landmarks Ltd  
Head office : Gautam Buddha Nagar, C-  
56/41, Sector-62, Noida-201303

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Varun Budhraja Advocate for complainant

Shri Shubankar Sehgal, proxy Advocate for the respondent  
counsel of Ms Tarini  
Bhargawa



**ORDER**

1. A complaint dated 24.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainant Ms Puja Bahri, against the promoter M/s Adel Landmarks Ltd, in respect of apartment number CSM/103/E-1103 in the project 'Cosmocity' for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the buyer's agreement was executed on 29.05.2013 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", Sector 103, Gurugram
2.	Nature of the project	Group housing colony
3.	DTCP license	79 of 2010 ( <b>expired</b> )
4.	RERA registered/ not registered.	<b>Not registered</b>



5.	Apartment/unit no.	CSM/103/E-1103, 11 <sup>th</sup> floor, Tower T
6.	Apartment measuring	2098 sq. ft
7.	Payment plan	Construction linked plan
8.	Date of execution of buyer's agreement	29.05.2013
9.	Total consideration	Rs. 79,93,190/-
10.	Total amount paid by the complainant	Rs. 45,94,210/-
11.	Date of delivery of possession (as per clause 10.1 of the buyer's agreement 36 months from the date of execution of buyer's agreement+ 6 months grace period)	29.11.2016
12.	Delay in handing over possession upto 05.12.2018	2 years 6 days
13.	penalty clause ( As per 10.2 of buyers agreement)	Rs.75 per sq. m per month of super area

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 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by



29.11.2016. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation of the said flat for the period of such delay. Therefore, the promoter has not fulfilled his committed liability till date.

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 19.07.2018. The case came up for hearing on 19.07.2018, 04.09.2018 and 05.12.2018. The reply has been filed on behalf of the respondent on 24.09.2018 and the same has been perused by the authority.

#### Facts of the case

6. The complainant submitted that she is a home maker who had invested all her life time savings in the said property launched by the respondent company in 2012.
7. The complainant submitted that the respondent company is a registered company under the Indian Companies Act, 1956



having its registered address at C-56/41, Sector – 62, Noida – 201303.

8. The complainant submitted that with a view to own a residential house around the Gurgaon – Manesar (New Gurgaon) area for her two daughters and based on various promises, representations, warranties and time lines offered by the respondent company to the petitioner through its authorised real estate, dealers and brochure, the complainant had entered into a buyer's agreement to acquire a 3 BHK residential unit admeasuring approx. 2098 sq. ft. in a project called "Cosmocity – 1" launched by the respondent company in the year 2012. The total cost of the apartment was stated to be as Rs. 79,93,190/-.

9. The complainant submitted that clause no. 10.1 of buyers agreement clearly prescribes the date of delivery of possession as 36 months from the date of execution of the agreement i.e., 29th May 2013. Accordingly, the possession of delivery, as committed in the buyer's agreement is May 2016.



10. The clause 10.1 says as follows : *“It is understood and agreed between the Parties that based on present and estimates and subject to all just exceptions the Developer contemplates to give / offer possession of Unit to Allottees(s) within 36 months from the date of execution of the buyers agreement (with a grace period of 6 months). The said delivery date is subject to force majeure events or governmental action/inaction or due to failure of Allottee(s) to pay in time the price of the said Unit along with other charges and dues in accordance with the schedule of payments or other activity of Allottees (s) deterrent to the progress of the Complex/Project/Residential Colony.”*
11. The complainant submitted that it is a fact that since 2014 there had been no absolutely no movement / development at the construction site. The same is evident from various photographs taken at the site in Feb. and April 2016 by the welfare society of allottees of “Cosmocity - 1”
12. The complainant submitted that based on various oral commitments and assurances by the respondent company, with regard to the delivery of possession within 36 months,



complainant paid almost 60% of the total cost of the said unit i.e Rs 45,94,210/- to the respondent company vide various cheques.

13. The complainant also submitted that it is pertinent to mention here that vide their Demand Letter dated 28th April 2014 the respondent company in an unequivocal manner threatened to cancel the allotment of the petitioner in case of non-payment of Rs. 29,00,759/- . Despite the fact that it was all apparent to the petitioner, that the respondent company intends to extort more and more money without putting up the commiserative construction at the site, the petitioner made the required payment to the respondent on the 30.06.2014, just to avoid any punitive action from the respondent company.

14. The complainant also submitted tha it is a matter of fact that since 2014 there has been no construction at the site and the respondent company, more or less, has abandoned the project altogether after collecting almost 60% of the total cost from the petitioner.



15. The complainant also submitted that It is pertinent to mention here that while the license of the project expired on the 14.10.2014, the respondent company made absolutely no attempt to renew the license and abandoned the project midway. It is a fact that till this date the license is in suspended mode and hasn't been renewed by the respondent company.
16. The complainant also submitted that in the year 2016, when the petitioner brought it to the notice of the respondent company that the project has been indefinitely delayed and lost all its perceived value to the petitioner, the respondent company had chosen to remain silent on the subject and refused to meet or communicate with the petitioner in the case. Furthermore, while the license of the project remains in the suspended mode, the respondent company made no attempt to renew the license and eventually abandoned the project mid-way.
17. The complainant also submitted that the decision of the respondent company to arbitrary and unilaterally abandon the project without providing any honourable Exit to the



petitioner is malafide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to the public policy, equity and fair play and as is unsustainable in the eyes of the law and is liable to be prosecuted under Section 18 (1) and other relevant sections of the Haryana Real Estate (Regulations and Development) Act 2016.

### **Issues raised by the complainant**

18. The following issue have been raised by the complainant:
- i. Whether the respondent is liable to refund the total consideration paid by the complainant along with interest?
  - ii. Whether the deliberate delay / abandonment of the project and denial of the respondent company to provide the complainant an exit caused mental agony and perceived financial losses to the complainant and whether the respondent is liable to pay compensation for the same ?



- iii. Whether the respondent company is liable to be prosecuted for the violation of RERA provisions other than Section 18 (1) namely Section 18 (3) and 14 (2)?

**Relief sought:**

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

- i. To direct the respondent to provide refund of the petitioner's entire money along with the compounding interest rate @18% p.a. till the date of actual payment of refunds by the respondent company.
- ii. To provide compensation of Rs. 1,00,000/- (Rupees One Lac only) should be awarded as reimbursement of expenses in fighting for this relief.
- iii. To provide additional compensation of Rs 25,00,000/- for mental, emotional, and financial harassment inflicted upon the petitioner and her family by certain deliberate and conspicuous misconduct of the respondent company



**Reply by the respondents**

20. The respondent submitted that the complaint filed by the complainant is not maintainable and this 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 and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
21. The respondent submitted that no cause of action has ever accrued in favour of the complainant to file the present complaint before this authority. The complaint being without any cause of action is liable to be dismissed at this ground alone.
22. The respondent submitted that the complainant has nowhere established that the 'project' is an on-going project that ought to be registered before this authority. The 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 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.

23. 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. The present reply is being filed without prejudice to the rights and contentions of the respondent contained in the said application.

24. The respondent submitted that 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, are required to be filed before the adjudicating officer under Rule-29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this authority under rule-28.

25. The respondent also submitted that the complainant has not approached this authority with clean hands and is guilty of misrepresentation and non-disclosure of material facts. It is categorically stated that, in the present case, the complainant has not come with clean hands and have suppressed material facts from this authority.

26. The respondent submitted that the complainant has suppressed material facts which are relevant for the purpose of just adjudication of the present case. The term "material facts" has been discussed in catena of judgments of the Hon'ble Supreme Court. Moreover, the averments of the complainant are wrong and misleading the authority to veil the truth of the dispute and distract the authority.

27. The respondent also submitted that It has been held in **S.P Chengalvaraya Naidu v. Jagannath, (1994)1 SCC 1** that "*The*



*courts of law are meant for imparting 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.”*

### **Determination of issues**

28. 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 :

- i. **Issue 1** : With respect to first issue, the authority is of the view that the project in question is abandoned by the respondent since the year 2014 and the concerned license also has not been renewed by the respondent, therefore



the respondent is liable to refund the total consideration paid by the complainant along with interest at the prescribed rate of 10.75% per annum.

- ii. **Issue 2 :** With respect to second issue, this authority does not have jurisdiction to deal with the cases of compensation. However the complainant is at liberty to approach appropriate forum to seek relief.

### Findings of the authority

#### 29. Jurisdiction of the authority-

##### Subject Matter Jurisdiction

The authority has complete 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.

##### Territorial Jurisdiction



As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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 complaints.

30. 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.

31. 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.

32. In the present case, as per clause 10.1 of the builder buyer agreement executed inter-se the parties on 29.5.2013, for unit/flat no. CSM/103/E-1103, tower-E, "Cosmocity" Sector-103, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 36 months + 6 months grace period which comes out to be 29.11.2016. Complainant/buyer has already paid an amount of Rs.45,94,210/- to the respondent. However, respondent has failed in fulfilling his obligation as on date. Complainant has submitted photographs of the project which clearly show that the project is lying abandoned, redundant and scrapped,



photographs of which are placed on record which 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. The authority has also observed that respondent/builder is not in possession of a valid licence and the project is not registered. Since the project is not either under construction nor there are any chances of its being taking off, therefore as per section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, complainant is entitled to get the deposited amount paid by him to the respondent.

33. Keeping in view the dismal state of affairs w.r.t. work at the project site 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 along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from this order.

### **Decision and directions of the authority**



34. 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. The respondent is directed to refund the entire paid amount of Rs. 45,94,210/- paid by the complainant along with prescribed rate of interest @ 10.75% p.a. from the date of each payment till 05.12.2018 (date of disposal of complaint) amounting to Rs. 25,84,384/- 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 05.12.2018
06.02.2012	Rs 6,50,000/-	Rs. 4,77,208/-
16.04.2012	Rs.6,35,000/-	Rs 4,52,948/-
20.10.2012	Rs 3,64,440/-	Rs 2,39,939/-
22.02.2013	Rs 81,000/-	Rs 50,378/-
30.06.2014	Rs 28,63,770/-	Rs 13,63,911/-
<b>Total amount</b>	<b>Rs. 45,94,210/-</b>	<b>Rs. 25,84,384/-</b>



35. Since the project is not registered, the authority has decided to take suo moto cognizance to initiate penal proceedings under section 59 of the Act against the respondent for not getting the project registered in under provision of section 3 of the Act
36. The order is pronounced.
37. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 05.12.2018

Judgement Uploaded on 08.01.2019

HARERA  
GURUGRAM

