

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

Complaint no. : 1313 of 2018  
First date of hearing: 20.02.2019  
Date of decision : 29.01.2020

1. Amar Sarin  
2. Akansha Sarin  
Both resident of: Flat no. 12, Pocket – E,  
Peepal Apartments, Sector – 17,  
Phase – 2, Dwarka, New Delhi – 110078

**Complainants**

Versus

1. M/s Spaze Towers Pvt. Ltd.  
2. Mr. Arvinder Dhingra  
3. Mr. Vivek Sharma  
Corporate office: Spazedge, Sector-47,  
Gurugram-Sohna Road, Gurugram,  
Haryana-122002  
Registered office: 18, Community/  
Apartment Center, Mayapuri, Phase-1  
New Delhi

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Satvir Singh Hooda  
Shri Ishaan Dang  
Shri Ashish Bhandari

Advocate for the complainants  
Advocate for the respondents  
AR for the respondents

**ORDER**

1. A complaint dated 17.11.2018 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 complainants Amar Sarin and Akansha Sarin against the promoter M/s. Spaze Towers Pvt. Ltd., on account of violation of the clause 3(a) of buyer's agreement executed on 27.12.2011 in respect of unit described hereunder for not handing over possession on the due date i.e. 06.12.2015 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 27.12.2011 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 statutory 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 case are as under: -

1.	Name and location of the project	"SPAZE PRIVY AT4", Sector-84, Village Sihi, Gurugram
2.	Nature of project	Residential group housing complex



3.	DTCP license number	<b>26 of 2011 dated 25.03.2011</b>
4.	RERA registered/ not registered	<b>Registered 385 of 2017</b>
5.	Revised date of registration	<b>31.06.2019</b>
6.	Unit no.	034, floor-3, tower-C1
7.	Unit measuring	1465 sq. ft
8.	Allotment letter	<b>25.07.2011</b>
9.	Buyer's agreement executed on	<b>27.12.2011</b>
10.	Payment plan	Construction linked plan
11.	Total consideration	Rs. 68,05,960/- (as per statement of account dated 01.12.2018, page 61 of reply)
12.	Total amount paid by the complainants till date	Rs. 65,13,614/- (as per SOA dated 01.12.2018 page 61 of reply)
13.	Percentage of consideration amount	100%
14.	Approval of building plans	06.06.2012(Page 36 of reply)
15.	Due date of delivery of possession <b>clause 3(a)</b> (36 months from the date of approval of building plan or the date of signing of this buyer's agreement, whichever is later + 6 months grace period)	<b>06.12.2015</b> ( due date of possession has been calculated from the date of approval of building plan)
16.	Delay in handing over possession till date	No offer of possession has been made by the respondent till date.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 06.12.2015 as per the said





agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared and filed reply which has been perused by the Authority.

#### **BRIEF FACTS OF THE COMPLAINT**

6. The complainants submitted that the matter in dispute relates to intentional, wilful, deliberate and vexatious non-offer of actual, physical and vacant possession of a 2 bedrooms residential unit/apartment bearing no. 034 type "C" having super area measuring 1465 sq. ft on third floor in block/tower C1 along with 1 covered car parking space of a multi-storied residential project in the name & style "Spaze Privy AT4" complete in all respects over the land situated within the revenue estate of Village Sihi, Sector-84, Tehsil & District Gurugram for a total valuable sale price of Rs. 64,78,008/- inclusive of external development charges (EDC), infrastructure development charges (IDC), preferential location charges (PLC) including floor, corner, green facing &



2 BHK, club membership charges along with service tax or any other tax as applicable in breach of the terms & conditions of buyer's agreement dated 27.12.2011 within the agreed period of 36 months with a grace period of 6 months from the date of building plans or date of signing of the buyer's agreement whichever is later i.e. on or before 26.12.2014 (36 months) and with the grace period i.e. on or before 26.06.2015.

7. The complainants submitted that initially somewhere in the years 2010-11 through an advertising campaign in print and electronic media, in active connivance with each other with ulterior motives of luring the prospective customers/clients, the respondents launched a multi-storied residential project in the name & style "Spaze Privy AT4" over the land measuring 10.512 acres situated within the revenue estate of Village Sihi, Sector-84, Tehsil & District Gurugram, wherein they offered various types and denominations of residential unit/apartments with state of the art modern facilities at very affordable prices.
8. The complainants submitted that vide application for registration for allotment of subject flat/dwelling unit dated

19.04.2011 inclusive of service tax or any other tax as applicable upon payment of Rs.4,00,000/- vide cheque dated 19.04.2011 duly received and acknowledged by the respondents vide receipt bearing no. PAT4-R/000001031 dated 20.04.2011.

9. The complainants submitted that in accordance with the aforesaid application dated 19.04.2011, the complainants further paid a sum of Rs.6,45,897/- the respondents provisionally allotted the said unit/apartment to the complainants, wherein the respondents reaffirmed the total sale consideration of the said unit/apartment and in terms with the payment plan, the complainants further paid a sum of Rs.4,55,326/-.
10. The complainants submitted that in consonance with the aforesaid application for registration dated 19.04.2011 and allotment letter dated 25.07.2011 after provisional allotment of the said unit/apartment, the respondent no. 1 executed a buyer's agreement dated 27.12.2011 with the complainants.
11. The complainants submitted that the Town and Country Planning Department Haryana, Chandigarh has granted a





licence bearing No. 26 of 2011 dated 25.03.2011 for development of a residential group housing complex over the said land and the collaborators had executed a power of attorney dated 23.08.2010 in favour of the developer i.e. respondent no. 1, vide which, they had authorised the respondent no. 1 to construct, develop and sell the group housing complex over the said land.

12. The complainants submitted that the developer has obtained approval of zonal plan for the aforementioned land from DTCP for developing a group housing complex vide approval memo no. ZP-699/JD) BS)/2011/ 14695 dated 03.10.2011.
13. The complainants submitted that as per clause no. 3(a) of the buyer's agreement, the developer proposes to hand over the possession of the apartment within a period of 36 months (excluding a grace period 6 months) from the date of approval of building plans or date of signing of this agreement whichever is later.
14. The complainants submitted that that as per clause no. 3(c)(iv) of the buyer's agreement, it was agreed that the developer shall be liable to pay compensation calculated @ Rs. 5 per sq.



ft per month of the super area of the apartment for the period of delay in offering the possession of the said apartment beyond the period indicated in clause 3(a), save and except for reasons beyond the reasonable control of developer as mentioned in clause 3(b) and 13. These charges shall be adjusted as the time of issuance notice of possession by the developer under clause 3(c) above subject to the apartment allottees having complied with the provisions, terms and conditions of this agreement and timely payment of all instalments as per the payment plan opted.

15. The complainants submitted that in performance of their part of contractual obligations in terms with the aforesaid buyer's agreement dated 27.12.2011 and the payment plan, the complainants always paid the amounts as demanded by the respondents from time to time and thus as on 07.12.2016, paid a total sum of Rs. 65,13,614/- against the total sale price of Rs. 64,78,808/- vide various cheques and other modes of payment duly received and acknowledged by the respondents
16. The complainants submitted that they approached the respondents personally on numerous occasions to request



them to handover the actual and physical possession of the said unit/apartment, upon which, initially the respondents extended false assurances, later on avoided even to meet them, finally flatly refused to accede to their just and legal requests, followed by harassment, humiliation and serious threats to their life, liberty and property, where after the complainants are left with no efficacious remedy to redress their grievances but to approach this hon'ble authority by filing the instant

**17. RELIEF SOUGHT**

The complainants have sought for following reliefs:

- I. The respondents may kindly be directed to handover the actual, physical and vacant possession of the residential unit/apartment bearing no. 034 to the complainants in terms with the buyer's agreement dated 27.12.2011;
- II. The respondents be directed to pay compensation @ Rs. 5 per sq. ft per month of the super area of the apartment for the period of delay in offering possession nor handed over the actual, physical and vacant possession of the said unit/apartment complete in terms with the buyer's agreement dated 27.12.2011;

- III. The respondents be directed to pay interest @ 24% per annum over the amounts paid by the complainants for illegal, unlawful and unauthorised use of Rs. 65,13,614/- till handing over of actual, physical and vacant possession of the said unit/apartment to the complainants;
- IV. Any other relief, which this hon'ble authority deems fit and proper under the peculiar facts and circumstances of the present case, may also be granted to the complainants.

**RESPONDENT'S REPLY**

18. The respondent submitted that the present complaint is not maintainable in law or on facts. The complainants have filed the present complaint seeking refund, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants and the complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with rule 29 of the Haryana Real Estate (Regulation and Development) rules,



2017, (hereinafter referred to as “the rules”) and not by this hon’ble authority.

19. The respondent submitted that the complaint is bad for misjoinder of respondents no. 2 and 3. That the complainants had consciously and voluntarily executed the buyer’s agreement with respondent no. 1 and the rights and obligations of complainants as well as respondent no. 1 are completely and entirely determined by the covenants incorporated in the buyer’s agreement which continues to be binding upon the parties thereto with full force and effect.
20. The respondent submitted that, the complainants had agreed to purchase unit number 073 on floor 7, tower C1, tentatively ad measuring 1465 sq. ft in the project known as Privy AT4, Sector 84, Gurugram from respondent no. 1. vide buyer’s agreement dated 27<sup>th</sup> of December 2011 which had been executed between the complainants and respondent no. 1 in respect of the aforesaid apartment.
21. The respondent submitted that as alleged non-delivery of physical possession of the apartment is concerned, and that in terms of clause 3(a) of the buyer’s agreement dated 27<sup>th</sup> of



December 2011 the time period for delivery of possession was 36 months excluding grace period of 6 months from the date of approval of building plans or date of execution of the buyer's agreement whichever is later, subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. 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 06.06.2012 subject to the provisions of the buyer's agreement.

22. It was further provided in clause 3 (b) of buyer's agreement dated 27.12.2011 that in case any delay occurred 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 allottees had agreed to not claim compensation of any nature whatsoever for the said period extended in the manner stated above.

23. The respondent submitted that the time period mentioned was consumed in obtaining requisite permission/sanctions from the concerned statutory authorities and the project in question could not have been constructed, developed and implemented by respondent no. 1 without obtaining the above sanctions. Thus, respondent no. 1 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 36 months and grace period of 6 months as has been explicitly provided in buyer's agreement dated 27<sup>th</sup> of December 2011. It is further

submitted that respondent expect to deliver the possession of the unit in question by May 2019.

24. The respondent submitted that respondent no. 1 had submitted an application for grant of environment clearance to the concerned statutory authority in the year 2012. The issuance of an environment clearance referred to above is a precondition for submission of application for grant of occupation certificate.

25. The respondent submitted that the construction activities involving excavation, civil construction were stopped in Delhi and NCR Districts from 1<sup>st</sup> November 2018 to 10<sup>th</sup> 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 respondent no. 1 had to suspend its construction activities for the said period. Respondent no. 1 cannot be held liable for any delay caused due to this fact as well.



26. The respondent submitted that complainants, having defaulted in payment of instalments, are not entitled to any compensation under the buyer's agreement.
27. Copies of all the relevant documents have been filed and placed on the 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.
28. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the parties is of considered view that there is no need of further hearing in the complaint.
29. The Authority is of the view that the Act is to protect the rights of the stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
30. Arguments heard. The authority is of the considered view that there is a delay on the part of the respondent to offer physical

possession of the allotted unit to the complainant as per terms and conditions of BBA executed between the parties and as such, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.20% per annum on the amount deposited by the complainant with the respondent from the due date of possession till the actual physical offer of possession of the allotted unit. Respondent is directed to pay the accrued delayed possession interest till date to the complainant within a period of 90 days from the date of this order and thereafter delayed possession charges shall be paid on 10th of every month.

**Directions of the authority**

31. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 directs the respondent in the interest of justice and fair play as under:

- i. The respondent is directed to give interest to the complainants at the prescribed rate of 10.20% on the amount deposited by the complainants for every month of delay from the due date of possession i.e. 06.12.2015 till the actual offer of possession of the allotted unit. Respondent is directed to pay the accrued delayed possession interest till date to the complainant within a period of 90 days from the date of this order and thereafter delayed possession charges shall be paid on 10th of every month.
  - ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The respondent shall not charge anything from the complainants which is not part of the agreement for sale.
32. The order is pronounced.
33. Case file be consigned to the registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.01.2020

  
**(Subhash Chander Kush)**

Member

Judgment uploaded on 02.06.2020