rBEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: 27.07.2023

Appeal No. 420 of 2022

1. Ms. Rita Gupta
2. Mr. Avinash Kumar Gupta

Both R/o 298, Deerwood Chase Nirvana Country, South City-II, Gurgon-122018.

Appellants

Versus

M/s Spaze Towers Private Limited R/o UG-39, Upper Ground Floor, Somdatt Chamber-II, 9, Bhikaji CAMA PLACE, New Delhi, South West Delhi 110066.

Respondent

Appeal No. 313 of 2022

1. Ms. Sneh Bala Sood
2. Mr. Munishwar Chander Sood

Both R/o 297, Deerwood Chase, Nirvana Country, South City-II, Gurgaon-122018.

Appellants

Versus

M/s Spaze Towers Private Limited R/o UG-39, Upper Ground Floor, Somdatt Chamber-II, 9, Bhikaji CAMA PLACE, New Delhi, South West Delhi 110066.

Respondent

CORAM:

Shri Justice Rajan Gupta **Chairman**
Shri Inderjeet Mehta **Member (Judicial)**
Shri Anil Kumar Gupta **Member (Technical)**

Argued by: Mr. Amarjeet Kumar, Advocate,
for the appellant.

Mr. Yashvir Singh Balhara, Advocate,
for the respondent.

O R D E R:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

1. By this order, we are disposing of the aforesaid two appeals bearing nos. 420 of 2022 & 313 of 2022 arising out of the orders of the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority') in complaint nos. 4650 of 2020 & 4646 of 2020.

2. Arguments were heard in common. The facts and issues involved in the above appeals were same and therefore, the same could be disposed, by passing one consolidated order. To dictate order, facts are being taken from appeal bearing no. 420 of 2020 titled as "Rita Gupta & Anr. Vs. Spaze Towers Private Ltd."

3. The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) against order dated 15.03.2022 passed by the Authority, whereby complaint No.

4650 of 2020 filed by the Appellant was disposed of by the following directions:

> *"(i) The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession + six months of grace period is allowed i.e. 22.07.2017 till the expiry of 2 months from the date of offer of possession (01.12.2021) which comes out to be 01.02.2021. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.*
>
> *(ii) Also, the amount of Rs. 2,82,797/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to Section 18(1) of the Act.*
>
> *(iii) the complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
>
> *(iv) the rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allotee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.*

> *(v) The respondent shall not charge anything from the complainants which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottees at any point of time even after at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020 "*

4. As per averments in the complainant, the respondent in the year 2011, launched one of their housing projects, by the name of "Spaze Privy At 4" at Sector-84, Gurgaon. The appellants applied for the property vide application dated 30.03.2011 and within 5 months of the booking were allotted a unit no. 063 on the floor 6, tower B-3 tentatively measuring 2070 sq.ft. In the project "Spaze Privy At 4". The total consideration as per the allotment letter was Rs. 86,89,906/-. The respondent, thereafter in the month of November 2011 sent the Buyer's agreement (hereinafter called the 'Agreement')) vide letter dated 19.11.2011 asking the appellants/complainants to send back the signed copy within a period of 1 month from the date of receipt of the same. It was mentioned in the said letter that upon failure to do the same, the allotment will be treated to be cancelled. The appellants accordingly signed the copy of the agreement and delivered the signed copy of the same at the respondent office within a period

of 1 month sometime in the month of December 2011. Thus, in the present case the date of execution of agreement is deemed to be 19th December 2011 and not as put by the respondent in the agreement.

5. It was further pleaded that the respondent has put the date as 22.01.2014, as the date of signing of agreement which is categorically disputed and denied. The agreement is of year 2011 is also evident from the fact that stamp embossed on the said agreement, is of November 2011. As per clause no.3(a) of the agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the date of approval of the building plan or from the date of signing of the agreement, whichever is later. In the present case since the agreement is of year 2011 and thus the date of building plan becomes relevant for calculating the date the possession and 36 months has to be calculated from the date of building plan approval.

6. It was further pleaded that in the present case the date of handing over the possession has to be taken from the date of approval of building plan 06.06.2012 and thus the respondent was supposed to handover the possession on or before 06.06.2015. Considering the 6 months grace period, the respondent was supposed to handover the possession of the unit by 06.12.2015. As per the contract act, the date of

acceptance of the offer made by the respondent is deemed to be on the date when the appellants signed the agreement and sent it to the respondent. The respondent has failed to handover the possession even as per the agreement and the same expired on 06.12.2015 (including 6 months grace period). The total consideration of the apartment as per the agreement was 86,89,906/. It is pertinent to mention here that the appellants had already made a payment of Rs 86,90,278/- as on date and had paid the installment of "On completion of flooring within the apartment" which was last raised in the year 2015 and the notice of possession (though denied) has been raised after a lapse of more than 5 years thereafter. That several demands were raised by the respondent on account of stage wise construction of the project, though it was not entitled do the same and the appellants continued to pay as per the said demands.

7. It was further pleaded that the appellants visited the site again in the first week of September 2019, i.e. after having paid more than 100% of the total sale consideration. The appellants were shocked to see that the actual work for the construction of their apartment was far away from completion even though possession was supposed to be handed over in 2015. Despite the project not being incomplete, the respondent issued a notice of possession vide email dated 05 December

2020, whereby the respondent has demanded an amount of Rs.17,64,667/- in addition to Rs. 2,42,500 as preserve demand bifurcation. The demands raised by the respondent as per said notice of possession is totally illegal and untenable in the eyes of Law. As per the terms of the payment plan opted by the appellants, they were just supposed to pay a sum of Rs. 3,49,416/- on the final notice of possession.

8. With these pleadings, the appellants filed the complaint inter alia claiming the following reliefs:-

> *" i. Direct the respondent to give possession of the fully developer/constructed apartment with all amenities.*
>
> *i. Direct the respondent to pay the delayed possession interest on the amount paid by the allotte, at the prescribed rate from the due date of possession to till the actual possession of the flat is handed over as per the proviso to section 18(1) of the Real Estate Regulation and Development) Act, 2016.*
>
> *iii.. Direct the respondent to issues a fresh notice of possession as per the BBA and to consider the date of building plan approval as the date of calculating the delayed possession charges."*

9. The complaint was resisted by the respondent on the grounds that the complaint is not maintainable in law or on facts.

10. It was further pleaded that in terms of clause 3(a) of the aforesaid contract, the time period for delivery of possession was 36 months excluding a grace period of 6 months from the date of approval of building plans or date of execution of the agreement, whichever is later. The application for approval of building plans was submitted on 26.08.2011 and the approval for the same was granted on 06.06.2012. Therefore, the time period of 36 months and grace period of 6 months as stipulated in the contract has to be calculated from the date of execution of the agreement, i.e., 22nd January 2014, subject to the provisions of the agreement. It was further provided in clause 3(b) of the said agreement that in case any delay occurs on account of delay in sanction of the building/zoning plans by the concerned statutory authority or due to any reason beyond the control of the developer, the period taken by the concerned statutory authority would also be excluded from the time period stipulated in the contract for delivery of physical possession and consequently, the period for delivery of physical possession would be extended accordingly. It was further expressed therein that the allottee would not be entitled to claim compensation of any nature whatsoever for the said period extended in the manner stated above.

11. It was also pleaded that a considerable time was consumed in obtaining the environment clearance, building plans approvals, clearance from PWD Department, the approvals from

Department Mines & Geology, approval from Fire Department, Approval from Forest Department and Aravali NOC from DC Gurugaon.

12. The said project cannot have been constructed, developed and implemented by the respondent without obtaining the said sanctions. Thus, respondent was prevented by circumstances beyond its controlled and therefore the same is liable to be excluded while computing the period of 36 months and grace period of 6 months as has been explicitly provided in said agreement. In fact, the total outstanding amount including Interest due to be paid by the appellants to the respondent on the date of dispatch of letter of offer of possession dated 01.12.2020. Although, there was no lapse on the part of the respondent yet an amount of Rs.2,82,797/- was credited to the account of the appellants. The respondent despite defaults committed by several allottees earnestly fulfilled its obligations under the agreement and completed the project as expeditiously as possible in the facts and circumstances of the case.

13. It was also pleaded that occupation certificate bearing no. 20100 dated 11.11.2020 has been issued by Directorate of Town and Country Planning, Haryana, Chandigarh. The respondent has already delivered physical possession to a large number of apartment owners. Possession of the unit was offered vide offer of possession letter dated 01.12.2020 whereby the

appellants were called upon to clear outstanding dues and take possession of the unit but the same has been ignored by the appellants and instead of taking possession, the appellants have filed the false and frivolous complaint.

14. After controverting all the pleas raised by the respondents-allottees, the appellant-promoter pleaded for dismissal of the complaint being without any merit.

15. The Ld. Authority after considering the pleading of the parties and the material on record passed the impugned order, the operative part of which has been already reproduced in para no. 1 in this order.

16. We have heard, Ld. counsel for the parties and have carefully examined the record.

17. At the outset, learned counsel for the appellants submitted that respondent in the month of November, 2011 sent the agreement vide its letter dated 19.11.2011 asking the appellants to send back the signed copy within a period of one month from the date of receipt of the same. It was mentioned in the said letter that on failure to do the same, the allotment will be treated as cancelled. Appellants accordingly signed the copy of the agreement and delivered the signed copy of the same at the office of the respondent within a period of one month i.e. in the month of December, 2011. Thus, in the present case, the date of execution of the agreement is deemed to be 19.12.2011 and not

as put by the respondent on the agreement. The respondent has put the date as 11.01.2014 as the date of signing of agreement which is denied. The respondent being aware that the date of agreement is necessary to determine the date of handing over the possession and therefore has fraudulently put the date as 21.01.2014, so, as to save the liability of two years of delay. The fact that the agreement was of the year 2011 is also evident from the fact that the stamp embossed on the said agreement is of November 2011. Therefore, the date of handing over of possession is required to be taken from the date of approval of the building plan i.e. 06.06.2012. thus, the appellant is entitled to delay possession charges w.e.f 06.06.2015 i.e. after 36 months of approval of building plan.

18. It was also asserted that the notice of the possession was issued on 05.12.2020 with illegal demand of Rs. 17,64,667/- in addition to Rs. 2,42,500/- as pre-serve demand bifurcation. As per terms of the payment plan, the appellant was to pay sum of Rs. 3,49,416/- on final notice of possession. The detail of illegal demand raised by the respondent is as under:

Nature of charges as per notice of possession	Amount	Comments
Previous outstanding (including GST)	Rs. 84094/-	The said demand is illegal since as per the demands raised by the OP, there was no due other than the demand at the time of notice of possession. That the complainants were not supposed to pay any VAT charges since the liability of the same accrued upon the

		complainants because of the delay in handing over the possession of the unit.
Basic with GST	Rs. 1,66,476/-	This demand is totally again illegal since as per the payment plan the only demand which the complainant was liable to make the payment was of Rs.3,49,416/- as the final notice of possession demand. The OP is charging the said also on the basis of the revised area of the unit from 2070 to 2275. That no justification has been provided by the OP as to the said increase in the area. That it is pertinent to mention here this has been done illegally and in fact has been done just to extract more money from each of the allottees.
Electric electrification (including 33 KV) water, sewer & meter charges with GST	Rs. 3,25,151/-	This demand is also illegal and has been raised to overcharges the complainants. It is humbly submitted that the cost of electrification was included in the basic cost price and also in addition EDC and IDC charges collected by the OP includes the cost under the said heads and thus, the same is untenable and illegal.
Miscellaneous charges with GST	Rs. 17,700/-	The said demand is also illegal and no justification has been given as to the nature of miscellaneous charges.
Interest (as on 30.11.2020) with GST	Rs. 75,725	The said demand is again illegal since there was no delay in the payments and thus the question of interest does not arise.

19. He further submitted that the demand raised as per the above said notice of possession is not as per the agreement and therefore the notice of possession dated 05.12.2020 is against the possession of the Act and also is not in conformity with the model agreement as provided in the Haryana Real Estate (Regulation and Development) Rules 2017 (hereinafter called rules).

20. He contended that as per the notice of possession dated 05.12.2020, the respondent has illegally increased the total sale consideration by changing the super area without the consent of the appellant- alltotees. As per payment plan the appellant was

liable to make a payment of Rs. 3,49,416/- on the issue of final notice of possession. However, the respondent has raised a demand of Rs. 17,64,667/- on the basis of revised super area of the unit from 2070 to 2275 sq. ft. and other charges.

21. It was further contended that the respondent has demanded interest of Rs. 75,725/- on account of delay in the payment by the appellant. However, there is no delay in the payments made by the appellant and thus, there can be no question of interest to be paid by the appellant.

22. With these pleadings, it was contended that the impugned order may be set aside and the appellants may be allowed the physical possession along with delay possession charges w.e.f 06.12.2015 till the actual physical possession is handover to them.

23. On the other hand, learned counsel for the respondent submitted that agreement between the parties was executed on 22.01.2014. appellants are trying to take advantage of the fact that stamp embossed on the agreement is of November 2011.The usage of a stamp does not determine the date of execution of the agreement or the date of enforceability of the agreement. The appellants also never raised this issue any time before filing of the present complaint before the Authority. He further contended that under the Indian Stamp Act, 1899, there is no expiration period of stamp paper. The stamp paper issued in 2011, can very well be

used in 2014, mere fact that the stamp paper used for execution of the agreement are of 2011, cannot ascertain the date of the agreement.

24. It was also contended that as per clause 1(1.1), 1 (1.2)(e) (Page 129-130) of the paper book, the super area of the apartment is tentative and is subject to change till the grant of Occupation Certificate. As per above said clause, the allottee has authorized the respondent to carry out such additions, alternations, deletions and modifications in the building plans and the final sale price can be recalculated if there is any change in size of the apartment. The appellant has not raised any objection in this respect at the time of execution of the agreement or at any time thereafter. The respondent has charged the excess amount on account of increased in super area as per final building plan sanctioned by the competent authority in accordance with agreed terms and conditions of the agreement.

25. He submitted that as per clause 5 of the agreement, the allottee undertook to pay on demand proportionate share of all deposits or charges to receive bulk supply of electricity and thus, the electrification charges as claimed in the final notice are as per the said clause 5 of the agreement.

26. He asserted that the interest from Maintenance security deposit @ 100/- per sq. ft. of the super area has been

claimed in the final demand notice are as per clause 4 of the agreement and no excess has been claimed from the appellant.

27. It was further asserted that the clause 6 (viii) of the agreement provides that taxes, levies, assessments, demands or charges levied or leviable in future on the land or any part of the building/complex would be borne and paid by the appellant in proportion of the super area of the apartment. Thus, nothing excess on account of taxes has been claimed in the final possession notice.

28. He further contended that as per clause 3(c) (v) of the agreement, the appellant is liable to pay all dues towards stamp duty charges, registration charges, incidental registration, legal registration and all other dues as demanded by the respondent in the final notice.

29. He contended that as all the dues raised in the final notice are in accordance with provisions in the agreement, therefore, the final notice issued is correct and is in accordance with the Act and the rules.

30. He asserted that as per Section 101 to 104 of the India Evidence Act, 1872, the one who makes an allegation is required to prove it beyond doubt, thus, the onus to prove the allegation put forth completely lies on the appellant/complainant and cannot be shifted to the respondent in any manners whatsoever.

Appellant has failed to prove his case and hence no relief should be allowed.

31. With these contentions, he prayed for dismissal of the appeal being without any merit.

32. We have duly considered the aforesaid contentions of the parties.

33. The brief facts of the case are that the unit bearing no. 063, 6th floor, tower B3, admeasuring 2070 sq. ft. in the project of the respondent- promoter 'Spaze privy at 4", Sector-84, Village - Sihi, Gurugram was allotted to the appellant vide allotment letter dated 25.05.2011. The agreement dated 22.01.2014 was executed between the parties. The date of agreement is disputed by the appellant. The total sale consideration as per the payment plan is Rs. 94,43,486/-. Appellant as per statement of account dated 31.03.2021 has paid an amount of Rs. 86,90,278/- to the respondent. The respondent got building plan approved on 06.06.2012. As per clause 3(a) of the agreement, the respondent-promoter is to handover the possession of the apartment to the appellant-allottee within a period of 36 months (excluding grace period of 6 months) from the date of approval of building plan or the date of signing of the agreement, whichever is later. The Occupation Certificate for the said unit was issued by the competent authority on 11.11.2020. The respondent issued the

offer of possession on 01.12.2020. The appellant-allottees are still not in possession of the unit.

34. The appellants have raised a challenge to the contested order, arguing that the respondent has put the date on the agreement as 21st January 2014, while the respondent actually sent the agreement on 19th November 2011 for the appellants to sign and return within one month, which they did and return the agreement to the respondent after appending their signatures within the time specified. The appellants claim that the date of the agreement should be recognized as 19th December 2011, not 21st January 2014. However, upon examining the agreement, it is evident that only one date, 21st January 2014, is mentioned as the date of execution. There are no other dates specified in the agreement. If the appellants signed the agreement in December 2011, it was their responsibility to include the date beneath their signatures. The appellants have also contended that the stamp on the agreement is of November 2011, but no date is explicitly mentioned on the stamp papers. Furthermore, this stamp date does not impact the execution date of the agreement. Therefore, we find no grounds to support the appellant's claim that the date of the agreement should be considered as 19th December 2011 instead of 21st January 2014, and thus there is no need to intervene in the contested order of the Authority for this reason.

35. The appellants raise another issue concerning the legality of the possession notice issued by the respondent on 5th December 2020. The appellants claim that the notice is illegal as the respondent raised an unauthorized demand on account unilateral increase in the super area of the unit from the originally allotted 2070 sq. ft. to 2275 sq. ft. without obtaining the appellants' consent and have charged Rs.11,66,476/- along with GST in the final demand notice dated 5th December 2020 whereas the appellants were required to pay only Rs.3,49,416/- on possession demand notice. It is noted that the increase in area conforms to the provisions stipulated in the agreement, and the respondent, as the promoter, had obtained approval for the building plan from the competent authority before the enactment of the Act. Hence, the provisions of the Act, requiring approval from the allottees before altering the sanctioned plan, do not apply in this case. The appellants have not contested the existence of the changed area. Consequently, no relief can be granted to the appellants based on this plea.

36. The appellants have lodged another challenge against the possession notice issued by the respondent on 5th December 2020, contending that the amounts demanded, namely a previous outstanding sum of Rs. 84,094/-, 'Electrification water and sewer charges' totalling Rs. 3,25,151/-, Miscellaneous Charges amounting to Rs. 17,700/- and taxes over the said amounts are

excessively charged by the respondent, rendering the notice unlawful. The respondent vehemently refutes this claim, asserting that all the charges mentioned in the said possession notice are as per the provisions stipulated in the agreement. The appellants have failed to provide sufficient evidence to substantiate and prove their aforementioned claim. Upon examination of the agreement, we have found no evidence supporting the appellant's assertion that the charges claimed by the respondent are not in accordance with the agreement. The appellants have also raised a contention that the respondent has charged an interest of Rs. 75,725/- for delayed payments. However, the appellants have not provided any specific details regarding the principal amount on which the interest was levied, nor have they disclosed the interest rate charged. Furthermore, the appellants have not presented any grounds or rationale to support their claim that the respondent charged extra interest on delayed payments. In light of these circumstances, the appellants cannot be granted any advantage based on their such assertion.

37. No other issue was raised before us.

38. In view of the aforesaid observations, we find do not find any merit in the appeal and is therefore dismissed. For the similar reasons the appeal bearing no. 313 of 2022 also stands dismissed.

39. It is pertinent to mention here that aforesaid order has been passed in the facts and circumstances of instant case

40. No order to costs.

41. Copy of this order be also placed in the file of appeal bearing no. 313 of 2022.

42. Copy of this order be sent to the parties/Ld. counsel for the parties and Haryana Real Estate Regulatory Authority, Gurugram.

43. File be consigned to the record.

Announced:
July 27, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal,

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Rajni