

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

**Complaint no. : 937 of 2019**  
**First date of hearing : 18.07.2019**  
**Date of decision : 18.07.2019**

Shri Sunil Kumar Jain HUF  
R/o: 410/16, Opposite John Hall, Civil  
Lines, Gurugram

**Complainant**

Versus

Soni Infratech (P) Ltd.  
Office at: 713-713-A, Narain Manzil,  
23, Barakhamba Road, New Delhi -  
110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri R.N. Dikshit  
Shri Anand Singh

Advocate for the complainant  
Manager of the respondent  
company in person

**ORDER**

1. A complaint dated 08.03.2019 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 Shri Sunil



Kumar Jain HUF, against the promoter M/s Soni Infratech (P) Ltd., on account of violation of clause 4.7 of agreement executed on 20.10.2011 in respect of unit no. 403, tower 2, 4<sup>th</sup> floor admeasuring 1460 sq. ft. in the project 'Spire South' located at Sector 68 , Gurugram for not handing over possession of the subject unit by the due date which is an obligation of the promoter under section 11(4)(a) of the Act ibid.

2. Since the agreement dated 20.10.2011 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of obligations on the part of the respondent in terms of the provision of section 34(f) of the Act ibid.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Spire South (Now Orion Galaxy) Sector 68 Gurugram
2.	Nature of real estate project	Group housing colony
3.	Project area	12.287 acres

**AUTHENTICATED**

**GURBACHAN KAUR**  
LEGAL OFFICER



4.	DTCP license no.	67 of 2010
5.	Registered/unregistered	<b>Registered</b> <b>100/2017</b>
6.	Revised date	<b>31.12.2023</b>
7.	Date of booking	<b>15.05.2010</b>
8.	Date of execution agreement	20.10.2011
9.	Unit no.	403, tower-2, 4 <sup>th</sup> floor
10.	Unit measuring	1460 sq. ft.
11.	Payment plan	Construction linked plan
12.	Total consideration amount (Clause 3.1 of agreement)	Rs 36,08,220/- +EDC, IDC
13.	Total amount paid by the complainants	Rs. 36,95,918/- (as per receipts annexed)
14.	Due date of delivery of possession (As per clause 4.7) - 3 years + 6 months from the execution of agreement	<b>20.04.2015</b>
15.	Delay in handing over possession till date 18.07.2019	4 years 2 months 28 days
16.	Penalty clause (as per clause 4.9 of agreement)	Rs. 5/- per sq. ft per month of super area for the period of delay

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An apartment

buyer's agreement is available on record for unit no. 403, tower 2, 4<sup>th</sup> floor admeasuring 1460 sq. ft. in the project 'Spire South' located at Sector 68 , Gurugram, according to which the possession of the aforesaid unit was to be delivered by 20.04.2015. However, the respondent has failed to fulfil his statutory liabilities as on date.

5. Taking cognizance of the complaint, the authority issued notice dated 09.03.2019 to the respondent for filing reply and for appearance. The case came up for hearing on 18.07.2019. The reply has been filed by the respondent on 01.04.2019 and the same has been perused.

#### **Facts as per the complaint**

6. The complainant submitted that the complainant is bonafide /reputed senior citizen of the country and is victim of cheating/misleading by Soni Infratech Pvt. Ltd.
7. The complainant submitted that the applicant has entered into an agreement with Soni Infratech Pvt. Ltd. On 20.10.2011 for purchase of flat no. 403 in tower T-2 in their project Spire



South (Now Orion Galaxy) at Sector 68, Gurugram having total area of 1460 Sq. ft.

8. The complainant submitted that the applicant has deposited Rs. 36,95,918 till date with the company.
9. The complainant submitted that the respondent has to offer possession of the flat within three years from the date of agreement i.e. on 20.04.2015 as per clause 4.7 of the agreement dated 20.10.2011.
10. The complainant submitted that one of the conditions of agreement was that the respondent shall pay a penalty @ 5.00 per Sq. Ft. per month to the applicant for the delay caused by them for the delay in delivering the possession of the flat.
11. The complainant submitted that the applicant has to pay a penalty @12 % per anum for delay in payment of instalments to the builder which is self-contradictory, as per RERA guidelines the builder has to pay the interest to the buyer at the rate he is charging interest on delayed instalments i.e. @12% p.a.

**AUTHENTICATED**

GURBACHAN KAUR  
LEGAL OFFICER

12. The complainant submitted that the applicant has requested to the respondent to pay the interest @12% p.a. from 20.04.2015 on the amount deposited till date and also interest @12% from the date amount deposited after 20.04.2015 with them till delivery/ possession of the flat is given to applicant with cost. But no response has been received from the respondent till date.

**Issue to be decided**

13. The relevant issue as per the complaint is: -
- i. Whether the complainant is entitled to delayed possession charges along with interest from the due date of possession till the actual handing over of possession?

**Relief sought**

14. The relief sought by the complainant are as follows: -
- i. Admit the complaint of the complainant.
  - ii. The respondents to pay the interest @12% p.a. to the applicant from 20.04.2015 on the amount deposited till 20.04.2015 till possession of the flat and also interest @12% p.a. from the dates amount deposited after 20.04.2015 till possession of



the flat from various dates of deposit up to the date of possession of the flat as the respondents violated terms and conditions of application form/ agreement dated 20.04.2012.

### Respondent's reply

15. The respondent submitted that the answering respondent M/s Soni Infratech Pvt. Ltd. is a registered company and has been strictly pursuing its business in a bonafide manner. The answering company, a leading and distinguished name in the real estate sector, is developing a residential group housing society by name "Orion Galaxy" at sector 68 Gurugram, Haryana under license bearing no. 67 of 2010 granted by Director town and Country Planning, Haryana and along with all other requisite approvals for developing the group housing project.
16. The respondent submitted that the construction at the site commenced in January 2012. As per the time line, the contractor was supposed to complete the construction and handover the site within a period of 24 months from the date of award of work/ agreement i.e. by December 2013. However, during the initial phase of the construction work was stalled



due to issues w.r.t. non-availability of the STP water which resulted in a delay of 6 months.

17. The respondent submitted that to add to the crisis after the resumption of work, the new contractor was faced with the below listed unprecedented events which lead to the further delay in completion of the construction of project:
- i. The construction work was first disrupted in year 2016 when the construction was put on hold under the directions of the Delhi Government and its neighbouring states owing to the alarming and unprecedented rise in the level of air pollution post Diwali.
  - ii. The same was immediately followed by surprise decision of the Indian Government when on 08.11.2016, the Government of India announced the demonetization of all Rs. 500 and Rs. 1000 bank currencies and directly affected the liquidity to pay the construction workers.
18. The respondent submitted that it is to be noted that Tower 2 (relevant in present context) of the project Galaxy Orion are nearly complete in all respects. The respondent has already



applied for the fire NOC and is awaiting the same.

19. The respondent submitted that the construction of all the towers of the project is nearing completion. Further even though the delay in the project has been for reasons beyond the control of the developer. The clause 4.9 of the builder buyer agreement duly executed between the customer and the developer sufficiently covers the aspect of event of delay in handing over of the possession of the apartments under the project. The clause 4.9 of the builder buyer agreement says that in case developer commits delay in offering possession of unit to allottee, the developer shall pay a sum of Rs. 5/- per square feet of the super area of unit per month for the period of delay towards liquidated damages. The said damages could have been calculated and paid /adjusted at the time of offer of possession since the same cannot be determined at any stage prior to that.

20. It is submitted that the respondent has got his project registered with the Haryana Real Estate Regulatory Authority vide registration no. 100 of 2017. The respondent hereby declares and undertakes to complete and deliver the project as

per time frame/ schedule as declared and submitted with the HRERA. No liability with regard the delay prior to that can be established and no penalty can be levied on the respondent in this regard.

### Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

21. With respect to the **sole issue**, as per clause 4.7 of the agreement dated 20.10.2011, the possession was to be handed over to the complainant within 3 years plus 6 months grace period from the execution of agreement. The grace period has been allowed by the authority because of contingencies beyond the control of the respondent. Accordingly, the due date of possession was 20.04.2015. However, the respondent has failed to handover the possession of the said unit within stipulated time, thus promoter has failed to abide by its statutory obligations.

**AUTHENTICATED**

GURBACHAN KAUR  
LEGAL OFFICER

However, the project is registered with the authority vide registration no. 100/2017, which is valid till 31.12.2023. However, there is delay of around 4 years 2 months 28 days in handing over the possession of the said unit to the complainant. Therefore, the complainant is entitled to delayed possession charges from the due date of possession i.e. 20.04.2015 at prescribed rate of interest i.e. 10.60% per annum for every month of delay from the due date of handing over possession till the offer of possession as per the provisions of proviso to section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

### **Findings and directions of the authority**

22. **Jurisdiction of the authority**-The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated



14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The authority has complete 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.

23. As per clause 4.7 of the agreement dated 20.10.2011 the possession was to be handed over to the complainant within 3 years plus 6 months grace period from the execution of agreement. The grace period has been allowed by the authority because of contingencies beyond the control of the respondent. The due date of possession was 20.04.2015. However, the respondent has failed to handover the possession of the said unit within stipulated time, thus promoter has failed to abide by its statutory obligations.

However, the project is registered with the authority vide



registration no. 100/2017, which is valid till 31.12.2023. There is delay of around 4 years 2 months 28 days in handing over the possession of the said unit to the complainant. Therefore, the complainant is entitled to delayed possession charges from the due date of possession i.e. 20.04.2015 at prescribed rate of interest i.e. 10.60% per annum for every month of delay till the actual offer of possession as per the provisions of proviso to section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

#### **Decision and directions of authority**

24. 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:
- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 20.04.2015 till the offer of possession as per the provisions of proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till 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 offer of possession shall be paid on or before 10<sup>th</sup> of every subsequent month.
  - iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for delayed period.
  - iv. The promoter shall not charge anything from the complainant which is not part of the agreement.
  - v. Interest on due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
25. The order is pronounced.
26. Case file be consigned to the registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.07.2019

Judgement uploaded on 23.07.2019