

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

Complaint no. : 1447 of 2019
First date of hearing : 27.11.2019
Date of decision : 29.01.2020

1. Mr. Anurag Srivastava
2. Mrs. Anuradha Dhingan
Both R/o: Flat No- B-4 - 1004,
Unitech Residencies, Sector-33, Gurugram,
Haryana -122005.

Complainants

Versus

M/s Spaze Towers Private Limited
Regd. office: A-307, Ansal Chambers -I, 3,
Bikaji Cama Place, New Delhi - 110066

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sukhbir Yadav
Shi Ishaan Dang
Shri Ashish Bhandari

Advocate for complainants
Advocate for the respondent
AR of the 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 ssection 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of 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.	Heads	Information
1.	Project name and location	"Spaze Privy AT4", Sector-84, Village Sihi, Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Residential group housing complex
4.	DTCP license no. and validity status	26 of 2011 dated 25.03.2011
5.	Name of licensee	Mohinder Kaur and others
6.	RERA Registered/ not registered	Registered 385 of 2017 dated 14.12.2017
7.	RERA registration valid up to	31.06.2019
8.	Unit no.	034, 3 rd floor, tower-B3 [Page 46 of complaint]
9.	Unit measuring (super area)	1745 sq. ft.
10.	Date of execution of apartment buyer agreement (executed between original allottees and respondent thereafter, initial allottees sold the subject unit to the complainants vide agreement to sell dated 16.10.2012)	15.10.2012 [Page 43 of complaint]



11.	Payment plan	Construction linked payment plan [Page 63 of complaint]
12.	Total consideration of the subject unit	Rs. 74,67,750/- [Page 133 of complaint] as per SOA dated 18.03.2019 Annexure P-18
13.	Total amount paid by the complainants	Rs. 75,25,663/- [page 135 of complaint]
14.	Due date of delivery of possession as per clause 3.1 – within a period of thirty (36) months (excluding a grace period of 6 months) from the date of approval of building plans (06.06.2012) or date of signing of this agreement (15.10.2012) whichever is later [Page 50 of complaint]	15.04.2016 (the due date has been calculated from the date of execution of buyer's agreement)
15.	Date of offer of possession	No possession has been offered by the respondent till date
16.	Delay in handing over possession till date of decision i.e. 29.01.2020	
17.	Specific reliefs sought	<ol style="list-style-type: none">i. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till actual handing over the possession, on amount paid by complainant.ii. Respondent to handover the possession of flat immediately complete in all respects.

3. As per clause 3(a) of the buyer's agreement dated i.e. 15.10.2012, the possession was to be handed over within a period of thirty six (36) months (excluding a grace period of 6 months) from the date of approval of building plans (06.06.2012) or date of signing of this agreement (15.10.2012) whichever is later. The building plans of the subject project was approved on 06.06.2012 wherein, the agreement was executed on 15.10.2012. The due date of possession has been calculated from the date of execution of this agreement i.e. 15.10.2012. Accordingly, the due date of possession comes out to be 15.04.2016. Clause 3(a) of the buyer's agreement is reproduced below:

"3. POSSESSION:

a) Offer of possession:

.....the developer proposes to hand over 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.....

4. The possession of the subject apartment has not been offered by the respondent to the complainants till date. The complainants seek delay interest as per section 18 of the Act. Hence, this complaint for the reliefs as stated above.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

6. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-

- i. The respondent submitted that the subject project is an “ongoing project” under RERA and the same has been registered under Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017. Registration certificate bearing no. 385 of 2017 granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-179/2017/2320 dated 14.12.2017 and the respondent had also applied for extension for registration of the said project dated 27.06.2019.
- ii. The respondent further submitted that Mr. Abhishek Bansal and Mr. Rajesh Saini (initial allottees) had been allotted a residential apartment bearing no. 034 admeasuring 1745 sq. ft. approximately, vide allotment letter dated 06.09.2011. Thereafter, builder buyer’s agreement dated 15.10.2012 was executed between the initial allottees and respondent.
- iii. That subsequently, the initial allottees sold the said unit to the complainants, Anuradha Dhingan and Anurag Srivastava vide agreement to sell dated

16.10.2012 and the complainants are bound as per the terms and conditions laid down in the builder buyer's agreement dated 15.10.2012 in respect of the said unit.

iv. The respondent submitted 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 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.

7. 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.
8. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.

9. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3(a) of the buyer's agreement executed between the parties on 15.10.2012, possession of the booked unit was to be delivered within a period of thirty (36) months (excluding a grace period of 6 months) from the date of approval of building plans (06.06.2012) or date of signing of this agreement (15.10.2012) whichever is later. The building plans of the subject project was approved on 06.06.2012 wherein, the agreement was executed on 15.10.2012. The due date of possession has been calculated from the date of execution of this agreement i.e. 15.10.2012. Accordingly, the due date of possession comes out to be 15.04.2016. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 15.10.2012 to hand over the possession within the stipulated period. Therefore, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established.

10. Arguments heard. Environment Clearance Certificate has already been received by the respondent. 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 buyer's agreement 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.
11. As such the complainants are entitled for delayed possession charges @10.20% p.a. w.e.f. 15.04.2016 till the date of actual offer of possession of the subject allotted unit as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
12. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:
- The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 15.04.2016 till the date of actual

handing of possession of the subject allotted unit as per provisions of section 18(1) of the Act read with rule 15 of the Rules within 90 days from the date of this decision and thereafter monthly payment of interest shall be paid before 10th of each subsequent month till offer of possession.

- 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.

13. Complaint stands disposed of.

14. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 29.01.2020

Judgment uploaded on 02.06.2020