

**PROCEEDINGS OF THE DAY**

Day and Date	Friday and 14.12.2018
Complaint No.	144/2018 Case titled as Santosh Chauhan V/S M/s Landmark Apartment
Complainant	Santosh Chauhan
Represented through	Complainant in person with Shri Arjun Bhatnagar, Advocate.
Respondent	M/s Landmark Apartment
Respondent Represented through	Shri Ajay Bansal, Advocate for the respondent.
Last date of hearing	20.11.2018
Proceeding Recorded by	H.R Mehta

**Proceedings**

Arguments heard.

Main contention of the complainant is that on 5.7.2012 he paid an amount of Rs.25,11,129/- against total consideration amount of Rs.82,99,200/- for allocation of commercial space measuring 520 square feet in the project, the outlet being created by the Landmark Group, in Sector- 67, Gurugram. Project is not registered. Besides this, project does not exist. Counsel for the respondent stated at bar that they are ready to offer them an alternative unit, however that is not acceptable to the complainant. There is no option left with the authority but to order refund of the payable amount alongwith prescribed rate of interest i.e. @ 10.75% which shall be made in 90 days.

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

Samir Kumar  
(Member)  
14.12.2018

Subhash Chander Kush  
(Member)  
14.12.2018

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

**Complaint no. : 144 of 2018**  
**First date of hearing : 15.05.2018**  
**Date of decision : 14.12.2018**

Mr. Santosh Chauhan  
HNO. H-19/4, Block H dharam colony palam  
vihar extension gurugram-122017

**Complainant**

Versus

M/S Landmark apartment pvt ltd  
plot no. 65, institutional area,  
Sector-44, Gurugram

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Santosh Chauhan Complainant in person  
Shri Arjun Bhatnagar Advocate for the complainant  
Shri Ajay Bansal Advocate for the respondent

**ORDER**

1. A complaint dated 05.04.2018 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 Mr. Santosh



Chauhan, against the promoter M/s Landmark apartment pvt ltd. on account of violation of the 11(4)(a) of the Act ibid.

2. Since, the allotment letter dated has been executed on 05.07.2012 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot 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 are as under: -

1.	Name and location of the project	"LANDMARK THE OULET", Sector 67, Gurugram.
2.	RERA registration no.	<b>Not registered</b>
3.	Flat/apartment/unit no.	2, ground floor
4.	Flat measuring	520 sq. ft.
5.	Date of execution of apartment buyer's agreement	Not available
6.	Allotment letter dated	05.07.2012
7.	Total consideration amount	Rs.82,99,200/-
8.	Total amount paid by the complainant till date	Rs.25,11,129/-/-
9.	Percentage of consideration amount	Approx. 27 percent
10.	Payment plan	Construction linked
11.	Date of delivery of possession	<b>Cannot be ascertained</b>



12.	Delay in handing over possession till date	<b>Cannot be ascertained</b>
13.	Penalty clause	<b>Cannot be ascertained</b>

The details provided above have been checked as per record available in the case file which have been provided by the complainant and the respondent. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 15.05.2018. The case came up for hearing on 14.06.2018, 18.07.2018, 7.08.2018, 23.08.2018 and 20.09.2018. The reply has been filed on behalf of the respondent.

#### **Facts of the complaint**

4. Briefly stated, the facts of the complaint are that the complainant after viewing the voucher displayed by the respondent for the general public through expression of interest approached the respondent and understood the schedule of payment.
5. The complainant submitted that the respondent have issued allotment letter dated 5.07.2012 addressed to complainant on her permanent address and provisionally allotted RETAIL



unit measuring 520sq. ft, bearing unit number 2 on ground floor in Landmark the OUTLET situated at Sector67, Gurugram Haryana.

6. The complainant submitted that the complainant as per the schedule of payments demanded by the respondent, complainant made all payments demanded by the respondent. The complainant in accordance with demand notice dated 20.05.2012 have made the payment in favour of respondent vide cheque number 958096 of SBI Haldwani of Rs. 10,00,000/- and cheque number 796602 of the Nainital Bank Limited on 5.07.2015 which was acknowledge by the respondent.
7. The complainant submitted that after making 20% basic sale price has visited the respondent, to know the status of the construction of the shop as per the voucher and the shop number allotted and shown in the voucher and in the allotment letter. The respondent have assured the complainant that the construction of the shop in the progress as per allotment letter and demanded Rs. 8,00,000/- which is



required to be paid by complainant within 60 days from the date of allotment.

8. The complainant submitted that as per the schedule of payment visited the office of respondent and offered the next scheduled payment subject to the status of the shop in September month of 2013. The respondent assured the complainant that they have not yet received the clearance of the project from DTCP for the commencement. The complainant submitted that the respondent had promised to complete the project within a period of 42 months from the date of execution of the apartment buyer agreement with a further grace period of six months. The initial apartment buyer's agreement was executed on 17.12.2012 and till date the construction is not complete, which is resulting in extreme kind of mental distress, pain and agony to the complainant.

9. The complainant submitted that he did not get the further notice of payment nor any updates status of project. The complainant several time visited the office of the respondent in the year 2014, 2015, and 2016. In order to confirm the



status of the project, the complainant issued a legal notice dated 18.10.2016 through the attorney vide which respondent had questioned the veracity of the project and schedule of the payment made to the respondent and informed that since last four years the respondent had neither executed the agreement with the complainant nor handed over the possession of the retail shop.

10. The complainant submitted that the respondent has also charged EDC and IDC to the home buyer's, which has been duly paid by the complainant herein but the same has not been deposited by the respondent with the government. Thus, the intention of the respondent was dishonest since the beginning towards the homebuyers as well as towards the government.

11. The complainant submitted that the complainant after all the efforts filed a case in permanent lok Adalat which was later on withdrawn with the liberty to file a fresh claim in an appropriate forum.





**Issue raised and Relief sought by the complainant**

12. The complainant is seeking refund of a sum of Rs.25,11,129/- along with interest per annum from the date when payments were made till realisation of the amount in full. The respondent further be directed to pay 10 lakhs toward compensation for the damage, harassment and mental agony suffered by the complainant since 2012. He also be directed to pay Rs. 21000/- toward the cost of the legal notice.

**Reply by respondent**

13. The respondent submitted that the project is cost escalation fee, as the complainant shall get the possession of the unit on the same price as committed by the respondent at the time of offering provisional allotment of the flat on 05.07.2012. All the losses / cost, escalation on many count like building material cost, labor cost, land cost, etc has been borne by the respondent.

14. The respondent submitted that the allotment was always 'provisional' and was subject to the alteration and modification and the same was well within the knowledge of



the complainant. The complainant, with his free will and understanding, booked a unit measuring 520 sq. ft. bearing unit no. 2 on ground floor in 'Landmark – The Outlet'. It is pertinent to mention here that the same information with respect to alteration and modification in the building plan has also been given in the brochure and the same is represented as follows for the ready reference of this Hon'ble Tribunal:

*'Visual representations shown in the brochure are purely conceptual and not a legal offering. Building Plans, specifications etc. are tentative and subject to variation and modification by the company or the competent authorities' sanctioning the plans'.*

From the bare perusal of the information, it is crystal clear that the complainant was well aware that the building plan was subject to changes and after thorough enquiry, complainant bought the said unit. But now, the complainant is trying to take advantage of the recent trend of 'filing false and frivolous consumer complaint against the builders with the sole purpose to earn extra money'.



15. The respondent submitted that the respondent was informed about the change in layout plan/building plan, as the same was subject to change/ alterations/ modifications. It is submitted that the said information has already been mentioned in the brochure and in the clause 14 of the terms and conditions of provisional allotment letter. The relevant extract of the clause 14 of the provisional allotment is reproduced herein for the ready reference of the Hon'ble Tribunal:

*(14) That Allotment made by the Company shall be provisional and the Company shall have the right to effect suitable alterations in the layout plan, if and when found necessary. Such alterations may include change in the Area, Layout Plan, location, Block, increase/decrease in the Super Area of the said area. That the opinion of Company's Architects on such changes will be final and binding on the Allottee(s).*

16. That, despite of fact that it would be a loss, the respondent still offered the complainant to accept either refund of the amount invested or to change/ switch unit in the same project but at on another/better location with enhanced area without paying extra charges; but the complainant, instead of responding/accepting to this offer, sought time to give a



thought over it and left the office of the respondent but never gave any confirmation on the same. Since then, the respondent had been waiting confirmation from the complainant.

17. The respondent submitted that in November, 2016, the complainant had filed a complaint before Permanent Lok Adalat for public utility services, Gurgaon, against the respondent. During the course of the said proceedings, the respondent again tried to settle the matter with the complainant by giving same offer, earlier in August 2012 (as already mentioned in para 3 of the preliminary submission), but the complainant, instead of accepting the said offer, withdrew the said complaint and filed a new complaint before this Hon'ble Tribunal with the ill-intention to extract more money.



18. The respondent submitted that the complainant, thus, has approached the hon'ble authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these

material facts and proceedings, the question of entertaining the purported complainant would not have arisen. It is settled law as held by the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1)** that non-disclosure of material facts and documents amounts to a fraud on not only the opposite parties but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in **Dilip Singh Vs State of UP 2010-2-SCC-114** and **Amar Singh Vs Union of India 2011-7-SCC-69** which is also been followed by the Hon'ble National Commission in the case of **Tata Motors Vs Baba Huzoor Maharaj being RP No. 2562 of 2012 decided on 25.09.2013.**

19. The respondent submitted that the present petition, so preferred under the Real Estate Regulation and Development Act 2016, is not maintainable as the complainant has failed to disclose any maintainable cause of action under the said provisions of the Act as alleged. That section 19 of the Real Estate Regulation And Development Act 2016 clearly



prescribes the rights and duties of the allottees and section 19 (6) specifically provides as under:“

*“Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any”*

20. The respondent submitted that the present complaint pertains 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”) and 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 hon'ble regulatory authority under rule-28.

21. The respondent submitted that, as per the records of the respondent, the complainant has paid 20% of the total sale consideration towards the basic sale price of the unit. It is pertinent to mention here that the said payment was made on 05.07.2017 i.e. after the expiry of 30 days from the date of booking, as mentioned in the payment plan (exhibited by the complainant himself as (annexure-B). The contents of the preliminary submission, preliminary objection and preceding paragraphs are reiterated herein for the sake of brevity.

22. The respondent submitted that all the necessary and requisite approvals were taken from all the concerned authorities before the project was started. The complainants are making false and frivolous statements to mislead this Hon'ble Tribunal. It is submitted that the complainant never visited the office of the respondent. The contents of the preliminary submission, preliminary objection and preceding paragraphs are reiterated herein for the sake of brevity.



### Determination of issue

23. With **respect to issue raised** by the complainant, project is not registered. Beside this, project does not exit. Council for respondent stated at bar that they are ready to offer them an alternative unit, however that is not acceptable to the complainant. The authority is left with no other option but to order refund of the payable amount alongwith prescribed rate of interest i.e. @ 10.75% which shall be made in 90 days.

### Findings and directions of the authority

24. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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 complainants at a later stage.

25. 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 complaint.

26. The complainant has sought relief of refund as there is no project in the name of the “Landmark the Outlet” in existence even today and the respondent has not rebutted this contention of the complainant. The main contention of complainant is that on 05.07.2012 he paid an amount of Rs.82,99,200/- for allocation of commercial space measuring 520 sq. ft. in the project, the outlet being created by the landmark group, in Sector 67, Gurugram. Project is not registered. Beside this, project does not exist. Council for respondent stated at bar that they are ready to offer them an alternative unit, however that is not acceptable to the complainant. The authority is left with no other option but to order refund of the payable amount alongwith prescribed rate of interest i.e. @ 10.75% which shall be made in 90 days.



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

**34 (f) Function of Authority –**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

28. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

**Decision and directions of the authority**

29. 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 issue



the following direction to the respondent in the interest of justice and fair play:

- i. The respondent is directed to refund the entire amount paid by the complainant along with prescribed rate of interest @ 10.75% p.a. from the date of each payment till 14.12.2018 (date of disposal of complaint) 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 14.12.2018
31.05.2012	Rs.5,00,000/-	Rs.3,51,289.41/-
05.07.2012	Rs.10,00,000/-+ Rs.1,59,840/-	Rs.8,03,122.31/-
04.08.2012	Rs.5,00,000/-+ Rs.3,00,000/-	Rs.5,47,022.81/-
14.08.2012	Rs.51,289/-	Rs. 34,919.74/-
Total	Rs.25,11,129/-	Rs.17,36,354.27/-



30. The order is pronounced.

31. Case file be consigned to the registry

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

Dated: 14.12.2018



HARERA  
GURUGRAM



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