

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Wednesday and 05.12.2018
Complaint No.	354/2018 Case Titled As Mr. Sunita Kumari Gaur Vs M/s Landmark Apartments Pvt. Ltd.,
Complainant	Mr. Sunita Kumari Gaur
Represented through	Mr.Dinesh Kaushik, Advocate for the complainant.
Respondent	M/s Landmark Apartments Pvt. Ltd.,
Respondent Represented through	Shri Amarjeet Kumar and Ms. Shriya Takkar, Advocates for the respondent.
Last date of hearing	12.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

### **Proceedings**

#### **Project is not registered.**

Arguments heard.

MoU dated 7.10.2010 inter-se both the parties was signed. As per clauses 3 & 12 of MoU, which reads as under:-

***Clause -3 "That the buyer has paid the entire basic sale price to the company @ Rs.10,450/- per sq. ft. for the total area admeasuring 220 sq. ft and the company has agreed to pay Rs.22,990/- every month as assured return to the Buyer which shall be payable quarterly, till the physical possession is handed over to the Buyer.***

***Clause - 12 "That the company agrees to sell the demised premises to the Buyer, which is a space admeasuring the aggregate tentatively, a super area of 220. Sq. ft. subject to final confirmation of area on completion of the building in Landmark Cyber Park at the rate of Rs.10,450/- per sq. ft. of super area, amounting to a total***

***consideration of 22,99,000/-. The final area on completion may increase or decrease by about 10% of the tentative area agreed herein to be sold. Correspondingly, the consideration amount shall also increase or decrease”.***

An assured return of Rs.22,990/- per month was to be given to the complainant. However, no date of actual possession of the office space booked by the complainant has been mentioned in the MoU. However, respondent/builder could not honour the provisions of these clauses. Later on, respondent stopped payment of assured return, as a result of which the complainant has filed the instant complaint. Project is not registered with the authority. Arguments advanced on behalf of the parties heard.

The authority has already adjudged in the order dated 7.8.2018 passed in complaint No.141 of 2018 titled as **Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd.** which is as under:-

***“The complainant has made a complaint dated 15.5.2018 with regard to the refund of the assured return of Rs.55,000/- per month. As per Clause 4 of the Memorandum of Understanding dated 14.8.2010, the complainant is insisting that the RERA Authority may get the assured return of Rs.55,000/- per month released to him. A perusal of the Real Estate (Regulation & Development) Act, 2016 reveals that as per the Memorandum of Understanding, the assured return is not a formal clause with regard to giving or taking of possession of unit for which the buyer has paid an amount of Rs.55 Lakhs to the builder which is not within the purview of RERA Act. Rather, it is a civil matter. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project, as per the provisions of Section 18 (1) of the Act. As such, the buyer is directed to pursue the matter with regard to getting assured return as per***

***the Memorandum of Understanding by filing a case before an appropriate forum/Adjudicating Officer”.***

As already decided in complaint No.141 of 2018 titled as Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd. no case is made out. Counsel for respondent has given a Supreme Court Judgment dated 25.7.1997 vide which he has pleaded the doctrine of precedent. Since the authority has taken a view much earlier as stated above, the authority cannot go beyond the view already taken.

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

Samir Kumar  
(Member)  
5.12.2018

Subhash Chander Kush  
(Member)  
5.12.2018

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

**Complaint no. : 354 of 2018**  
**Date of first hearing : 25.07.2018**  
**Date of decision : 05.12.2018**

Ms. Sunita Kumari Gaur  
R/O: Village Sikanderpur Badha Tehsil'  
District Gurugram

Versus

**Complainant**

M/S Landmark Apartments Pvt. Ltd  
plot no. 65, institutional area,  
Sector-44, Gurugram

**Respondent**

**APPEARANCE:**

Shri Dinesh Kaushik Advocate for the complainant

Shri Amarjeet Kumar and Ms. Shriya Takkar Advocate for Respondent

**CORAM:**

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



**ORDER**

1. A complaint dated 30.05.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with with rule 28 of the Haryana Real Estate (Regulation And Development) Rules, 2017 by the complainant Ms. Sunita

Kumari Gaur against M/S Landmark Apartments Pvt. Ltd, on account of violation of the article 3 of MOU executed on 18.12.2010 in respect of unit described as below for not handing over possession and not providing assured returns which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the memorandum of understanding is executed on 18.12.2010 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 Corporate Centre", Sector- 67, Gurugram
2.	Registered / Not Registered	<b>Not Registered</b>
3.	Unit/ Villa No.	8, on 4 <sup>th</sup> floor,
4.	Unit measuring	220Sq. Ft. (approx.)
5.	Date of Execution of MOU	18.12.2010



6.	Assured Return	Rs. 22,990/- every month as assured return
7.	Amount paid by the complainant till date	Rs.22,99,000/- as per MOU
8.	Total sale consideration	Rs.22,99,000 /- as per MOU
9.	Percentage of amount paid	100%
10.	Date of delivery of possession. 36 months from date of booking plus 6 months grace period	<b>Cannot be ascertained</b>
11.	Delay of number of months/ years	<b>Cannot be ascertained</b>

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. No builder buyer agreement is available on record but an MOU is provided which was executed on 18.12.2018.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 25.07.2018. The case came up for hearing on 16.08.2018. The reply has been filed on behalf of the respondent



### Facts of the case

6. The complainant submitted that the respondent approached the complainant with the representation that they is developing an IT park under the name and style of “Landmark Corporate Centre” located in Sector 67, Gurugram and also promoted the said project by giving large number of advertisements in newspapers followed by telephonic calls and personal visits.
7. The complainant submitted that the respondent assured the complainant that the said project would be delivered by the respondent and the same would be fully furnished having world class facilities. It was stated that the super area 220 sq. ft. of this unit in the said project would be for a basic sale price of Rs. 22,99,000/- along with other charges.
8. The complainant submitted that the respondent also assured that the said project would be completed for possession within a period of 36 months from the date of booking. Further it was also assured that till the possession is not given to the complainant, respondent shall regularly pay monthly assured return of Rs. 22,990/- per month. Thereafter, the respondent



shall pay assured leasing returns for a lock-in-period of 9 years with escalation of 15% after 3 years (as per clause 3 and 4 of MOU).

9. The complainant submitted that pursuant to the assurance of the respondent, the complainant agreed to purchased a 220 sq. ft. commercial space in the said project and entered into a provisional allotment letter and the complainant paid the entire sale consideration amount vide two cheques.
10. The complainant submitted that based upon such claims, promise and assurance given by and on behalf of the respondent, the complainant entered into an MOU dated 18.12.2010 with the respondent. In the terms of the said MOU, the respondent had been paying quarterly assured return to the complainant, however, the same was regularly paid only till 17.12.2013.
11. The complainant submitted that the basic structure of the project was not ready and the said project of the respondent was immensely delayed. The complainant is entitled to receive assured return till the date of possession and 9 years thereafter and the same was next due on 17.03.2014.





respondent was further liable to pay assured return for a period of 51 months and an amount comes equivalent to Rs. 11,72,490/-

## 12. Issues to be decided

- i. Whether the respondent are liable to pay assured returns as per the MOU?
- ii. Whether the respondent is in default of payment to be made to the complainant as per clause 3 and 4 of the MOU?
- iii. Whether it was mandatory for the respondent to abide by the terms and conditions of the MOU?

### Relief sought

To direct the respondent to pay the petitioner the following:

- i. Handover the fully developed physical possession of the commercial space admeasuring 220 sq. ft. super area in IT park of the respondent.
- ii. Respondent may be directed to refund the entire basic sale consideration amount Rs. 22,99,000/- along with interest @ 24 % per annum.



- iii. To pay the assured return in a sum of Rs. 11,72,490/- subject to deduction of TDS @ 10% along with the interest rate @24% p.a.
- iv. Respondent may be directed to compensate the complainant with Rs. 5,00,000/- due to inflation in property market.
- v. Respondent may be directed to compensate the complainant with Rs. 10,00,000/- for the mental agony and financial losses.
- vi. Respondent may be directed to compensate the complainant with Rs. 2,00,000/- on account of deficiency in the service.

### **Reply on behalf of respondent**

13. The respondent submitted that at the outset it is humbly submitted that the hon'ble authority in the similar matter titled: Brhimjeet vs. Landmark Apartments pvt. Ltd. last listed on 7.08.2018, has held that the matter in dispute therein was to be adjudicated by the adjudicating officer and not by the authority and accordingly dismissed the complaint with the liberty to approach the adjudicating officer.



14. The respondent submitted that at the outset it is humbly submitted that the present complaint is not maintainable or tenable in the eyes of law as the complainant has not approached this hon'ble authority with clean hands and has not disclosed the true and material facts relevant to this case of the complainant. That the complainant had specifically not disclosed the fact that the complainant had failed to make timely payments which was a necessary covenant under the provisional allotment. That despite several reminders from the respondent, the complainant had failed to make the payments so as to be entitled for the possession of the unit. However, in the present complaint is seeking the refund of the amount citing reasons which are illegal.

15. 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 on 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.**

16. 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).

17. 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. section 31, section 71, rule-28 and rule-29.

18. The respondent submitted that it is submitted that an amount of Rs. 7,44,876/- has been paid to the complainant as assured return and thus it is quite evident that time was not an essence of the contract.
19. The respondent submitted that the respondent vide letter dated 04.07.2015 offered possession to the complainant with the request to make payment towards EDC/IDC/IMFC and any other charges in order to take possession.
20. The respondent submitted that it is denied that respondent has not completed the construction till date. The respondent is willing to give the remaining assured returns as promised along with the possession, however, complainant needs to clear the statutory dues which to the tunes of Rs. 2,71,417/-.



### Findings of the authority

21. MOU dated 18.12.2010 inter-se both the parties was signed. As per clauses 3 & 12 of MoU, which reads as under:-

*Clause -3 "That the buyer has paid the entire basic sale price to the company @ Rs.10,450/- per sq. ft. for the total area admeasuring 220 sq. ft and the company has agreed to pay Rs.22,990/- every month as assured return to the buyer which shall be payable quarterly, till the physical possession is handed over to the Buyer.*

*Clause - 12 "That the company agrees to sell the demised premises to the buyer, which is a space admeasuring the aggregate tentatively, a super area of 220. Sq. ft. subject to final confirmation of area on completion of the building in Landmark Cyber Park at the rate of Rs.10,450/- per sq. ft. of super area, amounting to a total consideration of 22,99,000/-. The final area on completion may increase or decrease by about 10% of the tentative area agreed herein to be sold. Correspondingly, the consideration amount shall also increase or decrease".*



22. An assured return of Rs.22,990/- per month was to be given to the complainant. However, no date of actual possession of the office space booked by the complainant has been mentioned in the MOU. However, respondent/builder could

not honour the provisions of these clauses. Later on, respondent stopped payment of assured return, as a result of which the complainant has filed the instant complaint. Project is not registered with the authority. Arguments advanced on behalf of the parties heard.

23. The authority has already adjudged in the order dated 7.8.2018 passed in complaint No.141 of 2018 titled as **Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd.** which is as under:-

*“The complainant has made a complaint dated 15.5.2018 with regard to the refund of the assured return of Rs.55,000/- per month. As per Clause 4 of the memorandum of understanding dated 14.8.2010, the complainant is insisting that the RERA authority may get the assured return of Rs.55,000/- per month released to him. A perusal of the Real Estate (Regulation And Development) Act, 2016 reveals that as per the memorandum of understanding, the assured return is not a formal clause with regard to giving or taking of possession of unit for which the buyer has paid an amount of Rs.55 Lakhs to the builder which is not within the purview of RERA Act. Rather, it is a civil matter. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery*



*of possession to the buyer or deals with withdrawal from the project, as per the provisions of Section 18 (1) of the Act. As such, the buyer is directed to pursue the matter with regard to getting assured return as per the memorandum of understanding by filing a case before an appropriate forum/adjudicating officer”.*

24. As already decided in complaint No.141 of 2018 titled as **Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd.** no case is made out. Counsel for respondent has given a Supreme Court Judgment dated 25.7.1997 vide which he has pleaded the doctrine of precedent. Since the authority has taken a view much earlier as stated above, the authority cannot go beyond the view already taken.

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

25. 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 buyer in the interest of justice and fair play:

- i. The buyer is directed to pursue the matter with regard to getting assured return as per the memorandum of





understanding by filing a case before an appropriate forum/adjudicating officer”.

26. The order is pronounced.

27. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 05.12.2018



HARERA  
GURUGRAM



Judgement Uploaded on 08.01.2019