

**PROCEEDINGS OF THE DAY**

|                                |  |
|--------------------------------|--|
| Day and Date                   | Tuesday and 04.12.2018   |
| Complaint No.                  | 276/2018 case titled as Mr. Rajiv Garg Vs. M/s Adel Landmarks Ltd.                               |
| Complainant                    | Mr. Rajiv Garg   |
| Represented through            | Shri Sukhbir Yadav, Advocate for the complainant.  |
| Respondent                     | M/s Adel Landmarks Ltd.  |
| Respondent Represented through | Ms. Akshita Singh appeared on behalf of Ms. Tarini Bhargava Advocate for the respondent-company. |
| Last date of hearing           | 26.9.2018  |
| 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 6.6.2013 for unit/flat No.E-2101, 21<sup>st</sup> floor, Tower-E, in project "Skyville", Sector-68, Gurugram, the possession of the said unit was to be delivered within a period of 36 months from the date of signing of the agreement plus 3 months grace period which comes out to be 6.12.2016. Complainant/buyer has already paid an amount of Rs.17,95,344/- to the respondent. Counsel for the complainant has alleged that work at the project site 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. The 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 neither under construction nor there are any chances of its completion in near future, therefore 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 refund the entire 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. : 276 of 2018**  
**Date of First Hearing: 17.07.2018**  
**Date of Decision : 04.12.2018**

Mr. Rajiv Garg & Uma Garg  
R/o House No. A-3/5, Ground Floor,  
DLF Phase-I, Gurugram- 122002

**Complainant**

Versus

Adel Landmarks Limited,  
Office at: B-292, Chandra Kanta Complex,  
Shop No. 8, Near Metro Pillar No. 161, New  
Ashok Nagar, New Delhi-110096

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Sukhbir Yadav Advocate for the complainant

Ms. Akshita Singh on behalf of Advocate for the respondent  
Ms. Tarini Bhargava

**ORDER**

1. A complaint dated 16.05.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Rajiv Garg and Ms. Uma Garg against the promoter Adel



Landmarks Pvt. Ltd., on account of violation of clause 10.1 of buyer's agreement dated 06.06.2013 for unit no. E-2101, 21<sup>st</sup> floor in project "Skyville", located at sector 68, Gurugram, for not giving possession on due date i.e. on 06.12.2016, which is an obligation under section 11 (4) (a) of the Act *ibid*.

2. Since, the buyer's agreement dated 06.06.2013 has been executed prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the penal proceedings cannot be initiated retrospectively for contravention of any legal provision. Hence, keeping in view the facts of the case and submissions made by both the parties, the authority has decided to treat this complaint as an application to issue directions for compliance of obligations by the promoters under section 34(f) of the Real Estate (Regulation and Development) Act, 2016.



2. The particulars of the complaint are as under: -

|    |                                  |   |
|----|----------------------------------|---|
| 1. | Name and location of the project | "Skyville" in Tower- E, sector 68, Gurugram |
| 2. | Nature of real estate project    | Residential colony/complex                  |

|     |   |  |
|-----|---|--|
| 3.  | Allotted unit no.   | E-2101, 21 <sup>st</sup> floor in tower E.   |
| 4.  | Date of booking   | 16.08.2012   |
| 5.  | Admeasuring area of allotted unit   | 1446 sq. ft.   |
| 6.  | RERA Registered/ unregistered   | <b>Unregistered</b>  |
| 7.  | DTCP license  | 177 of 2008 dated 11.10.2008   |
| 8.  | Date of buyer's agreement   | 06.06.2013   |
| 9.  | Total consideration   | Rs. 64,56,390/- (BSP excluding other charges as per the agreement dated 06.06.2013)  |
| 10. | Total amount paid by the complainant  | Rs. 17,95,344/-  |
| 11. | Percentage of total consideration paid by the complainant                   | 25% approx.  |
| 12. | Payment plan  | Construction linked payment plan   |
| 13. | Due date of delivery of possession  | 06.12.2016<br>Note: <b>Clause 10.1</b> of agreement – 36 months from date of signing of agreement + 6 months' grace period.                                    |
| 14. | Delay of number of months/ years upto 04.12.2018                            | 2 years  |
| 15. | Penalty clause as per apartment buyer agreement dated 06.06.2013            | <b>Clause 15.7</b> -If company fails to offer possession of the said apartment, it shall be liable to pay compensation @ Rs.5/- per sq. ft. of the super area. |
| 16. | Date of offer of possession, if any   | Not available  |
| 17. | Revised date of delivery of possession as per RERA registration certificate | Not available  |



3. The details provided above have been checked and found on record as per the case file provided by the parties, a buyer's

agreement dated 06.06.2013 is available on record for apartment no. E-2101, 21<sup>st</sup> floor, tower E of the project in question, according to which the possession of the aforesaid unit was to be delivered by 06.12.2016. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 17.07.2018. The case came up for hearing on 17.07.2018, 30.08.2018, 26.09.2018, 17.10.2018 and 04.12.2018. The reply has been filed by the respondent on 17.10.2018 which has been perused.

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#### Facts of the complaint

5. Briefly put facts relevant for the disposal of the present complaint are that in August, 2012 complainants jointly booked a flat admeasuring 1446 sq. ft. in the respondent's project namely "Skyville" located at Sector-68, Gurugram. Pursuant to aforesaid booking of the complainant,

respondent allotted flat/unit no.E-2101 on the 21<sup>st</sup> floor to the complainant.

6. On 06.06.2013, buyer's agreement was entered into between the parties wherein as per clause 10.1, the possession should have been delivered within 36 months plus 6 months' grace period from date of signing of agreement. The total consideration of the unit was fixed at Rs. 64,56,390/- (basic sales price excluding other charges as per buyer's agreement dated 06.06.2013), out of which the complainant has made total payment of Rs. 17,95,344/- on various dates as per payment plans. It was alleged by the complainant that despite collecting 25% of the basic sales price as per payment schedule, respondent has failed to complete the construction and deliver the possession till date.



7. The complainants submitted that an offer of allotment letter was issued by the respondent on 24.06.2014. The complainant further submitted that since the construction was not being carried on and possession was not handed over in 06.12.2016 within the stipulated time of 40 months from the date of the execution of buyer's agreement i.e.

06.06.2013, the complainant decided to get the termination of agreement and sought refund of the paid amount alongwith interest from the respondent.

9. The complainants submitted that after 28.09.2012 to till date no demands were raised by the respondent and construction work is abandoned. On date 24.06.2013, respondent sent two letters informing the complainants that “the entire project/receivables arising out of the project has been mortgaged to ECL Finance Limited and IL&FS Financial Services Limited” hence, all future remittances/payments have to remit in “skyville project escrow A/C”.

10. The complainants further assert that on date 30.11.2015, complainants wrote a letter to respondent for refund of payments along with interest on account of delay in start of the construction of tower. The complainants again vide letter dated 31.08.2016 sought for cancellation of booking of unit and refund of payment, but no response was received from the respondent.

11. The complainant further submitted that even after paying more than 25% of the actual amounts of flat and willing to pay the





remaining amount, the respondent has failed to deliver the possession of flat as promised. The said project is mortgaged with two NBFC's and respondent sold that flat without taking prior permission of these NBFC's, which is in violation of the provisions of law.

### Issues to be decided

- I. Whether the respondent have violated the terms of buyer's agreement dated 06.06.2013?
- II. Whether complainants are entitled for refund of all money paid and also for the compensation for delayed possession from the respondent?
- III. Whether complainants are entitled for compounding interest @18% per annum from the date of booking to till date and also for compensation for mental agony and harassment?



### Reliefs sought

- I. Direct the respondent to refund the paid amount i.e. Rs. 17,95,344/- and compensate with interest 18% from August, 2012 to till date.

- II. Direct the respondent to pay an amount of Rs. 5,00,000/- for deficiency in service.
- III. Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation expenses.
- IV. Direct the respondent to refrain from giving effect to unfair clauses unilaterally incorporated in the Flat Buyer Agreement.
- V. To pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny the right to take possession as agreed at the time of sale.

### Respondent's reply

12. The respondent submitted that the present complaint is not maintainable and this authority has no jurisdiction to entertain the present complaint. It was further submitted by the respondent that the parties have entered into buyer's agreement dated 06.06.2013 and are bound by the terms of said agreement. In case of delay in possession necessary



provision for payment of compensation to allottee have been incorporated therein.

13. The respondent contended that the complainants have failed to show any cause of action accrued against them to file the instant complaint. It was further contended by the respondent that complainants are not covered under the category of consumer as defined under section 2(1)(d) of the consumer protection Act, 1986. Hence, the present complaint is not maintainable.

14. The respondent contended that as per clause 19.1 of the agreement dated 06.06.2013, in the event of any dispute with respect to the project in question, the aggrieved party should refer the dispute to arbitration. Hence, the party should approach to arbitrator as per clause 19.1 of the agreement and the present complaint is liable to be dismissed on this ground alone.

15. The respondent submitted that the complaint pertains to compensation and interest for a grievance under section 12, 14, 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 which are required to be filed before



the adjudicating officer under rule 29 of Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this ld. authority. Hence, this authority has no jurisdiction to entertain such complaint.

16. The respondent submitted that the complainant has not approached this authority with clean hands. It is submitted by the respondent that Skyville Residents Welfare Association and allottees of the project skyville; and Rational Buildcon Pvt. Ltd.; Golden Glow Estate Pvt. Ltd.; Adel Landmarks Ltd. and Greenwillow Homes Pvt. Ltd. entered into memorandum of understanding (MoU) on 27.10.2017 which is binding on all the parties including the complainants.



17. As per the MoU, the project will be developed according to the timelines mentioned in schedule III. Clause 3.4 of the said MoU dated 27.10.2017 states that the customer shall not seek a set off or refund or payment of the delay charges prior to the expiry of offer of possession as set out in schedule III. Hence, in light of the abovementioned clauses of the MoU, the

complainant has no right to approach this authority before the expiration of the timeline provided under schedule III by virtue of clause 3.4 of the MoU.

18. The respondent has also filed an application seeking rejection of the complaint on the ground that as per clause 19.1 of the agreement dated 06.06.2013, parties should refer the dispute to arbitration and the present complaint is not maintainable.

#### Determination of issues

19. As regards **issue no. I** raised by the complainant, the respondent was under contractual obligation to deliver the possession of the flat/unit no. E-2101, 21<sup>st</sup> floor in tower E by 06.12.2016 i.e. within 36 months plus 6 months' grace period from the date of execution of agreement dated 06.06.2013, however, they have failed to complete the construction and deliver the possession till date which is a clear cut violation of terms of agreement dated 06.06.2013.

20. As regards **issue no. II** raised by the complainant, it is noted from the arguments of the parties and perusal of records that the project has been left abandon by the respondent since September, 2012 and moreover, respondent has mortgaged



the project land with the ECL Finance Limited and IL&FS Financial Services Limited. So, it is clear that title of project land is not free from encumbrance and rights of the allottee including complainant with respect to the allotted unit/flat is in question, hence in the interest of justice, the complainant is entitled for refund of the paid amount.

21. As regards **issue no. III** raised by the complainant, this authority has no jurisdiction to decide and award compensation under the provision of the Act *ibid*, hence, this issue is dismissed for the want of jurisdiction and complainant is at liberty to file an appropriate application before the adjudicating officer under section 71 of the Act *ibid* for compensation of mental harassment and delayed delivery, if any.



### Findings of the authority

22. The issue regarding jurisdiction raised by the respondent 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 complainant at a later stage. As per **notification no. 1/92/2017-1TCP dated 14.12.2018** 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 i.e. in sector 68, Gurugram, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

23. The issue regarding reference of dispute to arbitration, 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.



24. 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.
25. During the course of arguments, learned counsel for the complainant that the construction work at the project site 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 DTCP license. Since, the project is neither under construction nor there are any chances of its completion in near future, therefore, 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 and Development) Act,





2016 the complainant is entitled to get the refund of the paid amount alongwith prescribed rate of interest.

### Decision and directions of the authority

26. Keeping in view the facts, documents as adduced by the parties and after hearing the arguments of both the parties, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 issues the following directions to the respondent in the interest of justice:-

- i. The respondent is directed to refund the entire paid amount of Rs. 17,95,344/- alongwith interest @ 10.75% p.a. from the date of each payment till 04.12.2018 (date of order). Details of interest payable is given below in tabular form –

| Date of payment | Principal amount paid  | Interest payable @10.75%p.a. from date of payment till 04.12.2018 |
|-----------------|------------------------|---|
| 16.08.2012      | Rs.7,00,000/-          | Rs.4,74,075/-   |
| 28.09.2012      | Rs.10,95,344/-         | Rs. 7,26,122/-  |
| <b>Total</b>    | <b>Rs. 17,95,344/-</b> | <b>Rs. 12,00,197/-</b>  |



- ii. The penal proceedings for imposing penalty under section 59 of the Real Estate (Regulation and Development) Act, 2016 be initiated against the respondent for not getting the project registered under section 3(1) of the Act *ibid*.

27. The order is pronounced.

28. The case file be consigned to registry. Copy of this order be consigned to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: - .....

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