



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा


PROCEEDINGS OF THE DAY

Day and Date	Wednesday 27.06.18
Complaint No.	13/2018 case titled as Mr. Hardik Shantilal Hundia V/s M/s Soni Infratech Pvt. Ltd.
Complainant	Mr. Hardik Shantilal Hundia
Represented through	Complainant in person
Respondent	M/s Soni Infratech Pvt. Ltd.
Respondent Represented through	Ms. Sangeeta Kataria, Advocate on behalf of the Respondent.

Proceedings

The counsel for the complainant made a statement that he is not appearing before the Authority for compensation but for fulfilment on the obligations by the promoter as per The Real Estate (Regulation & Development) Act, 2016 for which he will be giving application.

As the complainant is not agreed to continue with the project, thus the respondent is directed to refund the deposited amount with the promoter alongwith interest @ of marginal cost of lending of State Bank of India which is currently prevailing plus 2% per annum within a month to the complainant. The complainant is allowed and disposed of accordingly. The detail order will follow. The file is consigned to records of registry.


Sanjay Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
27.06.2018

B.K

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

Complaint No. : 13 of 2018
Date of Institution : 15.02. 2018
Date of Decision : 27.06. 2018

Mr. Hardik Hundia Resident of House J/401,
Sispal Vihar , Sector-49 Sohna Road Gurugram

Complainant

Versus

M/s Soni Infratech Pvt.Ltd. 713A, 7th Floor,
Narain Manzil, 23 Barakhamba
Road,Connaught Place New Delhi- 110001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Mr.Hardik Hundia Complainant in person
Ms.Sangeeta Kataria Advocate for the respondent

ORDER

1. A complaint dated 15.02.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulatory & development) rules 2017 by the complainant (Mr. Hardik Hundia) against the promoter (M/s Soni Infratech Pvt Ltd.) on accounts of violation of clause 4.7 of the





builder buyer agreement executed on 7.06.2012 for unit no. 204, Floor - 2nd, Tower-T5 in the project Orion Galaxy for not giving possession on due date which is an obligation under section 11 (4) (a) of the act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the Project	Orion Galaxy, village Badshapur, Sector -68, Gurugram
2.	RERA Registration No.	100 of 2017
3.	Flat/Apartment/Plot No./Unit No.	204, Floor - 2nd, Tower-T5
4.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs.2,00,000/-
5.	Total consideration amount as per agreement dated 7.06.2012	Rs. 63,18,072/-
6.	Total amount paid by the complainant upto date	Rs. 48,55,165/-
7.	Percentage of consideration amount	Approx. 76 Percent
8.	Date of delivery of possession from the date of builder as per buyer agreement execution of agreement	3 years i.e. 7.06.2015





9.	Delay for number of months/ years upto date	3 Years
10.	Penalty Clause as per builder buyer agreement dated 7.06.2012	Sub clause 7 of Clause 4 i.e. Rs.5/- per square ft. per month
11.	Cause of delay in delivery of possession	Default on the part of the contractor

3. The details provided above, have been checked on the basis of record available in the case file. A builder buyer agreement is available on record for Unit No 204, Floor - 2nd, Tower-T5 village Badshapur, Sector -68, Gurugram in the project Orion Galaxy according to which the possession of the aforesaid unit was to be delivered by 7.06.2015. whereas the respondent company has not delivered the possession till 27.06.2018 even after expiry of more than three years. The promoter has not fulfilled his committed liability as on date. Neither he has delivered the possession of the unit no. No204, Floor - 2nd, Tower-T5 as on date to the complainant nor has paid any compensation to him for the delayed period i.e. @ Rs. 5 per sq. ft. of the super area of the said unit per month as per clause 4.9 of builder buyer agreement dated 7.06.2012
4. Taking cognizance of the complaint, the authority issued notice dated 19.03.2018 to the respondent for filing reply





and for appearance on 11.04.2018. The respondent neither appeared nor submitted reply on the given date i.e. 11.04.2018. The respondent appeared on 25.05.2018 but did not file the reply. The case came up for hearing on 11.04.2018,25.05.2018,15.05.2018,07.06.2018 & 27.06.2018. The reply was filed on behalf of the respondent company after 25.05.2018 which has been perused and found to be vague and evasive. It was contended by the respondent that the progress of the project was affected to the default on part of the contractor.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. It came to the notice of the authority that the Construction activities at the site is far less than the milestone, so it is not possible for the respondent to handover the possession of that even in the near future.
6. As per agreement for sale, clause no. 4.7 the possession of the flat was to be handed over within 36 months from the date of execution of builder buyer agreement (with a grace period of 6 months) . As per date of execution of buyer agreement, the due date of possession was 7.06. 2015.as far as the penalty clause in case of delay in possession is



concerned which is Rs 5 sq ft, it is held to be one – sided as held in para 181 of the judgment in case of *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors.* (W.P 2737 of 2017), where in the Bombay HC bench held that:

“..... Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

In the present complaint also, there is a completely one-sided agreement which clearly favors the builder and leaves no relief for the allottee.

7. It is requested by the complainant that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act 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.”

8. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the Adjudicating Officer. From the conduct of the respondent as well as the terms and condition of builder buyer agreement, the respondents have failed to give possession of the space, as per Builder Buyer Agreement which is in violation of Section 11 (4) (a).

“11.4 The promoter shall—

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*





9. Keeping in view the present deplorable status of the project, the complainant wishes to **withdraw** from the project and as per section 18(1) of the Act, complainant has made a demand to the promoter to return the amount received by him in respect of the flat allotted to him with prescribed rate of interest. The promoter has failed to return the amount received by him along with the prescribed rate of interest which is an obligation on the promoter as per the provision of section 18(1)

18 (1) Return of amount and compensation -

1. *If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*
- (a) *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
 - (b) *due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the



handing over of the possession, at such rate as may be prescribed.


Complainant reserves its right to seek compensation from the promoter for which he/she shall make separate application to the adjudicating officer, if required.


10. Thus, the prayer of the complainant has been considered and allowed by the authority and accordingly the respondent is directed to refund the deposited amount with the promoter along with interest @ of marginal cost of lending of state bank of India which is currently prevailing plus 2% i.e. 10.15% per annum within a month of the date of this order to the complainant.


11. The order is pronounced.

12. Case file be consigned to the registry.




(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal) 27.6.2018
Chairman

Haryana Real Estate Regulatory Authority, Gurugram