

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 04.12.2018
Complaint No.	368/2018 case titled as Mr. Krishna Mehta Vs. M/s Adel Landmarks Ltd.
Complainant	Ms. Krishna Mehta
Represented through	Shri Surinder Singh proxy counsel for the complainant.
Respondent	M/s Adel Landmarks Ltd.
Respondent Represented through	Ms. Akshita Singh, on behalf of respondent-company.
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.

As per clause 10.1 of the Builder Buyer Agreement executed inter-se the parties on 21.1.2014 for unit/flat No.103-D/1605 Block/Tower D, 16<sup>th</sup> floor, Cosmocity -I, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 54 months from the date of signing of the agreement plus 6 months grace period which comes out to be 21.1.2019. Complainant/buyer has already paid an amount of Rs.38,44,513/- to the respondent.

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

Counsel for the complainant has alleged that work at 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. Since the project is not either under construction nor there are any chances of its being taking off, as such, 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 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. : 368 of 2018**  
**First date of hearing: 26.07.2018**  
**Date of decision : 04.12.2018**

Mrs. Krishna Mehta  
R/o H.No. 204, block -C,  
Sirsa, Haryana

**Complainant**

**Versus**

M/s Adel Landmarks Ltd.  
Address: C-56/14, Sector-62,  
Noida-201301.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Surinder Singh proxy Advocate of complainant  
counsel for the complainant.

Shri Akshita Singh 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 Mrs. Krishna 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 the section 3 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: -

1.	Name and location of the project	"Cosmocity", Village Dhanwapur, Sector 103, Gurgaon.
2.	Nature of the project	Group housing colony
3.	DTCP license no.	79 of 2010
4.	RERA registered/ unregistered.	<b>Not registered</b>
5.	Unit no.	CSM/103/D-1605, 16 <sup>th</sup> floor, tower 'D'
6.	Unit measuring	194.90 sq. ft.
7.	Payment plan	Construction linked payment plan
8.	Date of execution of buyer's agreement	21.01.2014



9.	Basic sale price as per the said agreement	Rs. 69,98,914/-
10.	Total consideration as alleged by the complainant	Rs.81,05,954/-
11.	Total amount paid by the complainant till date as per the receipts attached with the complaint	Rs.38,44,513/-
12.	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
13.	Delay in handing over possession till date	Premature complaint
14.	Penalty clause as per the buyer's agreement	Clause 10.8 of the said agreement i.e. Rs.10/-sq. mt. per month for the delay in offering possession.

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 dated 21.01.2014 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 1.01.2019. 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 and 04.12.2018. The reply filed on behalf of the respondent on 17.09.2018 has been perused.

**Facts of the case**

5. The complainant submitted that the complainant booked a residential flat in the project of the respondent namely "COSMOCITY-I" in Sector 103, Gurugram.
6. The complainant submitted that on believing the advertised project by the respondent, the complainant applied for allocation of the residential unit and by an apartment buyers agreement dated 21/01/2014, for residential unit bearing no. CSM/103/D-1605 in tower D on the 16<sup>th</sup> floor admeasuring 194.90 sq. mtrs. @ Rs. 35,908.63/- per square metres was allotted to the complainant at basic sale price of Rs. 69,98,914/-.
7. The complainant submitted that as per the terms contained in schedule-II apartment buyer's agreement' dated 21.01.2014, the total price payable for the residential floor/premises allotted to them was Rs. 69,98,914/-.
8. The complainant submitted that as per clause 10(1) of the said agreement, 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 21.01.2019. Further, the respondent was required to handover the possession of the said allotted residential independent premise immediately after the completion of the construction.

9. The complainant submitted that as per the layout plan of the project, 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 and 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.

10. That 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-I" 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.

11. The complainant submitted that it is further stated that as per the agreement entered between the parties, the complainant was required to make the payments as and when demanded by the respondent in accordance to the payment schedule annexed to the above mentioned agreement. It is stated 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. 38,44,513/- as against the total price of the premise i.e. Rs. 69,98,914/- has been paid by the complainant to the respondent herein.
12. 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 45% of the total basic price, 100% of the EDC and IDC and the service tax on such amounts, as and when demanded by the respondent.





13. The complainant submitted that it is further stated that the respondent having made promises to the complainant herein as per the agreement and fully utilizing the amounts as deposited while failing to act in accordance and is thereby guilty of indulging in unfair trade practices and misrepresentation for the sole purpose of duping the complainant of their hard-earned money.
14. The complainant submitted 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.
15. The complainant submitted 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. 38,44,513/- be refunded it along with an interest @ 15 % p.a. and when such sums were deposited by the complainant.



**Issues to be decided:**

- 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:**

The complainant is seeking the following reliefs:

Direct the respondent to refund a sum of Rs. 38,44,513/- along with interest @ 15 % per annum from the date when payments were made till realization of the amount in full.



**Respondent's reply**

16. 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.

17. The respondent submitted that the complaint filed by the complainant is premature as the time period agreed under the buyer agreement dated 21.01.2014 for delivery of possession of unit no. CSM/103/D-1605, in tower D on the 16<sup>th</sup> floor admeasuring 194.90 sq. mts has not lapsed. It is prima facie evident that the possession of unit ought to be handed over to the complainant in 21.01.2019 and the present grievance is suppository and speculative in nature, therefore, the complaint is liable to be dismissed as being premature in time
18. The respondent submitted that the complaints pertaining to compensation and interest for grievance under section 12, 14, 18 and section 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.



19. The respondent submitted that 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 for the purpose of filing an application under the said Act and said rules, the application, if any can only be filed before the adjudicating officer and not before the regulatory authority.
20. The respondent submitted that no cause of action has ever accrued in favor 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.
21. The respondent submitted that the parties entered into legally binding agreement. The parties are bound to follow the terms and conditions of the agreement and in case of delay in possession necessary provisions for payment of compensation to allottee have been incorporated therein. Therefore, any relief beyond the terms and conditions of the agreement are unjustified.



22. The respondent humbly submitted 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.

23. 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.

24. 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.

25. 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.



26. The respondent submitted that RERA is enacted for the effective consumer protection and to protect the interest of the consumer in the real estate sector. RERA is not enacted to protect the interest of investor. As the said Act has not defined the term consumer, therefore the definition of consumer as provided under the Consumer Protection Act,1986 has to referred for adjudication of the present complaint.

27. 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.

28. 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.

29. The respondent submitted that the respondent company is in process to get the project registered . 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 compliant is liable to be stayed and/or dismissed.





30. The respondent submitted that the respondent company is in the process of developing various residential and commercial project to the satisfaction of its customers. The respondent company is doing its level best to implement the project undertaken by the respondent company in time and to deliver good quality apartments and to provide excellent services to its clients.

#### Determination of issue

31. 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.

32. 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.”*

33. With respect to **third issue** raised by the complainant, the due date of delivery of possession i.e. 21.01.2019. Since the project is not either under construction nor there are any chances of its being taking off, as such, 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 the entire amount with prescribed rate of interest paid by him to the respondent.
34. 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.*



34. 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:

**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.*

**Findings of the authority**

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



36. 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.
37. 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.

### Decision and directions of the authority

38. Keeping in view the facts and circumstances of the complaint, the authority is of the view as per clause 10.1 of the builder buyer agreement executed inter- se the parties on 21.1.2014 for unit/flat No.103-D/1605 Block/Tower D, 16<sup>th</sup> floor, Cosmocity -I, Gurugram, the possession of the said unit booked by the complainant was to be delivered within a period of 54 months from the date of signing of the agreement plus 6



months grace period which comes out to be 21.1.2019. Complainant/buyer has already paid an amount of Rs.38,44,513/- to the respondent. However, counsel for the respondent submits that the complaint is pre-mature and is liable to be dismissed on this ground.

39. During the course of arguments, counsel for the complainant has contended that work at 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 the 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 that since the project is not registered and the respondent/builder is not in possession of a valid licence. Since the project is neither under construction nor there are any chances of its being taking off, as such, 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 the refund of entire amount paid by him to the respondent.

40. 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 directs the respondent-

- i. To refund the entire amount paid by the complainant i.e. Rs. Rs. 38,44,513/-along with prescribed rate of interest @ 10.75% per annum from the date of each payment till 04.12.2018 within a period of 90 days. The statement of account filed by the complainant on record is illegible. The complainant shall submit calculation sheet regarding refund to the respondent and a copy to the authority.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**HARERA**  
GURUGRAM



Dated: 04.12.2018

Judgement Uploaded on 25.01.2019