

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

Complaint no. : 1996 of 2023
First date of hearing: 03.10.2023
Date of decision : 03.09.2024

Jyoti Verma R/o: - H.No: 101, first floor, E Wing Palm Court Project, Link Road, near D Mart, Malad West Mumbai-400064.	Complainant
Versus	
M/s Spaze Towers Pvt. Ltd. Registered Office: Spazetge Sector 49, Sohna Road, Gurugram-122018.	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

APPEARANCE:	
Sh. Col. M.S. Sehrawat	Counsel for Complainant
Sh. Harshit Batra	Counsel for Respondent

ORDER

1. The present complaint dated 10.05.2023 has been filed by the complainant/allottee 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Spaze Privy AT4, Sector 84, Gurugram.
2.	Nature of the project	Group Housing Colony
3.	DTCP license no. and validity status	26 of 2011 dated 25.03.2011 valid upto 24.03.2019
4.	RERA Registered/ not registered	385 of 2017 dated 14.12.2017 valid upto 31.06.2019
5.	Unit no.	052, 5 th floor, tower- A5 (Page 26 of the complaint)
6.	Unit area admeasuring	1745 sq. ft. (Page 26 of the complaint)
7.	Date of allotment letter in favour of original allottee i.e., Ajit Kumar Gupta	29.10.2011 (page no. 20 of complaint)
8.	Date of execution of agreement in favour of original allottee i.e., Ajit Kumar Gupta	20.05.2012 (page 23 of ocmplaint)



9.	Date of endorsement letter in favour of the complainant	24.08.2021
10.	Agreement to sell executed between the complainant and the original allottee i.e., Ajit Kumar Gupta	24.08.2021 (page 58 of the reply)
11.	Possession clause	<i>3(a) That Subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with All the terms and conditions of this Agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the APARTMENT ALLOTTEE(s) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to handover the possession of the APARTMENT within a period of thirty (36) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this Agreement whichever is later. It is however understood between the parties that the possession of various blocks/towers comprised in the compels as also the various common facilities planned therein shall be ready & completed in phases and will be Handover over to the allottees of different block/towers as and when completed and in a phased manner. (Emphasis supplied)</i>
12.	Date of building plan approval	06.06.2012 (as per the information provided by the respondent at the time of registration)



13.	Due date of possession	06.12.2015 Note: 36 months from date of approval of building plan i.e., 06.06.3023 being later + 6 months grace period allowed being unqualified) Note: Since the present complainant was endorsed on 24.08.2021, i.e., after coming into force of the Act of 2016, therefore, 06.12.2015 shall be treated as due date from calculating delayed possession charges.
14.	Sale consideration as per SOA dated 20.09.2021 at page 66 of complaint	RS. 79,20,548/-
15.	Sale consideration as per SOA dated 20.09.2021 at page 72 of complaint	Rs.85,68,823/-
16.	Occupation certificate	11.11.2020 (page 52 of the reply)
17.	Offer of possession for unit admeasuring 1918 sq.ft. to original allottee	01.12.2020 (page 55 of the reply)
18.	Possession letter dated for unit admeasuring 1918 sq.ft. to the complainant	26.11.2021 (page 77 of the complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the original allottee i.e., Mr. Ajit Kumar Gupta invested in the project of the respondent by the name of "Spaze Privy At4", Sector-84, Gurugram. On 29.10.2011, an allotment letter was issued by the respondent to the original allottee and was allotted a unit no. 052, 5th floor, tower B2



admeasuring 1745 sq.ft. for the total sale consideration of Rs. 72,93,250/-. On 20.10.2012, a buyer's agreement was executed between the original allottee and respondent-promoter. Thereafter, the original allottee endorse all the right and liabilities mentioned under the buyers agreement to the first subsequent allottee namely Davyam Mehra. Thereafter Davyam Mehra sold the unit to the second subsequent allottee, i.e., Amit Raj Jain.

- II. That as per possession clause 3(a), the due date comes out to be 06.12.2015. The second subsequent-allottee paid due amounts to the respondent on time without any default but the respondent could not complete the unit on or before the due date.
- III. That the respondent issued notice for possession, payment of due and for submission of documents on 01.12.2020 to the second subsequent allottee. Thereafter, the subject unit was bought by the complainant, i.e., Jyoti Verma vide agreement to sell dated 24.08.2021 and subsequently, the endorsement was also done in favour of the complainant. The complainant also received a full and final payment certificate from Mr. Amit Raj Jain confirming payment of Rs. 86,00,000/-. Also, the statement of account dated 20.09.2021 of the complainant maintained by the respondent confirms payment of Rs. 85,68,823/-.
- IV. That the respondent on 24.09.2021, intimated to the complainant about registration of unit no. 52, tower A5 in privy AT 4, sector 84, Gurugram

- and required the complainant to deposit stamp duty and registration fee for execution of the conveyance deed.
- V. The complainant executed a Common Area Maintenance and Service Agreement with Preserve Facilities on 30.11.2021. The complainant also provided a "No Dues Certificate" from the maintenance company. On 17.12.2021, 17.12.2022, and 23.02.2022, the complainant sent several emails to the respondent, but no action was taken by the respondent.
- VI. That on 26.11.2021, possession letter for handing over of possession was given to the complainant but the physical possession was handed over only during the first week of January 2023. Thereafter on 21.03.2022, the complainant sent an email to the respondent for knowing the status of the registration deed. Thereafter on 22.03.2022, the respondent reply through an email requiring the complainant to deposit Rs. 1,25,000/- more for stamp duty and Rs. 10,000/- for registration fee due to increase in circle rates w.e.f. 01.01.2022.
- VII. That the cause of action has occurred first on 20.11.2015 when the respondent failed to handover the possession of the booked unit as the per the buyers agreement. The cause of action again occurred when the respondent denied compensation for huge delay in handing over the possession. Further, the cause of action happened when the respondent fail negligently to execute the registration/conveyance deed of the subject unit despite complainant fulfilling all the formalities and making requisite payments.

VIII. That due the facts and circumstances explained above, the complainant is compelled to approach the Authority to grant much entitled and needed reliefs.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- I. Direct the respondent to pay delay possession charges as interest for delay with effect from the due date of possession which was 20-11-2015 till the date of filing this complaint.
- II. Direct the respondent to execute conveyance deed in favour of complainant without further delay and not to demand additional stamp duty and registration charges as the same became applicable due to the negligence of the respondent.
- III. Direct the respondent not to charge anything from the complainant which is not part of the buyer's agreement dated 20.05.2012, between the parties.
- IV. Direct the respondent to refund increased super area charges (super area was increased by 173 sq ft) along with interest from the date of such payments.
- V. Direct the respondent to refund following with interest.
 - Increased super area charges with GST.
 - Labour cess Rs. 22,460/-.
 - 2 External electrification charges with GST Rs. 2,74,127/-.
 - PLC with GST Rs. 48,440/-.
 - MISC charges Rs.17,700/-.
 - Direct the respondent to supply a copy of the occupation certificate received from the competent Authority.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent



6. The respondent has contested the complaint on the following grounds.
- a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be dismissed on this ground alone. The complainant is estopped by her own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
 - b. That the complainant has not come before the Authority with clean hands and has suppressed vital and material facts from the Authority. The correct facts are set out in the succeeding paras of the present reply.
 - c. That at the outset, it is to be noted that the original allottee, namely Ajit Kumar Gupta, being interested in the real estate development of the respondent under the name and style "Spaze Privy AT4" situated in Sector 84, Gurugram, Haryana applied for a provisional allotment of a unit in residential group housing complex being constructed by the respondent and was thereby allotted a tentative unit bearing no. 52, 5th floor, tower A5 admeasuring a tentative area of 1745 sq. ft. in the project of the respondent vide allotment letter dated 29.10.2011.
 - d. That after the allotment of the unit in favour of the original allottee, a builder buyer agreement dated 20.05.2012 was executed between the original allottee and the respondent. The original allottee, after being fully satisfied and agreed with the terms and conditions of the agreement, voluntarily and wilfully entered into the same. After the execution of the agreement between the original allottee and the

respondent, the unit was sold and subsequently endorsed in favour of the first subsequent allottee, namely, Davyam Mehra. Thereafter Davyam Mehra sold the unit to the second subsequent allottee, i.e., Amit Raj Jain and then the said unit was bought by the complainant, i.e., Jyoti Verma vide agreement to sell dated 24.08.2021 and the subsequently, the endorsement was also done in favour of the complainant.

- e. That it was prior to the purchase of the unit by the complainant, that the respondent had already fulfilled its obligation and completed the construction of the unit on time and consequently, had obtained the occupation certificate of the project dated 11.11.2020 and lawfully offered to possession of the unit to the erstwhile purchaser, i.e., Amit Raj Jain on 01.12.2020.
- f. That it is categorical to note at this stage that when the complainant bought the unit in question, the construction of the unit and the project was already completed and the possession of the unit was already offered to the previous allottee, i.e., Amit Raj Jain. The present complainant is a subsequent allottee who has purchased the unit from the previous allottee on 24.08.2021, i.e., at such time when the possession of the unit has already been offered to the previous allottee. Hence, it is crystal clear that the complainant was well aware about the fact that the construction of the unit and the project in question had already been completed and the possession of the unit was offered. Moreover, the complainant has not suffered any kind of delay in

obtaining the possession of the unit and as soon as the unit was transferred in favour of the complainant, the physical possession was also taken by the complainant and the possession letter dated 26.11.2021 was issued in favour of the complainant stating that the vacant and peaceful possession of the unit has been handed over to the complainant.

- g. That since the complainant was already in knowledge that the construction of the unit was already completed and the possession has already been offered to the previous allottee, no delay has ever been suffered by the complainant and hence, the present complaint filed by the complainant is liable to be dismissed.
- h. That without prejudice to the rights and the submissions of the respondent, there was no delay in the development of the project and the due date as per the agreement was subjective to the force majeure circumstances as per the agreement and despite all the events beyond the control of the respondent, the development of the project was completed.
- i. That as per clause 3(c)(v) of the agreement, the developer shall execute the conveyance deed in favour of the complainant-allottee only after the complete payment towards the stamp duty charges, registration charges, incidental expenses etc. Hence, the complainant was duty bound to make the complete payments towards the stamp duty and registration charges. There was a revision in the stamp duty according to which the

complainant was bound to make the revised payments due towards the stamp duty which are duly communicated to the complainant telephonically on 22.03.2022 and vide email dated 22.03.2022. However, till date, the complainant had failed to do so.

j. That since the complainants were already in knowledge that the construction of the unit was already completed and the possession has already been offered to the previous allottee without any protest to any charges or specifications whatsoever, the complainant, at this stage, cannot seek the assistance of the Authority. Hence, the present Complaint is liable to be dismissed.

7. All the other averments made in the complaint were denied in toto.
8. 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

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

11. 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) 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;

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.

12. 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.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs*

Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the hon'ble supreme court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Finding on objections raised by the respondent.

15. That the original allottee, namely Ajit Kumar Gupta invested in the project of respondent namely "Spaze Privy At 4, situated in Sector 84, Gurugram. On 29.10.2011, an allotment letter was issued to the original allottee and allotted a tentative unit no. 52, 5th floor, tower A5 admeasuring a tentative area of 1745 sq.ft. in the project of the respondent. Thereafter, on 20.05.2012, a buyer's agreement was executed between the original allottee



and the respondent. After the execution of the agreement between the original allottee and the respondent, the unit was sold and subsequently endorsed in favour of the first subsequent allottee i.e., Divyam Mehra. Thereafter, first subsequent allottee sold the unit to the second subsequent allottee i.e., Amit Raj Jain and then the said unit was bought by the complainant i.e., Jyoti Verma vide agreement to sell dated 24.08.2021 and subsequently, the endorsement was made in favour of the complainant after receiving a full and final payment certificate from Mr. Amit Raj Jain.

16. By virtue of clause 3(a) of the buyer's agreement executed between the parties on 20.05.2012, the developer proposes to handover the possession of the unit within a period of thirty six month (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this agreement whichever is later. The date of approval of building plans being later, the due date of handing over of possession is reckoned from the date of building plans and the grace period of 6 months is also allowed being unqualified/unconditional. Therefore, the due date of handing over of possession comes out to be 06.12.2015. The occupation certificate for the subject unit has been obtained by the respondent promoter on 11.11.2020 and the possession has been offered on 01.12.2020 to the second subsequent allottee i.e., Amit Raj Jain. The present complainant is a third subsequent allottee who has purchased the subject unit from the second subsequent allottee on 24.08.2021 i.e., at such a time when the possession of the subject unit has already been offered to the second subsequent allottee. It simply means that the present complainant was well aware about the fact that the construction of the subject project and unit has already been completed and the possession of the same has been offered. Moreover, she has not suffered any delay as the third subsequent allottee comes only picture on 24.08.2021

after offer of possession which was made on 01.12.2020 to the second subsequent allottee. In the light of the facts mentioned above the present complainant who has become a third subsequent allottee at such a later stage is not entitled to any delayed possession charges as he has not suffered any delay in the handing over of possession.

17. The Authority is of view that the present complainant became third subsequent allottee on 24.08.2021, after possession of the unit was offered to the second subsequent allottee. It is pertinent to mention here that the present complainant never suffered any delay and also respondent builder had neither sent any payment demands to the complainant nor complainant paid any payment to the respondent. So, keeping in view all the facts, the complainant is not entitled for delay possession charges and other reliefs. However, his rights to claim possession of the subject unit in view of provision of section 17(1) remains intact. Relevant part of Act is reproduced hereunder-

"17. Transfer of title.-

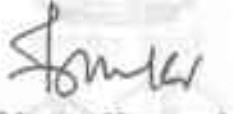
(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

18. In view of foregoing, the respondent promoter is directed to get the conveyance deed executed in the favour of complainant within 60 days after payment of dues, if any.

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act.
- i. The respondent is directed to get the conveyance in terms of section 17(1) of the Act, 2016 after payment of stamp duty charges by the complainant as applicable.
20. Complaint stands disposed of.
21. File be consigned to registry.

(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

V.I. 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2024

HARERA
GURUGRAM