

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 05.12.2018
Complaint No.	364/2018 case titled as Ms. Asha Mehta Vs M/s Adel Landmarks Ltd.
Complainant	Ms. Asha Mehta
Represented through	Shri Surinder Singh, Advocate proxy counsel for the complainant.
Respondent	M/s Adel Landmarks Ltd.
Respondent Represented through	Shri Shubankar Sehgal, Advocate proxy counsel of Ms Tarini Bhargava for the respondent.
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.

Counsel for the respondent seeks adjournment on account of the fact that some stellar issues are involved for which arguments need to be advanced. Case has already been listed on 26.7.2018. As per provisions of RERA Act, the complaint has to be decided within a period of 60 days, as such, request of the counsel for respondent cannot be acceded to.

As per clause 10.1 of the Builder Buyer Agreement executed inter-se the parties on 21.1.2014 for unit/flat No.CSM/103/D-2304, Tower-D, "Cosmocity" Sector-103, Gurugram, possession of the unit booked by the complainant was to be delivered to the complainant within a period of 54

months + 6 months grace period which comes out to be 21.1.2019. Complainant/buyer has already paid an amount of Rs.34,80,787/- to the respondent. However, respondent has failed in fulfilling his obligation as on date to deliver the possession. Complainant has submitted photographs of the project which clearly show that the project is lying abandoned, redundant and scrapped. Photographs submitted by the complainant are placed on record 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. 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. Project is not either under construction nor there are any chances of its being taking of and the complainant is not likely to get the possession of the unit 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.

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

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. : 364 of 2018**  
**First date of hearing : 26.07.2018**  
**Date of decision : 05.12.2018**

Ms. Asha Mehta  
H.No. 205, Block -C, Sirsa,  
Haryana- 125055

**Complainant**

Versus

M/s Adel Landmarks Ltd  
Head office: B-39, Friend's Colony West,  
New Delhi- 110065

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shree Surinder Singh

Advocate proxy counsel for the  
complainant

Shri Mohd. Amir

Authorized representative on  
behalf of the respondent

Shree Shubankar Sehgal

Advocate proxy counsel of Ms.  
Tarini Bhargava for the  
respondent

**ORDER**

1. A complaint dated 01.06.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act herein after referred to RERA, 2016 read with rule 28 of the Haryana



Real Estate (Regulation And Development) Rules, 2017 by the complainant Ms. Asha Mehta, against the promoter M/s Adel Landmarks Ltd., in respect of apartment number CSM/103/D-2304, tower D on 23<sup>th</sup> floor in the project 'Cosmocity', on account of violation of the section 3 and 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 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: -

- **Nature of the project- Residential project.**
- **DTCP license no.- 79 of 2010 dated 16.10.2010**
- **License valid/renewed upto- 15.10.2014**
- **License holder- M/s Headway Buildcon Pvt. Ltd.**



1.	Name and location of the project	"Cosmocity", Sector 103, Gurgaon.
2.	Nature of the project	Residential colony
3.	RERA registered/ not registered.	<b>Not registered</b>
4.	Apartment/unit no.	CSM/103/D-2304, tower D on 23 <sup>th</sup> floor
5.	Apartment measuring	194.90 sq. ft
6.	Payment plan	Construction linked plan
7.	Date of execution of buyer's agreement	21.01.2014
8.	Total sale price	Rs.92,30,454/-
9.	Basic sale price	Rs. 74,46,464/-
10.	Total amount paid by the complainant till date as per the receipts attached with the complaint	Rs. 34,80,787/-
11.	Date of delivery of possession as per clause 10.1 of the buyer's agreement  (54 months + 6 months grace period from the date of execution of buyer's agreement)	21.01.2019
12.	Delay in handing over possession till date	Premature
13.	As per penalty clause 10.8 of apartment buyer's agreement dated 21.01.2014	Rs.10/- sq. ft per month of the super area of the said flat.



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 is available on record for the aforesaid apartment

according to which the possession of the same was to be delivered by 21.01.2019. Therefore, the complaint is premature in nature. Although there is no delay as the date of delivery of possession has yet not expired but there is an alleged delay in completion of construction and various other consumer complaints/ petitions pending against the respondent for the delay in delivery of possession.

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 26.07.2018. The case came up for hearing on 26.07.2018. The reply filed on behalf of the respondent has been perused.

#### **Facts of the case**

6. The complainant submitted that on believing the advertised project by the respondent, the complainant applied for allocation of the residential unit/premise and by an 'apartment buyer's agreement' dated 21/01/2014, for residential unit bearing No. CSM/103/D-2304 in block/tower D on the 23<sup>rd</sup> floor admeasuring 194.90 sq. metres. @ Rs.



38,204.83 per square metres was allotted to the complainant at basic sale price of Rs. 74,46,464/-.

7. The complainant submitted that, as per clause 10(1) of the said agreement, the respondent was obligated to complete the construction of the residential independent floor/premises within a period of sixty months (including grace period of six months) from the date of execution of the agreement, i.e., by January,2019. Further, the respondent was required to handover the possession of the said allotted residential independent premise immediately after the completion of the construction.
8. The complainant submitted that as per the layout plan of the project, annexed as annexure-I of the 'apartment buyer's agreement', the respondent had to complete the construction of various amenities/structures including club house, nursery school, the oval, secondary gateway, urban forest, outdoor relaxing pool, sunbathing terrace, food & beverage, tennis court, podium gardens drop off, surface parking, children's play area, ramp to basement parking, landscape buffer and





community housing, apart from the residential units, on the said project of the respondent.

9. The complainant submitted that however, the complainant 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 “COSMOCITY-1” project 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.

10. The complainant submitted that the complainant has duly paid the instalments pertaining to the said unit/premise as and when demanded the respondent, in accordance to the terms and conditions of the said contract. It is stated that till date, a total amount of Rs. 34,80,887/- as against the total price of the



premise i.e. Rs. 74,46,464/- has been paid by the complainant to the respondent herein.

11. The complainant submitted that the said payments were made in lieu of booking of the unit, on completion of the excavation and on completion of ground floor roof slab, according to the scheduled payment plan of the said unit and that the total amount paid is inclusive of 40% of the total basic price, 100% of the EDC & IDC and the service tax on the such amounts, as and when demanded by the respondent.

12. The complainant submitted that it is stated 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.

13. The complainant submitted that it is stated that due to the deficiency in providing services as proposed by the respondent itself in the apartment buyer's agreement, the



inordinate delay in completion of the said project and unreliable goodwill of the respondent, the complainant herein demands cancellation of the 'apartment buyer's agreement' and that the amount already deposited i.e. Rs. 34,80,887/- be refunded it along with an interest @ 15% p.a. from as and when such sums were deposited by the complainant.

### Issues raised by the complainant

#### 14. The following issues have been raised by the complainant:

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



### Relief sought:

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

- a) Direct the respondent to refund a sum of Rs. 34,80,887/- along with interest @ 15% per annum from the date when payments were made till realization of the amount in full;
- b) Direct the respondent to pay a sum of Rs. 10,00,000/- as a compensation to the complainant towards undue hardship and injury, both physical and mental, caused to due to the acts of omissions and commissions on the part of the respondent;
- c) Direct the respondents to pay a sum of Rs. 50,000/- to the complainant towards the cost of the litigation;
- d) pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.



### Reply by the respondent

15. The respondent submitted that at the very outset, it is most respectfully submitted that the complaint filed by the complainant is not maintainable and this learned regulatory

authority has no jurisdiction whatsoever to entertain the present complaint. The respondents have 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 respondents contained in the said application.

16. The respondent submitted that at the outset, it is most respectfully submitted that the complaint filed by the complainant is premature as the time period agreed under the buyer's agreement dated 21.01.2014 ("agreement") (annexure 1) for delivery of possession of unit no. CSM/103/D-2304, in tower-D on the 23<sup>rd</sup> floor admeasuring 194.90 sq. mts ("Unit") has still not lapsed. The relevant clause regarding delivery of possession of the unit is reproduced hereunder for ready reference:

*"10.1 It is understood and agreed between the Parties that based on present plans and estimates and subject to all just exceptions, the Developer contemplates to give/offer possession of Unit to Allottee(s) **within 54 months from the date of execution of buyer's agreement (with grace period of 6 months)** or grant of all statutory approvals, whichever is later, unless there shall be delay or failure due to force majeure conditions and reasons mentioned in the Agreement. The said delivery date is subject to force*



*majeure events or government action/inaction or due to failure of Allottee(s) to pay in time the price of the Unit along with other charges and dues in accordance with the Schedule of payments or any other activity of the Allottee(s) deterrent to the progress of the Complex/Project/Residential Colony. The Allottee(s) is not entitled to lease out the said Unit till execution of formal & proper sale deed/ conveyance deed and handing over of possession to the Allottee (s).” (Emphasis supplied)*

The parties entered into an agreement and the parties are bound to follow the terms and conditions of the agreement. It is *prima facie* evident that the possession of the unit ought to be handed-over to the complainant in March,2019 and the present grievance is suppository and speculative in nature, therefore, the complaint is liable to be dismissed as being premature in time.

17. The respondent submitted that the respondent humbly submits before this learned regulatory authority that respondent company has developed various projects and has completed those projects. The respondent has obtained occupancy certificate in majority of its projects. Since, the respondents have been diligent in completing all its project and shall be completing the remaining projects in phased



manner therefore it is humbly submitted that the COSMOCITY-I project shall be completed at the earliest.

18. The respondent submitted that the complainant has nowhere established that the 'project' is an on-going project that ought to register before this learned authority. The ld. regulatory 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 hon'ble regulatory 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.



19. 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.

20. The respondent submitted that without prejudice to the above, despite several adversities, the respondent's company has continued with the development of the said project and is in the process of completing the legal formalities as well as compliances, However, as the complainant is only a supersizing power of the learned authority and not interested in taking over the possession of the said plot, therefore the complaint is liable to be rejected. The alleged grievance of the complainant has origin and motive in sluggish real estate market.

21. The respondent submitted that the complainant pertaining 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”) 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 learned regulatory authority under rule-28 and Section 31.

22. 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.

23. The respondent submitted that vide a resolution passed by the board of directors of the respondent company Mr. Mohd. Amir, has been authorized and empowered to sign and verify the pleadings, and to move appropriate reply, in the name of and



on behalf of the respondent company. It is further authorized to him to lead the evidence and to proceed further in the case.

24. The respondent submitted that the DTCP Haryana granted license no.79 of 2010 in favor 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.

25. The respondent submitted that the respondent company is in process to get the project registered under Real Estate Regulation Act, 2016. It is pertinent to mention that this learned authority vide complaint no. HARERA/ GGM/ 2018/ suo-motu/ NON-REG/ 09 dated 31.08.2018 (received by the respondent company on 08.09.2018) has already issued show-



cause notice consequent upon non-registration of on-going project and the same is under due deliberation and pending adjudication by this learned regulatory authority. Thus, the subject on which this complaint has been instituted is materially and substantially already being deliberated upon by this learned regulatory authority and hence, the present complaint is liable to be stayed and/or dismissed.

26. The respondent submitted the respondent company is in the process of developing *inter alia*, various residential and commercial projects to the satisfaction of its customers. The respondent company is doing its level best to implement the projects undertaken by the respondent company in time and to deliver good quality apartments/ units and to provide excellent services to its clients/ customers.

27. The respondent submitted that the each and every averment of the complaint is wrong, false and vehemently denied unless.

28. The respondent submitted that he has filed an application submitting that the complainant in the complaint are relying upon the builder buyer agreement existing between the



parties and clause 19(2) of the agreement is a validly existing arbitration agreement between the parties. In context of clause 19(2) of the buyers agreement as well as sub-section 1 of section 8 of the Arbitration and Conciliation Act, 2015 the present dispute is liable to be referred to arbitration since it is a mandate of Section 8 that any dispute brought before any judicial authority under any action which is the subject matter of arbitration "shall" be referred to arbitration between the parties.

### **Determination of issues**

29. 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:
27. With respect to **first issue**, the burden of proof lies on the person who asserts the existence of the facts. Therefore, the complainant has only made an assertion/ allegation without substantiating the same in material particulars. As such the issue cannot be decided.



28. With respect to the **second issue** raised by the complainant, as per clause 10(1) of buyer agreement, the possession of the unit was to be handed over within 54 months from the execution of agreement along with a grace period of 6 months. Therefore, the due date of handing over the possession shall be computed from 21.01.2014 which comes out to 21.01.2019. The clause regarding the possession of the said unit is reproduced below:

*“10(1) Possession*

*Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this agreement, the developer contemplates to give possession of unit to allottee within 54 months from the date of execution of agreement with the grace period of 6 months.”*

Accordingly, the due date of possession is 21.01.2019.

Although the due date of possession has so far not been crossed, the interest for the delayed possession as per section 18(1) of the Act has not accrued.



27. With respect to **third issue** raised by the complainant, he has submitted photographs of the project which clearly show that the project is lying abandoned, redundant and scrapped. Photographs submitted by the complainant are placed on

record corroborate the facts of the case. Project is not either under construction nor there are any chances of its being taking of and the complainant is not likely to get the possession of the unit in near future. As such, as per section 18 (1) of the Real Estate (Regulation And Development) Act, 2016, complainant is entitled to get the entire 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 along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from this order.

28. The complainants 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.*

29. The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the



promoter to comply with the provisions and fulfil obligation which is reproduced below:

### Findings of the authority

30. 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 14.12.2018 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.



31. The authority is of the considered view 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.

32. Further, **in Aftab Singh and Ors. v. Emaar MGF Land Ltd and Ors., Consumer case no. 701 of 2015- NCDRC (affirmed by the Supreme Court in civil appeal no.(s). 23512-23513 of 2017)**, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.
33. Counsel for the respondent seeks adjournment on account of the fact that some stellar issues are involved for which arguments need to be advanced. Case has already been listed on 26.7.2018. As per provisions of RERA Act, the complaint has to be decided within a period of 60 days, as such, request of the counsel for respondent cannot be acceded to.
34. As per clause 10.1 of the builder buyer agreement executed inter- se the parties on 21.1.2014 for unit/ flat No. CSM/ 103/ D-2304, tower-D, "Cosmocity" Sector-103, Gurugram, possession of the unit booked by the complainant was to be delivered to the complainant within a period of 54 months + 6





months grace period which comes out to be 21.1.2019. Complainant/buyer has already paid an amount of Rs.34,80,787/- to the respondent. However, respondent has failed in fulfilling his obligation as on date to deliver the possession. Complainant has submitted photographs of the project which clearly show that the project is lying abandoned, redundant and scrapped. Photographs submitted by the complainant are placed on record corroborate the facts of the case.

35. Counsel for the complainant has alleged that work of 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 And Development) Act, 2016 for imposing penalty for violation of section 3 (1) of the Act be initiated against the respondent. Project is not either under construction nor there are any chances of its being taking of and the complainant is not likely to get the possession of the unit in near future. As such, as per section 18 (1) of the Real Estate (Regulation And



Development) Act, 2016, complainant is entitled to get the entire amount paid by him to the respondent

36. 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:**

37. 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 i.e. 10.75% per annum within a period of 90 days from this order.



- ii. Since, the respondent has failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

38. The order is pronounced.

39. Case file be consigned to the registry

Samir Kumar  
(Member)  
05.12.2018

Subhash Chander Kush  
(Member)  
05.12.2018

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.12.2018

HARERA  
GURUGRAM



Judgement Uploaded on 08.01.2019