

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

Complaint no. :	7 of 2022
Date of filing complaint:	21.01.2022
First date of hearing:	11.02.2022
Date of decision :	21.07.2022

1. Mr. Naveen Yadav S/o Sh. Jagdish Yadav R/o: H.no. 169, Mohalla Ponga, Village - Wazirabad, Gurugram	<b>Complainants</b>
2. Mr. Vikas Kumar S/o Mr. Rambir R/o: H.no. 173, Mohalla Ponga, Village - Wazirabad, Gurugram	
Versus	
1. M/s Spaze Tower Pvt. Ltd. R/o: A-307, Ansal Chamber - 1, 3 Bhikaji Cama Place, New Delhi - 110066	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Geetansh Nagpal (Advocate)	Complainants
Sh. J.K. Dang (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of

section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Spaze Boulevard, Sec 47, Gurugram
2.	Allotment letter	18.11.2010 (Annexure C3 at page 58 of complaint)
3.	Unit no.	F-38, 1 <sup>st</sup> floor admeasuring 346 sq. ft. (Annexure C4 at page 61 of complaint)
4.	Date of execution of buyer's agreement	23.08.2011 (Annexure C4 at page 59 of complaint)
5.	Possession clause	14 That the possession of the said premises is proposes to be



		delivered by the developer to the allottee within <b>three years from the date of this agreement... (emphasis supplied)</b>
6.	Due date of possession	23.08.2014 Calculated from the date of agreement
7.	Total sale consideration	Rs.25,71,968/- [Page 119 of the complaint]
8.	Total amount paid by the complainant	Rs.14,60,975/- [As per receipts annexed at page 46-55]
9.	Occupation certificate	27.07.2020 (Annexure 20, page 170 of reply)
10.	Last and final opportunity	15.05.2014 (Annexure R7 at page 98 of complaint)
11.	Cancellation letter	23.05.2014 (Annexure C5 at page 87 of complaint)
12.	Possession letter	<b><i>The respondent has admitted in its reply that after termination of the unit, it was reallocated to third party on 23.10.2015 to Mr. Shailender Kapoor and the respondent</i></b>

		<i>has also placed on record possession letter dated 29.01.2018 (Annexure R11 at page 103 of reply)</i>
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**B. Facts of the complaint:**

3. The respondent company issued advertisement announcing a commercial colony project namely SPAZE BOULEVARD situated at Sector-47 Gurugram, Haryana and thereby invited applications from prospective buyers. Complainants paid to the agents of the respondent company an initial amount of Rs. 3,00,000.00 vide a cheque dated 01.12.2009 and accordingly filed the application form. The complainants rigorously followed up with the respondent company requesting for the issuance of an allotment against their application form. That the respondent raised a demand of Rs. 46,340.00 which was paid by the complainants through a cheque on 15.04.2010 and the same was acknowledged by the receipt issued by the respondent on 17.05.2010. Further, the respondent raised a demand of Rs. 2,42,828/- which was paid by the complainants through cheque on 15.07.2010 and the same was acknowledged. Subsequently, the respondent issued an allotment on 26.11.2010 for the unit in question.
4. Thereafter, the complainants on 28.02.2011, paid an amount of Rs. 14,396.00 through a cheque. The respondent duly executed a buyer's agreement with the complainants on 23.08.2011 after taking Rs. 10,29,241.00 against a total demand raised by it of Rs.



10,29,241.00. The respondent raised a demand of Rs. 4,23,338.00 and Rs. 8,453.00 towards the demand of the casting of the ground floor slab and second floor slab which was paid by the complainants through cheques dated 25.01.2012 and the same was acknowledged. The complainants upon visiting the site came to know that the construction had been stalled and the demands were not as per the construction linked demands raised. That the complainants stopped receiving any demand from the respondent till 2014 and where upon visiting the office of the respondent's, the complainant were issued a termination letter by the respondent on 23rd May, 2014 received at the office in 2018 unilaterally cancelling the unit of the complainants.

5. That against the said cancellation, the complainants proffered an application before the Lok Adalat in 2018 seeking to take possession of the unit allocated to them but the same has not been heard to certain exigencies. Therefore, aggrieved by the lack of any adjudication in the lok Adalat the complainants preferred a complaint before the Hon'ble Authority. The complainants are seeking the relief of possession of the allocated unit in the project and undertakes to pay the remaining balance as agreed in the buyer's agreement along with the interest at the prescribed rate. Hence, this complaint.

**C. Relief sought by the complainants:**

6. The complainants have sought following relief(s):

- i. Direct the respondent to handover the possession of the Unit to the complainants as soon as possible.
- ii. Declare the cancellation issued by the respondent on the complainants as on sided and arbitrary.
- iii. Restrain the respondent from raising any fresh demand with respect to the project.
- iv. Order the respondent to adjust the entire amount of interest due to the complainants from the date of the delivery period as per the buyer's agreement to the actual delivery of possession against the demands from the complainants, if any, as per the guidelines laid in the RERA, 2016.
- v. Order the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the sale deed.
- vi. Order the respondent not to charge anything irrelevant which has not been agreed to between the parties like increased amount of instalments, which in any case is not payable by the complainants.
- vii. Order the respondent not to charge anything towards GST for the reasons explained in the petition.
- viii. Order the respondent not to charge anything towards HVAT for the reasons explained in the petition.



- ix. Order the respondent to withdraw the excessive demands raised against the internal painting and adjusted the same before issuing any further demands.
- x. Order the respondent to kindly handover the entire possession of the unit of the complainants, once it is ready, in all respects with proper road, electrification of the roads, functioning of the club etc. and other things which were assured in the brochure, as the complainant had booked a unit in a complex based on the brochure and not a stand-alone flat.

**D. Reply by respondent:**

7. That the present complaint is not maintainable in law or on facts. This Hon'ble Authority does not have the jurisdiction to hear or decide the present complaint or to grant any relief to the complainants. The present complaint is liable to be dismissed on this ground alone. That the complaint is barred by limitation. The so-called cause of action arose in favour of the complainants before RERA came into force.
8. That the complainants have filed the present complaint, seeking, inter alia, possession of unit in question and interest for alleged delayed possession. It is respectfully submitted that the provisional allotment in favour of the complainants was cancelled as far back as on 22<sup>nd</sup> May 2014 due to persistent and wilful default in making payment of sale consideration as per the applicable payment plan. The complainants, although in receipt of the cancellation notice as well as the notices and reminders for

payment, never took any steps to get the allotment restored or to challenge the cancellation of allotment, which was done by the respondent in accordance with the buyer's agreement dated 23.08.2011.

9. That after cancellation of allotment by the respondent, the unit in question was allotted in favour of Mr Shalinder Kumar Kapoor and Mr Lokesh Kapoor. The construction of the unit was completed, and possession of the unit has already been handed over on 29<sup>th</sup> January 2018. That right from the very beginning, the complainants were extremely irregular in payment of instalments. It was repeatedly emphasized by the respondent that delayed payment would attract interest in accordance with the terms and conditions of buyer's agreement dated 23<sup>rd</sup> August 2011. However, the complainants continued to default in the contractual obligations. The last and final opportunity was afforded by the respondent to the complainants vide notice dated 15<sup>th</sup> May 2014 to immediately clear their outstanding dues of Rs 13,84,993/- failing which the complainants were informed that their allotment would stand cancelled and earnest money and other amount shall stand forfeited in accordance with the terms and conditions of allotment/buyer's agreement dated 23<sup>rd</sup> August 2011.
10. That the complainants neither responded to the aforesaid notice nor made payment of the outstanding dues to the respondent. Consequently, the respondent was constrained to terminate the allotment in favour of the complainants with effect from 22.05.2014. By the said notice, the complainants were informed



that they should contact the customer care department/accounts department for full and final settlement of accounts and to collect the balance amount, if any, after completion of due formalities. Once again, there was no response from the complainants. Thereafter, the respondent informed the complainants vide letter dated 10<sup>th</sup> June 2014 that after forfeiture of earnest money and other amounts as per the buyer's agreement dated 23<sup>rd</sup> August 2011, an amount of Rs 6,93,707/- was refundable to the complainants. That after keeping silent for more than 4 years, the complainants filed a false and frivolous application before the Hon'ble Permanent Lok Adalat, Public Utility Services, Gurugram praying for possession of the unit in question. The respondent filed its reply, *inter alia*, highlighting that the allotment in favour of the complainants was cancelled w.e.f. 22.05.2014 due to the wilful and persistent defaults by the complainants and duly communicated to them vide communication dated 23.05.2014. When it became apparent to the complainants that the same is going to be dismissed, they withdrew the application and filed the present misconceived and untenable complaint before this Hon'ble Authority.

11. That clause 9 of the buyer's agreement provides that it shall be incumbent upon the allottee to comply with the terms and conditions including terms of payment failing which the developer shall be entitled to cancel the allotment and the earnest money along with interest on unpaid instalments shall be forfeited. Upon cancellation, the allottee shall not be left with any right, title or

interest or claim of any nature whatsoever over the cancelled unit and that the developer shall be at liberty to re allot and/or deal with the unit in any manner whatsoever at its sole discretion. It is pertinent to mention that the application for approval of building plans was submitted on 23.04.2010 and the approval for the same was granted on 07.09.2010. The respondent submitted an application for grant of environment clearance to the concerned statutory authority on 09.05.2017. However, for one reason or the other arising out of circumstances beyond the power and control of respondent, the aforesaid clearance has only been granted on 05.02.2020, despite due diligence having been exercised by it in this regard. It is pertinent to note that all construction activities involving excavation, civil construction were stopped in Delhi and NCR Districts from 1st November 2018 to 10th November 2018 vide directions issued by Environment Pollution (Prevention & Control) Authority for the National Capital Region. The said circular was applicable to the project in question and consequently, the respondent had to suspend its construction activities for the said period. Respondent cannot be held liable for any delay caused due to this fact as well.

12. The respondent applied for grant of occupation certificate on 08.01.2016. The construction of the building in question has been completed and occupation certificate for the same has been received as well. It is pertinent to mention that occupation certificate dated 27th of July, 2020 had been received by the respondent with respect to the said project. The relevant court



order dated 20.08.2016 passed in case titled "Sushil Suri and others Vs. M/s Spaze Tower Private Limited" vide which possession was to be offered to the allottees in the said project. That the complaint has been preferred on absolutely baseless, unfounded and legally and factually unsustainable surmises which can never inspire the confidence of this Honourable Authority. The accusations levelled by the complainants are completely devoid of merit. The complaint filed by the complainants deserves to be dismissed.

13. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

14. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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 deal with the present complaint.

## **E. II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

### **Section 11(4)(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;*

### **Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, 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 if pursued by the complainants at a later stage.

## **F. Findings regarding relief sought by the complainants:**

**F.1 Declare the cancellation issued by the respondent on the Complainants as on sided and arbitrary.**



The complainants were allotted unit no F-38 on 1<sup>st</sup> floor in the project "Spaze Boulevard" by the respondent builder for a total consideration of Rs. 25,71,968/- under the construction linked payment plan on page 119 of the complaint. After that BBA was executed on 23.08.2011, the respondent builder continued to receive the payments against the allotted unit. It has brought on record that the complainants had deposited several amounts against the allotted unit and paid a sum of Rs. 14,60,975/-. It is to be noted that demands were raised against /for instalments due towards consideration of allotted unit and various demands and reminders letters were issued vide letters dated 17.11.2010, 21.12.2010, 09.08.2011, 07.02.2012, 23.05.2014 were raised in respect of payment of outstanding dues.

That the respondent pleaded that after issued final opportunity letter to the complainants on 15.05.2014, they did not come forward to clear their dues and take possession, due to which the respondent was left with no option but to issue cancellation letter dated 23.05.2014. After repeated reminders the respondent terminated the allotment of the unit vide cancellation letter dated 23.05.2014.

On consideration of the documents available on record and submission by both the parties, the authority is of the view that the allottee has failed to abide by the terms of agreement by not making the payments in timely manner as per the payment plan opted by them. The complainants failed to pay the remaining amount as per the schedule of payment.

**Now the question before the authority is whether this cancellation is valid?**

As per clause 8 of the BBA, the allottee is liable to make payment on time and in default in doing so, shall entitle the developer to terminate this contract. Further as per clause 9 of the agreement, developer shall at liberty to forfeit the entire amount of earnest money as well as interest over unpaid instalments

The respondent has obtained occupation certificate from the competent authority on 27.07.2020 but no offer of possession has been made to the complainant. The respondent has given ample opportunities by way of demand letters/ reminders to complainant and thereafter when they did not come forward to pay the outstanding amount, the respondent cancelled the unit allotted to the complainants with adequate notices. Thus, the cancellation of unit is valid.

Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

***"5. AMOUNT OF EARNEST MONEY***

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where*



*the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

Keeping in view the aforesaid legal provisions, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram within 90 days from the date of this order alongwith interest @ 9.80% p.a. on the refundable amount from the date of cancellation i.e.,23.05.2014 till the date of its payment.

**F.2 Possession and other mentioned reliefs:**

Keeping in view the cancellation found to be valid by the authority, the relief no. 1 and 3 to 10 become irrelevant.

**G. Directions of the authority:**

15. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram within 90 days from the date of this order.

- ii. The respondent is also directed to pay interest @ 9.80% p.a. on the refundable amount from the date of cancellation i.e., 23.05.2014 till the date of its payment.

16. Complaint stands disposed of.

17. File be consigned to registry.

*v.l - 3*  
**(Vijay Kumar Goyal)**  
Member

**(Dr. KK Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 21.07.2022**

  
**HARERA**  
**GURUGRAM**