

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

Complaint no. : 523 of 2018
Date of first hearing: 11.9.2018
Date of decision : 11.12.2018

Satya Narain Singla HUF
R/o: C/o Singla Surgical Hospital,
Karnal Road, Kaithal, Haryana-136027

...Complainant

Versus

M/S Landmark Apartments Pvt. Ltd
Address: House-85, Sector-44,
Gurugram, Haryana

...Respondent

APPEARANCE:

Shri Rajan Gupta

Advocate for the complainant

Shri Amarjeet Kumar

Advocate for respondent

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

ORDER

1. A complaint dated 10.7.2018 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 complainant Satya Narain Singla HUF against M/s Landmark Apartments Pvt. Ltd in respect of apartment/unit described below in the project



'Landmark Cyber Park', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 9.12.2011 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 are as under: -

***Nature of the project:** Commercial space

1.	Name and location of the project	"Landmark Cyber Park", Sector- 67, Gurugram
2.	Registered / not registered	Not registered
3.	Applied for OC	In 2015 (as alleged by the respondent in the reply)
4.	Unit no.	Service No-08, 5 th floor,
5.	Unit measuring	300 sq. ft. (approx.)
6.	Date of execution of agreement	9 .12.2011
7.	Due date of offer of possession Clause 3(a)- "possession of the said office space is proposed to be delivered by the company to the allottee within 3 years from the date of signing of the buyer's agreement."	9.12.2014



8.	Intimation of possession for fit outs on (Note: without obtaining occupation certificate)	23.6.2015
9.	Delay till date	4 years (approx.)
10.	Amount paid by the complainant till date	Rs. 22,59,000/-
11.	Total sale consideration	Rs. 23,00,000 /-
12.	Percentage of amount paid	100% (approx.)
13.	Due date of delivery of possession.	9.12.2013
14.	Delay of number of months/ years	4 years (approx.)

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement is available on record which was executed on 9.12.2011.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed on behalf of the respondent

Facts of the case

6. Mrs. Saroj Kansal and Mr.R.K. Kansal booked an office space in the above mentioned project and the respondent allotted service office no.8 on 5th floor admeasuring 300 sq. ft'. Buyer's agreement was executed on 9.12.2010 between the parties.



7. The said property was transferred by respondent company in the name of Satya Narain HUF vide letter dated 11.10.2012. Till today the complainant has paid Rs.22,59,000. As per clause 3 of the agreement the possession of the said unit was to be handed over within 3 years i.e. by 9.12.2014.
8. The complainant paid all the instalments on time but on site visit it was observed that the construction was not completed. On approaching the office of respondent, the complainant was told that it was not possible to allot them the unit on 5th floor instead they were being offered a unit on 1st floor. Also, the area of new unit was less than the area of earlier unit but the price was same.
9. **Issues to be decided**
 - i. Whether the respondent can change the allotment of office space without the consent of complainant?
 - ii. Whether the complainant is entitled to refund of amount i.e., Rs.22,59,000/- along with interest to the complainant?
 - iii. Whether the complainant be paid for fraud and harassment by the respondent?



10. Relief sought

- i. To direct the respondent to offer possession of the office space bearing service no.8 on 5th floor having super area of 300 sq. ft'.
- ii. To direct the respondent to fulfil its part of the contract and refund the amount paid by the complainant along with interest.
- iii. To pass any such other order as this authority may deem fit.

Reply on behalf of respondent

11. The respondent submitted that the hon'ble authority in the similar matter titled as "Brhimjeet vs. Landmark Apartments Pvt. Ltd. last listed on 7.8.2018, has held that the matter in dispute therein was to be adjudicated by the adjudicating officer and not by the authority and accordingly dismissed the complaint with the liberty to approach the adjudicating officer.

12. The respondent submitted that the present complaint is not maintainable or tenable in the eyes of law as the complainant has not approached this hon'ble authority with clean hands and has not disclosed the true and material facts relevant to this case of the complainant. That the complainant had specifically not disclosed the fact that the complainant had



failed to make timely payments which was a necessary covenant under the provisional allotment. That despite several reminders from the respondent, the complainant had failed to make the payments so as to be entitled for the possession of the unit. However, in the present complaint is seeking the refund of the amount citing reasons which are illegal and unneatable.

13. That the complainant, thus, has approached the hon'ble authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint and if there had been disclosure of these material facts and proceedings, the question of entertaining the purported complainant would not have arisen. It is settled law as held by the hon'ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1)** that non-disclosure of material facts and documents amounts to a fraud on not only on the opposite parties but also on the court. Reference may also be made to the decisions of the hon'ble Supreme Court in **Dilip Singh Vs State of UP 2010-2-SCC-114** and **Amar Singh Vs Union of India 2011-7-SCC-69** which is also been followed by the Hon'ble National Commission in the case of **Tata Motors Vs Baba Huzoor**



Maharaj being RP No. 2562 of 2012 decided on 25.09.2013.

14. That the present petition, so preferred under the Real Estate Regulation and Development Act 2016, is not maintainable as the complainant has failed to disclose any maintainable cause of action under the said provisions of the Act as alleged. That section 19 of the Real Estate Regulation and Development Act 2016 clearly prescribes the rights and duties of the allottees.
15. That the present complaint pertains to compensation and interest for a grievance under section 12, 14, 18 and 19 of the **Real Estate (Regulation and Development) Act, 2016** (hereinafter referred to as the "said Act") and are required to be filed before the adjudicating officer under **rule-29** of the **Haryana Real Estate (Regulation & Development) rules, 2017** (hereinafter referred to as the "said Rules") read with **section 31** and **section 71** of the said Act and not before this hon'ble regulatory authority under **rule-28**. Section 31, section 71, read with rule-28 and rule-29.
16. It is submitted that the respondent vide letter dated 23.6.2015 offered possession to the complainant with the request to make payment towards EDC/IDC/IMFC and any other charges in order to take possession.



Determination of issues

17. With respect to the **first issue** relating to the change in allotment, clause 1 of the builder buyer agreement provides that the allottee would be provided an office space admeasuring 300 sq. ft' and the unit number is not mentioned. The allotment letter attached by the respondent shows that unit number 8 was allotted to the complainant whereas there is no revised allotment letter on record either by the complainant or the respondent so it cannot be ascertained whether there was a change in allotment or not.
18. With respect to the **second issue**, the authority came across clause 3(a) of the buyer's agreement which is reproduced hereunder:

"that the possession of the said office space is proposed to be delivered by the company to the allottee within 3 years from the date of signing of the buyer's agreement subject to force majeure conditions."

The due date comes out to be 9.12.2013 which means that there is a delay of 5 years approx. Regarding payment of interest for delay in delivery of possession the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the



complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate which is SBI MCLR highest lending rate + 2% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 9.12.2014 up to the date of offer of possession.

19. With respect to the **third issue, *Simmi Sikka V/s M/s EMAAR MGF Land Ltd. (7 of 2018), on 21.08.2018*** has held that this authority is not the appropriate forum for providing compensation and the same shall be filed with the adjudicating officer.

Findings of the authority

20. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainants at a later stage.

21. The authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.
22. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

23. 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 issues the following directions to the respondent in the interest of justice and fair play:

- (i) As per clause 3 (a) of the builder buyer agreement dated 9.12.2011, for office space no.08, 5th floor, Landmark Cyber Park, Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 3 years which comes



out to be 9.12.2014. Complainant has already deposited Rs.22,59,000/- against total sale consideration amount of Rs.23 Lakhs. However, the respondent has not delivered the unit in time, as such, complainant is entitled for prescribed rate of interest i.e. 10.75% per annum w.e.f 9.12.2014 for every month of delay as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over the offer of possession.

- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

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24. The order is pronounced.

25. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.12.2018

Judgement Uploaded on 26.03.2019



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