

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

**Complaint no. : 940 of 2019**  
**First date of hearing: 18.07.2019**  
**Date of decision : 18.07.2019**

Ms. Neelima Jain

Address: 410/16, Opposite John Hall, Civil  
Lines, Gurugram-122001

**Complainant**

Versus

M/s Soni Infratech Pvt. Ltd.

Regd. Office: 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  
Authorised representative on  
behalf of the respondent

**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 Ms. Neelima Jain, against the respondent M/s Soni Infratech Pvt. Ltd., on account of violation of the clause 4.7 of agreement executed on 20.04.2012 in respect of unit described below for not handing

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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 has been executed on 20.04.2012 i.e. prior to the commencement of the Act *ibid*, 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 statutory obligation on part of the promoter/respondent in terms 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, Haryana.
2.	Nature of the project	Group housing colony
3.	Project area	12.287 acres
4.	Registered/not registered	<b>Registered</b>
5.	HRERA registration no	<b>100 of 2017 dated 28.08.2017</b>
6.	HRERA registration certificate valid up to	<b>31.12.2023</b>
7.	DTCP license no.	67 of 2010 dated
8.	Date of execution of agreement	20.04.2012 (Annexure 1)
9.	Flat/unit no.	1201, T1, 12 <sup>th</sup> floor
10.	Flat measuring	1582 sq. ft.
11.	Payment plan	Construction linked payment plan
12.	Total consideration amount as per clause 3.1 of the agreement	Rs. 40,77,932/- + EDC IDC

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13.	Total amount paid by the complainant till date	Rs. 41,11,290/- (as per details submitted by the complainant)
14.	Due date of delivery of possession as per clause 4.7 of agreement i.e. within a period of 3 years plus 6 months grace period from the date of execution of the agreement i.e. 20.04.2012 +3years+ 6 months	20.10.2015
15.	Delay in handing over possession from due date of possession till date of decision 18.07.2019	3 years 8 months and 28 days
16.	Penalty clause as per flat buyer's agreement	Clause 4.9 of the agreement i.e. Rs.5/- per sq. ft. per month of super area of unit.

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. An agreement dated 20.04.2012 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 20.10.2015. Neither the respondent has delivered the possession of the said unit till date nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of unit as per clause 4.9 of buyer's agreement dated 20.04.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice dated 09.03.2019 to the respondent for filing reply and

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for appearance on 18.06.2019. The respondent through his

counsel appeared on 18.07.2019. The case came up for hearing on 18.07.2019. The respondent filed reply on 01.04.2019 and same has been perused.

**Brief facts of the complaint**

6. The complainant submitted that she has entered into an agreement with M/s Soni Infratech Private limited on 20.04.2012 for purchase of flat no. 1201 in their project "Spire South" (Now Orion Galaxy) at Sector 68, Gurugram having total area of 1582 sq. ft.
7. 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 20.04.2012.
8. The complainant submitted that one of the conditions of agreement was that the respondent shall pay a penalty @ Rs. 5.00 per sq. ft. per month to the applicant for the delay caused by the respondent in delivering the possession of the flat.
9. The complainant submitted that she has to pay a penalty @12% per annum 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.

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

**Issues to be decided**

11. The issues raised by the complainant are as follows:
- Whether the respondent has delayed the delivery of possession of the booked unit and is liable to pay delay interest for the delay in delivery of possession?

**Reliefs sought**

12. The complainant is seeking the following reliefs:
- Direct the respondent to pay interest @12% p.a. to the applicant from 20.04.2015 on the amount deposited 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 the various dates of deposit upto the date of possession of the flat as the respondent has violated the terms and conditions of application form/agreement dated 20.10.2011.

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**Respondent's reply:**

13. The respondent submitted that it has duly procured all the necessary approvals and sanctions required with regard to the construction of the said group housing project and the construction at the project site is going on in full swing.
14. The respondent submitted that under the license no. 67 of 2010 and other approvals granted by the development of group housing project at section 68 Gurugram, the respondent awarded the work contract to M/s Era Engineering Limited vide agreement dated 28.12.2011.
- 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 delay of 6 months.
  - Having resolved the above issue, the contractor was instructed to carry out the construction. However, M/s Era failed to deploy sufficient labour/manpower at the

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site so as to cover up and bridge the delay which had already been caused. In view of the scope of work awarded to the contractor an average of 700 labour per day was required to be deployed to complete the work within the target period but the contractor failed to mobilize the required strength of manpower and could not deploy an average of 180 labour per day.

- d. Further, due to the financial crises M/s Era Infra Engineering Ltd. also defaulted in procuring sufficient material required to meet the milestones since procurement of construction material too was within the scope of the contractor.
- e. Despite repeated reminders and request from the end of respondent, the company M/s Era failed to rectify the situation created and the respondent was constrained to rescind the contract with Era vide termination letter dated 10.09.2015. Till the date of termination only 40% of the total work awarded to Era was done and rest 60% was still pending.
- f. Post termination of the contract with Era, the work was awarded to M/s Indsao Infratech vide agreement dated

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18.11.2015 and the construction was resumed at the site with effect from 21.11.2015. The respondent himself was helpless during this period as the situation created was not owing to his fault but due to internal crisis within the company M/s Era which is an independent contractor. The estimated time to complete the pending 60% work left by Era as declared by the new contractor would be about 2 years from the date of award of work and further one year to complete the finishing work and handling over the project. The delay in completion of work was solely on account of default on part of the contractor M/s Era Infra Engineering Limited.

15. The respondent submitted that the shareholder of M/s Soni Infratech Private Limited the land-owning company after the grant of license entered into a shareholding agreement with "Spire Group". By virtue of the said agreement the responsibility to launch the project, construct and develop the project was that of spire group.

16. The respondent submitted that the tower 2 of the project Orion Galaxy are nearly complete in all respects. The respondent herein wishes to place before the hon'ble court the



architect's certificate of project status of Orion Galaxy, Sector 68, Gurugram. The plaster, tiling and flooring work is nearing completion. The respondent has already applied for the fire NOC and is awaiting the same. Once this is received, the respondent will be entitled to apply for the occupation certificate. It is anticipated that thereafter and subject to the receipt of the said certificates and approvals, the apartments in phase I which includes tower 2 will be ready for delivery by end of year 2019. The true copy of the status report of the project which includes the pictures of the project as on October 2018 is available in records.

17. The respondent has submitted that construction of all towers of the project are going in full swing and 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. ( Subject to force majeure conditions and also subject to providing of the external development commits delay ( i.e. delay after the expiry of

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grace period) in offering possession of unit to allottee, developer shall pay a sum Rs. 5/- per sq. ft. of the super area of unit per month for the period of delay towards liquidated damages).

18. The respondent further submitted that the construction in the project site is underway in full swing and is nearing possession. The first phase of the group housing project will be offered for possession within the next 4-6 months.
19. The respondent submitted that respondent has got his project registered with 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 the time frame/ schedule as declared and submitted with the HARERA. 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 complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

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20. With respect to the **sole issue** raised by the complainant, as per clause 4.7 of agreement dated 20.04.2012, the possession of the flat was to be handed over within 3 years plus 6 months grace period from the date of execution of the agreement i.e. 20.04.2012 plus 3 years and 6 months. Accordingly, the due date of possession was 20.10.2015 and the possession has been delayed by 3 years 8 months and 28 days till the date of order. As the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the rules ibid, to pay interest to the complainant at prescribed rate i.e. 10.60% per annum for every month of delay from the due date i.e. 20.10.2015 till the offer of possession to the complainant.

#### **Findings of the authority**

21. 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.* As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and 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

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

22. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. 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. Arguments heard. As per clause 4.7 of the agreement dated 20.04.2012 for unit No.1201, tower-1, 12<sup>th</sup> floor, in project "Spire South (Now Orion Galaxy), Sector-68, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of agreement + 6 months grace period which comes out to be 20.10.2015. However, the respondent has failed to deliver the possession of the unit to the complainant in time. Complainant has already paid Rs.41,10,293/- to the respondent against a total sale consideration of Rs.40,77,932/- + EDC and IDC.

**Directions of the authority: -**

24. 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

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

- i. The respondent is liable to pay delay possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 20.10.2015 as per the provisions of proviso section 18 (1) proviso read with rule 15 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 subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.
- v. Interest on the 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.

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25. The order is pronounced.
26. Case file be consigned to the registry.



Judgement uploaded on 24.07.2019

