

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

**Complaint no. : 1464 of 2019**  
**First date of hearing : 29.11.2019**  
**Date of decision : 29.01.2020**

Mr. Deepak Trika  
**R/o:-**217, SF, Today Blossom-I, Sector-47  
Gurugram-122001

**Complainant**

Versus

M/s Spaze Towers Private Limited  
(through Managing Director/Director/  
Authorised Representative)  
**Office at:-** A-307, Ansal Chambers-I, 3, Bikaji  
Cama Place, New Delhi-110066.  
**Corporate office:-** Spazedge, Sector-47,  
Sohna Road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Ishaan Dang  
Shri Ashish Bhandari

Advocate for the complainant  
Advocate for the respondent  
AR for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/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 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 complainant, 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, Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	<b>26 of 2011 dated 25.03.2011 valid upto 24.03.2019</b>
5.	Name of licensee	Mohinder Kaur and others
6.	RERA Registered/ not registered	<b>Registered 385 of 2017 dated 14.12.2017</b>
7.	RERA registration valid up to	<b>31.06.2019</b>
8.	Unit no.	043, 4 <sup>th</sup> Floor, Block/Tower-C1 [Page 41 of complaint]
9.	Unit measuring (super area)	1465 sq. ft. [Page 41 of complaint]
10.	Date of execution of apartment buyer agreement	31.12.2011 [Page 41 of complaint]
11.	Payment plan	Construction linked payment plan [Page 61 of complaint]

12.	Total consideration of the subject unit	Rs. 68,36,315/- <b>(Pg.89 of the complaint)</b>
13.	Total amount paid by the complainant	Rs. 65,27,339/- <b>(Pg.91 of the complaint)</b>
14.	Due date of delivery of possession as per possession clause 3(a) of the agreement (within a period of 36 months excluding a grace period of 6 months from the date of approval of building plans <b>(06.06.2012)</b> or date of signing of this agreement <b>(31.12.2011)</b> whichever is later) [Page 52 of complaint]	<b>06.12.2015</b> <b>Note: due date of possession has been calculated from the date of approval of building plans i.e. 06.06.2012</b>
15.	Delay in handing over possession till date of actual offer of possession	No possession has been offered by the respondent till date.
16.	Specific reliefs sought	i. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the actual handing over the possession, on amount paid by complainant and to handover the possession of the unit immediately after completing in all respects.

3. As per clause 3(a) of the buyer's agreement dated i.e. 31.12.2011, the possession was to be handed over within a period of 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. The approval of the building



plan has been received on 06.06.2012. Accordingly, the due date of possession comes out to be 06.12.2015. Clause 3.1 of the apartment buyer agreement is reproduced below:

**“3. Possession**

a) *Offer of possession:*

*.....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 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. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different Block/Towers comprised in the Complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different Block/Towers as and when completed and in a phase manner .....*”

4. The possession of the subject apartment has not been offered by the respondent to the complainant till date. The complainant seeks 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. The matter was taken up for hearing on 29.11.2019 and 29.01.2020. The reply has been filed on behalf of the respondent which has been perused by the Authority.

6. The submission made by the respondent, in brief, is 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.
  - ii. The respondent submitted that there is no locus standi or cause of action to file the present complaint. Since it is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer’s agreement dated 31.12.2011.
  - iii. The respondent submitted that the complainant, Deepak Trikha had been allotted a residential apartment bearing no. 043 admeasuring 1465 sq. ft. approximately, vide allotment letter dated 19.08.2011. Thereafter, builder buyer’s agreement dated 31.12.2011 had been executed between the parties.
  - iv. The respondent submitted that the complainant has completely misinterpreted and misconstrued the terms and conditions of buyer’s agreement dated 31.12.2011. So far as alleged non-delivery of physical possession of the apartment is concerned, it is submitted that in terms of clause 3(a) of the buyer’s agreement dated 31.12.2011, 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 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. That 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.

v. The respondent submitted that in accordance with contractual covenants incorporated in buyer's agreement dated 31.12.2011 the span of time, which was consumed in obtaining the following approvals/sanctions deserves to be excluded from the period agreed between the parties for delivery of physical possession.

vi. The respondent submitted that all 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 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 parties is of considered view that there is no need of further hearing in the complaint.
9. 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.

10. On consideration of the circumstances, the evidence and other record and submissions made by the complainant 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 31.12.2011, 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 (31.12.2011) whichever is later. The building plans of the subject project was approved on 06.06.2012 wherein, the agreement was executed on 31.12.2011. Hence, the due date of possession has been calculated from the date of approval of building plans i.e. 06.06.2012. Accordingly, the due date of possession comes out to be 06.12.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 31.12.2011 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.



11. 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.
12. Counsel for the respondent pointed out that due to force majeure reasons i.e. ban of construction by NGT or Hon'ble Apex Court or High Court, the construction work of the project could not be completed in time. Respondent is directed to submit the details of such period during which the construction was stayed by competent authorities alongwith certified copies of supporting orders. On submission of such documents, the period during which the construction was stayed shall be deducted from the total period for payment of delayed possession charges.
13. The counsel for the respondent further submitted that due to orders of NGT, MCG and Haryana State Pollution Control

Board, the construction work at project site remain stayed for a total period of 139 days. The respondent was advised to furnish copies of such orders from NGT, MCG and Haryana State Pollution Control Board indicating specific time period when the construction was stayed. Now, the promoter has submitted requisite orders whereby ban on construction activity was imposed by various authorities from time to time.

14. Accordingly, the period of 139 days may also be treated as zero period while calculating delayed possession charges in this case. As such the complainant is entitled for delayed possession charges @10.20% p.a. w.e.f. 06.12.2015 till the date of actual handing over of possession of the subject allotted unit as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
15. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:
  - i. 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 complainant from due date of possession i.e. 06.12.2015 till the date of actual physical offer of possession of the allotted unit.

- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The respondent shall not charge anything from the complainant which is not part of the agreement for sale.
16. Complaint stands disposed of.
17. File be consigned to registry.


  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.01.2020

Judgment uploaded on 02.06.2020

  
**(Subhash Chander Kush)**

Member