

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 05.12.2018
Complaint No.	366/2018 Case titled as Mehta Infracon Pvt. Ltd. Vs M/s Adel Landmarks Ltd.
Complainant	Mehta Infracon Pvt. Ltd.
Represented through	Shri Surinder Singh Advocate proxy counsel for the complainant.
Respondent	M/s Adel Landmarks Ltd.
Respondent Represented through	Shri Shubankar Sehgal, 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. As per provisions of RERA Act, the complaint has to be decided within 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 18.10.2014 for unit/flat No.CSM/103/D-2105, 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 18.10.2019. Complainant/buyer has already paid an amount of Rs.60,17,209/- 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 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, GURGAON**

Complaint no. : 366 of 2018
First date of hearing: 26.07.2018
Date of decision : 05.12.2018

M/s. Mehta Infracon P. Ltd.
Through its director Sh. Ved Prakash Mehta
Address: R- 695, 2nd floor, New Rajinder Nagar
New Delhi - 110060

Complainant

Versus

M/s Adel Landmarks Ltd.
Address: B-39, Friends Colony West,
New Delhi - 110065.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Surinder Singh

Advocate (proxy) for the
complainant

Shri Shuankar Sehgal, proxy

counsel of Ms. Tarini Bhargava Advocate for the respondent

ORDER

1. A complaint dated 01.06.2018 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 M/s. Mehta Infracon P. Ltd. through its director Sh. Ved Prakash Mehta,



against the promoter M/s Adel Landmarks Ltd.in respect of apartment/unit described below in the project ‘Cosmocity I’, on account of violation of section 3 of the Act ibid.

2. Since, the buyer’s agreement has been executed on 18.10.2014 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 I”, Village Dhanwapur, Sector 103, Gurgaon.
2.	Project area	10.437 acres
3.	Nature of the project	Group housing/residential colony
4.	DTCP license no.	79 of 2010 dated 16.10.2010
5.	RERA registered/ unregistered.	Unregistered
6.	Apartment/unit no.	CSM/103/D-2105, 21 st floor, tower ‘D’
7.	Unit admeasuring super area	194.91 sq. mtrs. (2098 sq. ft.)



8.	Payment plan	Construction linked payment plan
9.	Date of execution of buyer's agreement	18.10.2014
10.	BSP of the unit as per the agreement	Rs.63,55,180/-
11.	Total consideration as per statement of account	Rs.73,84,770/-
12.	Total amount paid by the complainant till date	Rs.60,17,902/-
13.	Percentage of consideration amount	45% of BSP + 100% EDC/IDC and service tax
14.	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)	18.10.2019
15.	Delay in handing over possession till date	NO DELAY

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 unit according to which the possession of the same was to be delivered by 18.10.2019. 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 respondent 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, 13.09.2018 and 05.12.2018. The reply filed on behalf of the respondent on 17.09.2018 and the same has been perused.

Facts of the case

6. The complainant submitted that in October, 2014, the respondent has advertised its residential project 'cosmocity' situated at village Dhanwapur, sector – 103, Gurgaon. Relying on the advertisement of the respondent, the complainant vide application dated 11.09.2014 applied for allocation of a residential apartment in the said project. On 18.10.2014, apartment buyer's agreement for the allotted apartment no. CSM/103/D-2105 was executed between the parties. As per clause 10(1) of the agreement, respondent was under obligation to complete the construction and deliver the possession within 54 months plus 6 months grace period



from the date of execution of agreement. The complainant visited the project on various occasion and noticed that the project is fully abandoned with no construction taking place since long. It was further stated by the complainant that till date they made a payment of Rs. 60,17,902/- as against the total consideration of Rs. 63,55,180/-.

7. Due to deficiency in services on the part of the respondent as proposed in the buyer's agreement and inordinate delay in completion of the said project, the complainant demands cancellation of the agreement dated 18.10.2014 and refund of paid amount alongwith interest @ 15% p.a. On getting no response from the respondent, the complainant was constrained to file the present complaint.

Issues to be decided:-

1. Whether the respondent made false representation about the project in question in order to induce the complainant to make booking?
2. Whether the respondent is liable for unjustifiable delay in construction of the project and whether the promoter is



liable to refund the deposited amount of the complainant alongwith interest @ 15% p.a. alongwith compensation?

Reliefs sought:-

8. The complainant is seeking the following reliefs:
- i. Direct the respondent to refund a sum of Rs. 60,17,902/- alongwith interest @ 15% p.a. from the date of payment till realization.
 - ii. Direct the respondent to pay a sum of Rs. 10,00,000/- as compensation to the complainant towards undue hardship and injury both physical and mental caused due to the acts and omissions on the part of the respondent.
 - iii. Direct the respondent to pay a sum of Rs. 50,000/- to the complainant towards the cost of the litigation.

Respondent's Reply: -

9. The respondent 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 respondent has also separately filed



an application for rejection of the complaint on the ground of jurisdiction.

10. The respondent submitted that the complaint filed by the complainant is premature as the time agreed for the delivery of possession of the allotted unit no. CSM/103/D-2105 has still not lapsed.

11. The respondent submitted that the parties entered into legally binding agreement. The parties are bound to follow the terms and conditions of the agreement. The present grievance is suppository and speculative in nature, therefore, the complaint is liable to be dismissed as being premature in time.

12. The respondent submitted that no cause of action has ever accrued in favour of the complainant to file the present complaint before this learned regulatory authority. The complaint being without any cause of action is liable to be dismissed at this ground alone.

13. 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 respondent has 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.

14. 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. 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 the authority and the same is liable to be stayed and/or dismissed on this ground alone.



15. 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.
16. The respondent submitted that, without prejudice to the above, despite several adversities, the respondent 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.



17. The respondent submitted that the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Act ibid are required to be filed before the adjudicating officer under rule-29 Rules ibid read with section 31 and section 71 of the said act and not before this learned regulatory authority under rule-28.
18. The above stated position is further vindicated by the proviso to section 71 which clearly states that even in a case where a complaint is withdrawn from a consumer forum/NCDRC for the purpose of filing an application under the said Act, the application, if any, can only be filed before the adjudicating officer and not before the regulatory authority.
19. The respondent submitted that the name of the respondent no.1 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.

20. The respondent submitted that the DTCP, Haryana granted license no.79 of 2010 in favour 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 Gurgaon 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.

21. The respondent submitted that the respondent company is in process to get the project registered as per the Act ibid. It is pertinent to mention that this learned authority vide complaint no. HARERA /GGM/2018/ SuoMotu/ 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.

22. The respondent company is in process of developing inter alia, various residential and commercial projects to the satisfaction of its customer.

Determination of issues: -

After considering the facts submitted by both the counsel of the parties and perusal of record on file, the finding of the authority on the issues is given below-

23. As far as **issue no.1** raised by the complainant, they have failed to produce any iota of evidence in support of their allegation that the respondent has made false representation about the project in question in order to induce the complainant to make the booking of the apartment. Hence,



this issue is not determined in favour of complainant for the want of documentary evidence.

24. As regards the **issue no. ii** is concerned, the authority is of the view that the project is not saved under section 3(2)(b) of the Act *ibid* and is covered under the definition of “on-going projects” as defined under rule 2(o) of the Rules *ibid*.

25. Keeping in view the above facts and as per the records of the authority, the project is registerable under section 3 of the Act *ibid* and the respondents have not registered the project with the Haryana Real Estate Regulatory Authority till date. This omission on their part is violation of proviso to section 3(1) of the Act *ibid*. Consequently the above act on their behalf is a punishable offence under section 59(1) of the Act. Hence, the authority takes suo- moto cognizance for non-registration. Moreover the issue raised by the complainant as to whether complainant is entitled for refund of the paid amount. The learned counsel for the complainant during the course of arguments has submitted the photographs of the project which is taken on record and it clearly depicts that the project is lying abandon, redundant and scrapped.



Moreover, the project is neither under construction stage nor there are any chances of its being taking of and the complainant is not likely get the possession of the subject 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 refund of the paid amount.

Findings and directions of the authority -

26. 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. In the present case, the project in question is situated within the planning area of Gurgaon District. 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, Gurgaon shall be entire Gurgaon District for all purpose with offices situated in Gurgaon. In the present case, the project in question is situated within the planning area of



Gurgaon district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

27. 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 and 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.

28. 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 incivil 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.



Decision and directions of the authority:

29. Keeping in view the dismal state of affairs with respect to the work at the project site and facts and circumstances of the case, the authority finding no other option but to order for refund of amount deposited by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% p.a. Thus, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- i. The respondent is directed to refund the entire paid amount of Rs. 60,17,902/- alongwith prescribed rate of interest @ 10.75% p.a. from the date of each payment till 05.12.2018 (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 05.12.2018
011.09.2014	Rs.(32,26,868+ 1,04,900+47,163+ 99,710+12,966)/- = Rs.34,91,607/-	Rs. 16,00,112.61/-

09.09.2014	Rs.15,26,295/-	Rs. 6,95,865.07/-
10.09.2014	Rs. (2,47,560+ 7,44,790+ 7,650)/- = Rs. 10,00,000/-	Rs. 45,621.23 /-
Total amount	Rs. 60,17,902/-	Rs. 23,41,598.91/-

- 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.

30. The order is pronounced.

31. 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, Gurgaon



Dated:.....