

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

Complaint no. : 742 of 2018
First date of hearing : 21.01.2019
Date of decision : 25.04.2019

Mr. Jai Prakash Jain,
R/o. Houseno. 102, 2nd floor,
Sector 47, Gurugram-122001

Complainant

Versus

M/s Soni Infratech Pvt. Ltd.
(through managing director)
Regd. office: Pent house, 18th floor, Narain
manzil, 23, Barakhamba road, Connaught
Place, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Gaurav Srivastava

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 24.08.2018 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 Mr. Jai Prakash Jain, against the promoter M/s Soni Infratech Pvt. Ltd. on account of violation of the clause 4.7 of the agreement

executed on 25.05.2012 in respect of flat described as below in the project "Spire South" for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the agreement was executed on 25.05.2012 i.e. prior to the commencement of the Act *ibid*, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations on 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: -

1.	Name and location of the project	"Spire South", Sector 68, Gurugram
2.	Project area	12.278 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no	67 of 2010
5.	License valid/renewed up to	30.08.2018
6.	License holder	M/s Sona Infratech Pvt. Ltd.
7.	Registered/ not registered	Not registered
8.	Flat/unit no.	1004, 10 th floor, tower T5
9.	Flat admeasuring	2184 sq. ft. [initially 1890 sq. ft. was allotted vide provisional allotment letter dated 19.01.2011, page-25]
10.	Date of execution of agreement	25.05.2012

11.	Payment plan	Construction linked payment plan
12.	Total consideration as per annexure A the said agreement	Rs.52,02,048/-
13.	Total amount paid by the complainant as per statement of account dated 01.12.2018	Rs.45,44,697/- [page 72 of complaint]
14.	Due date of delivery of possession as per clause 4.7 of the agreement within 3 years + 6 months grace period from the date of execution of this agreement i.e. 25.05.2012.	25.11.2015
15.	Delay in handing over possession till date of decision i.e. 25.04.2019	3 years 5 months 9 days
16.	Penalty clause as per clause 4.9 of the agreement dated 25.05.2012	Rs.5/- per sq. ft. of super area of unit per month for the period of delay

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. A agreement is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 25.11.2015. Neither the respondent has delivered the possession of the said unit as on date to the complainant nor has it paid any compensation @ Rs.5/- per sq. ft. of super area of unit per month for the period of delay as per article 4.9 of the agreement duly executed between the parties. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 21.01.2019. Despite service of notice, neither the respondent has appeared nor has filed its reply to the complaint. Hence, ex-parte proceedings has been initiated against the respondent.

Facts of the complaint

6. Briefly stated, the facts of the complaint are that the project in question is known as "Spire South-68", Sector 68, Gurugram, Haryana. As per section 2(zk) of the Act ibid, the respondent falls under the category of promoter and is bound by the duties and obligations mentioned in the said Act and is under the territorial jurisdiction of this hon'ble regulatory authority.
7. The complainant submitted that on 20.04.2011, he purchased a flat in resale in the above mentioned project with the permission of respondent bearing no.1004 in tower no. 5, admeasuring 1890 sq. ft. in the said project. On 03.05.2011, respondent issued a letter of confirmation of endorsement in complainant's name.
8. The complainant submitted that the said flat was booked by Mr. Avneesh Garg on 20.08.2010 under construction linked payment plan and paid Rs.2,09,752/- vide cheque dated 20.08.2010 and respondent issued payment receipt dated

30.08.2010. On 19.01.2011, the respondent issued a letter of allotment of dwelling unit in the said project for flat no.1004 measuring 1890 sq. ft. in tower no. 5. On 20.04.2011, complainant purchased flat from original allottee Mr. Avnish Garg. On 03.05.2011, respondent issued a letter 'transfer of rights and interests in housing unit' and endorsed the rights in favour of the complainant.

9. The complainant submitted that on 26.05.2011, respondent issued a demand letter of Rs.1,82,256/- for payment of third installment against increased area i.e. 2184 sq. ft. as per approved building plans. Complainant paid the said demand vide cheque dated 04.06.2011. On 12.07.2011, a pre-printed, unilateral, arbitrary and one-sided agreement was executed between complainant and respondent. Complainant signed two copies of agreement and sent the same to respondent. Thereafter, respondent entered the date of agreement as 25.05.2012.
10. The complainant submitted that he continued to pay the remaining installment as per the payment schedule of the said agreement and have already paid more than 85% amount till 27.12.2016 along with interest and other allied charges of actual purchase price. But when complainant observed that there is no progress in construction of subject flat for a long

time, he raised his grievance to respondent. Complainant has always been ready and willing to pay the remaining instalments provided that there is progress in construction of flat.

11. The complainant submitted that since July 2014, he has been visiting the office of respondent as well as construction site and making efforts to get the possession of allotted flats but all in vain, in spite of several visits by the complainant. The complainant has never been able to know the actual status of construction. Though the tower seems to be built up but no progress is observed in finishing and landscaping work.
12. The complainant submitted that on 09.12.2016, he wrote an email to respondent to get the information about construction stage and measurement of super area and carpet area. Thereafter, complainant sent grievance emails on 15.12.2016 and 27.12.2016 stating that 'I am paying the latest demand of Rs.4,87,093/- under protest and will be taking a legal action against you for not completing the work on time and for showing unwillingness to answer any queries raised by me vide mail dated 09.12.2016, 11.12.2016 and 15.12.2016.'
13. The complainant submitted that cause of action first arose in or around July 2011 when the agreement containing unfair and unreasonable terms was forced upon the allottee. The

cause of action further arose in 2014, when the respondent party failed to handover the possession of the flat as per the agreement. Further the cause of action arose in a) December 2014, b) February 2015, c) June 2016, d) December 2016, e) March 2017, f) December 2017, g) July 2018 and so many times till date when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent by an order of injunction or passes the necessary orders.

14. The complainant submitted that the above said act of respondent is violation of section 11(4)(a) of the Act *ibid*. As per section 12 of the Act *ibid*, the promoter is liable to return the entire investment along with interest to the allottee of an apartment, building or project for giving any incorrect, false statement, etc. As per section 18 of the Act *ibid*, the promoter is liable to pay compensation to the allottees of an apartment, or project for a delay or failure in handing over possession as per the terms of agreement for sale. The complainant made a submission before the authority under section 34(f) to ensure compliance/obligations cast upon the promoter. The

complainant submitted that he reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Issues raised by the complainant

15. The relevant issue to be decided are as follows:
- i. Whether the respondent has violated the terms and conditions of the agreement and the complainant is entitled to get possession of the said unit along with interest for the period of delay so caused?
 - ii. Whether there has been deliberate or otherwise misrepresentation on part of the developer for delay in giving possession of flat?

Reliefs sought by the complainant

16. The complainant is seeking the following reliefs:
- i. The respondent be directed to hand over the possession of agreed flat to the allottee immediately and not later than 3 months from the date of judgement, complete in all respects and execute all required documents for conveying ownership of the respective flat.
 - ii. The respondent be directed to pay interest for delay in handing over possession from July 2014 till date of possession.

Determination of issues

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are as under:

17. With respect to the **first issue** raised by the complainant, as per clause 4.7 of agreement duly executed between the parties, the possession of the said unit was to be handed over within a period of 3 years plus 6 months grace period from the execution of this agreement i.e. 25.05.2012. The grace period of 6 months is given to the respondent due to exigencies beyond the control of the respondent. Therefore, due date of possession shall be computed from 25.05.2012. The article regarding the possession of the said unit is reproduced below:

“clause 4.7

4.7 Developer shall offer possession of unit to allottee within a period of three years (plus a grace period of six months) from the date of execution of this agreement.”

18. Accordingly, the due date of possession was 25.11.2015 and the possession has been delayed by 3 years 5 month 9 days from due date of possession till the date of decision. Therefore, the respondent has failed to deliver possession of the said flat in terms of the agreement dated 25.05.2012.

19. As the promoter has failed to fulfil its obligations, the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the rules *ibid*, to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.
20. With respect to the **second issue** raised by the complainant, the complainant has not produced any material document and has only made assertions with respect to the misrepresentation on part of the developer for delay in giving possession. As the complainant has not substantiated the allegation in material particulars. Therefore, the said issue is decided in negative.

Findings of the authority

21. **Jurisdiction of the authority-** 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town & Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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 entertain the present complaint.

22. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
23. The respondent has failed to submit the reply, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.
24. Project is not registered with the authority. Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
25. Arguments heard. As per clause 4.7 of the agreement dated 25.05.2012 for unit no. 1004, 10th floor, T-5 in project "Spire South" Sector 68, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of agreement + 6 months grace period which comes out to be 25.11.2015. However, the respondent has not

delivered the unit in time. The complainant has already paid Rs.45,44,697/- to the respondent against a total sale consideration of Rs.52,02,048/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 25.11.2015 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Directions of the authority

26. After taking into consideration all the material facts as adduced and produced by the complainant, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- i. The respondent is directed to pay delayed possession charges @ 10.70% p.a. to the complainant w.e.f. 25.11.2015 till actual offer of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- ii. Thereafter, monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
 - v. The promoter shall not charge anything from the complainant which is not part of the builder buyer's agreement.
27. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.
28. The order is pronounced.
29. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.04.2019


(Subhash Chander Kush)

Member

Judgement uploaded on 12.06.2019