

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

**Complaint no. : 1107 of 2018**  
**Date of First hearing : 28.02.2019**  
**Date of decision : 28.02.2019**

Smt. Jasbir Dagar  
R/o A-369, Maidan Garhi Road, Chattarpur  
Enclave Phase-II, New Delhi

**...Complainant**

Versus

M/s Soni Infratech Private Limited (through  
its authorised representative)  
Office at: 517 A, 5<sup>th</sup> Floor, Narain Manzil, 23  
Barakhamba Road, Connaught Place, New  
Delhi-110001

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Rishabh Gupta  
None for the respondent

Advocate for the complainant  
Advocate for the respondent



**EX-PARTE ORDER**

1. A complaint dated 09.10.2018 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 Smt. Jasbir Dagar against the promoter M/s Soni Infratech Private Limited (through its authorised representative), in respect of unit described below in the project 'Orion Galaxy', on account of violation of section 11(4)(a) of the Act *ibid*.

2. Since the booking was made on 03.02.2016, 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: -

1.	Name and location of the project	"Orion Galaxy" in Sector 68, Gurugram
2.	Project area	12.287 acres (as per registration certificate)
3.	Nature of project	Group housing colony
4.	Unit no.	403, tower 'T13' (as per the complaint)
5.	Unit area	1390 sq. ft. (as per the complaint)



6.	Registered/not registered	<b>Registered (100 of 2017)</b>
7.	Revised date of completion as per RERA registration certificate	<b>31.12.2023</b>
8.	DTCP license	67 of 2010 dated 31.08.2010
9.	Date of booking	03.02.2016
10.	Date of buyer's agreement	<b>No BBA has been executed between the parties</b>
11.	Total consideration	Rs.74,37,000/- (as per the complaint)
12.	Total amount paid by the complainant	Rs. 12,97,131/- (as per receipts attached with the paper book)
13.	Payment plan	<b>Cannot be ascertained</b>
14.	Date of delivery of possession	<b>Cannot be ascertained</b>
15.	Delay of number of months/ years up to 28.02.2019	<b>Cannot be ascertained</b>
16.	Penalty clause as per buyer's agreement	<b>Cannot be ascertained</b>

4. The details provided above have been checked on the basis of the record available in the case file. No agreement is available on record. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his 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 28.02.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

### **Facts of the complaint**

6. The complainant submitted that believing the assurances of the respondent, on 03.02.2016, the complainant booked a unit in the project named 'Orion Galaxy' by paying an advance amount of Rs. 2,00,000/- to the respondent. Accordingly, the complainant was issued a customer ID no. SS00635, and was allotted a unit bearing no. 403, tower- T-13 measuring 1390 sq. feet in the said project. A rough calculation was written by the respondent employee which shows the total sale consideration of the unit i.e. basic sale price of Rs. 62,37,000/- and assured that after execution of builder buyer agreement, it will include additional charges as well as preferential location charges of Rs. 12,00,000/-. Thus, the total sale consideration of the unit comes to Rs. 74,37,000/-.
7. The complainant submitted that after entering into the application letter, the complainant had a site visit with one



employee of the respondent who assured that the project will construct on that land and assured that the project will be completely developed by June 2018 and possession will also be handed over to the complainant.

8. The complainant submitted that thereafter, she asked for execution of builder buyer agreement for which the respondent represented that only after obtaining 30% as booking amount of basic sale price, a builder buyer agreement is liable to be executed.
9. The complainant submitted that it was agreed between the parties that 10% amount to be paid after 45 days of booking and more 10% amount to be paid after starting of construction. It is submitted that the respondent issued a demand letter dated 21.03.2016 for Rs. 4,48,174/- and the said amount was paid by the complainant. The respondent further issued a demand letter dated 21.06.2017 of Rs. 6,48,957/- and the same was also paid by the complainant. Receipts of both the payments have been annexed with the paper book.
10. The complainant submitted that out of total sale consideration of Rs. 74,37,000/-, the complainant had paid Rs



12,97,131/-, i.e. more than 15% payment of total sale consideration. It is submitted that thereafter, the complainant contacted the respondent for which the respondent again assured that the project is under construction and will be completed by the year 2018. The complainant, in the month of January 2018 visited the spot and after seeing the site view, she was shocked to see that the land is still lying vacant and no construction work has been carried out by the respondent. Even the excavation level in the land had not been constructed. The current photographs of the project are attached in the file.

11. The complainant further submitted that after visiting/ seeing the spot, she had no faith upon the respondent and tried to contact them for refund. The respondent always used to make one pretext or the other. The complainant visited the office of the respondent at Delhi and filed an application for cancellation of allotment and refund of money paid by them. The said application was received by the official of the respondent and he signed after receiving it. The said application is attached herewith. The complainant also wrote many emails to the officials of the respondent for cancellation of allotment and getting refund of amount paid by the





complainant. It is also pertinent to mention here that the respondent official assured/ represented that they are ready to refund the amount paid by the complainant but till now no piece of amount has been given by the respondent to the complainant. Thus, above facts and circumstances shows how the respondent had cheated the complainant and her family and the respondent wanted to usurp the hard-earned money of the complainant. This is a clear-cut case of unfair trade practice, unfair use of dominant position of the respondent to cheat the innocent customers like the complainant and deficiency in service adopted by the respondent.

12. The complainant further submitted that it is pertinent to mention that she and her husband, both are senior citizen of India and now they are in need of money to get their medical treatments. Thus, keeping in view the status of project and the intervening circumstances, the complainant intends to withdraw from the project and filed the present compliant under section 31 of the said Act.

**13. Issues raised**

The relevant issues as culled out from the complaint are as follows:



- I. Whether the respondent is in progress of construction of tower/project or not?
- II. Whether the complainant is entitled to withdraw from the project and is entitled for refund of invested money along with interest, as provided under the provisions of the RERA, 2016?

#### 14. Relief sought

- I. Direct the respondent to cancel the allotment and refund the principal amount of Rs.12,97,131/- along with the interest at the prescribed rate as paid by the complainant and as per demand letter, from booking date i.e. 3.02.2016 till final decision of the complaint.

#### Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

15. With respect to the **first and second issue** raised by the complainant, although the complainant has annexed photos in the paper book, but the correct position as to the construction progress cannot be made out. Further, keeping





in view the non-appearance of the respondent and going through documentary evidence, the authority is of the considered opinion that the complainant is entitled to refund of the principal amount deposited by her after deducting 10% of basic sale price (BSP) with prescribed rate of interest @ 10.75% per annum.

16. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
17. 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.
18. The complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required.

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

19. **Jurisdiction of the authority-** The project “Orion Galaxy” is located in Sector 68, Gurugram, thus 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.

20. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs.5,000/-. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs.10,000/-.

21. Such notices were issued to the respondent on 11.10.2018 and on 29.10.2018 and on 29.11.2018. Further, a final notice dated 18.02.2019 by way of email was sent to both the



parties to appear before the authority on 28.02.2019.

22. As the respondent has failed to be present before the authority or to submit the reply in such period, despite due and proper service of notices, it appears that the respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing material particulars in the matter. Thus, 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.

23. No builder buyer agreement has been executed between the parties. Thus, the due date of handing over possession cannot be ascertained. However, the date of delivery of possession as per RERA registration certificate is 31.12.2023. Further, as against the total sale consideration of Rs.74,37,000/-, the complainant has paid only Rs.12,97,131/- to the respondent. Keeping in view the non-appearance of the respondent and going through documentary evidence, the authority is of the considered opinion that the complainant is entitled to refund of the principal amount deposited by her after deducting 10% of basic sale price (BSP) with prescribed rate of interest @



10.75% per annum.

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 refund to the complainant the principal sum of Rs. 12,97,131/- paid by her after deducting 10% of BSP with prescribed rate of interest @10.75% within a period of 90 days from the date of the order.

25. The complaint is disposed of accordingly.

26. The order is pronounced.

27. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member



Dated: 28.02.2019

Judgement uploaded on 28.03.2019