

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

Complaint no. : 680 of 2019  
First date of hearing: 24.07.2019  
Date of decision : 29.01.2020

1. Mrs. Kusum Bala  
**R/o:** House no. 1618, Ward no- 31,  
Opposite Union Bank, Sector 52, Wazirabad,  
Gurugram- 122001, Haryana

**Complainant**

Versus

1. M/s Spaze Towers Pvt. Ltd.  
**Corporate office at:** Spazedge, Sector-47,  
Sohna Road, Gurugram, Haryana-122001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Sushil Yadav  
Shri Ishaan Dang  
Shri Ashish Bhandari

Advocate for the complainant  
Advocate for the respondent  
Authorised representative for the  
respondent

**BRIEF**

1. A complaint dated 14.02.2019 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 complainant Mrs. Kusum Bala against Spaze Towers Pvt. Ltd., on account of violation of

the clause 3(a) of buyer's agreement executed on 17.07.2013 in respect of unit described as below for not handing over possession within the due date which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 17.07.2013 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 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:

1.	Name and location of the project	"SPAZE PRIVY AT4", Sector-84, Village Sihi, Gurugram
2.	Nature of project	Group housing complex
3.	Project area	10.512 acres
4.	DTCP license number	<b>26 of 2011 dated 25.03.2011</b>
5.	RERA registered/ not registered	<b>Registered 385 of 2017 dated 14.12.2017</b>
6.	Revised date of registration	<b>31.06.2019</b>
7.	Unit no.	22, 2 <sup>nd</sup> Floor,



		Block/Tower-"Kalistaa"
8.	Unit measuring	2905 sq. ft
9.	Date of allotment letter	<b>11.01.2013</b> as per page 47 of the complaint
10.	Buyer's agreement executed on	<b>17.07.2013</b>
11.	Total consideration	Rs.1,93,10,315/- as per (SOA dated 15.03.2019) pg.95 of the reply
12.	Total amount paid by the complainant till date	Rs. 1,97,46,612/- (as per statement of account Annexure R7) pg. 97 of the reply
13.	Payment plan	Construction linked plan
14.	Grant of approval building plan	06.06.2012(as per Annexure R6)
15.	Due date of delivery of possession As per clause 3(a) 42 months from the date of approval of building plan or the date of signing of this buyer's agreement plus 6 months grace period, whichever is later (building plan approved on 06.06.2012 and BBA was executed on 17.07.2013)	<b>17.07.2017</b> (calculated from the date of execution of agreement i.e. 17.07.2013)
16.	Delay in handing over possession till date	Possession has not been handed over so far
17.	Relief sought	Direct the respondents to handover the flat along with prescribed interest from the promissory date of the flat in question.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 17.07.2017 as per the

said agreement. However, the possession has not been handed over so far. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 24.07.2019 and filed reply on 25.03.2019 which has been perused.

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

6. The complainant submitted that the respondent gave advertisement in various leading newspapers about their forthcoming project named "Privy AT4", Sector-84, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Hirday Ram & Kusum Bala, booked an apartment/flat admeasuring 2905 sq.ft. in aforesaid project of the respondent for total sale consideration is Rs 1,93,10,315/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.
7. The complainant made payment of Rs. 1,88,44,017/- to the respondent vide different cheques on different dates.



8. The complainant submitted that as per flat buyers' agreement the respondent had allotted a unit bearing No 22 in tower-Kalistaa having super area of 2905 sq. ft. to the complainant. That as per para no.3(a) of the builder buyer agreement, the respondent had agreed to deliver the possession of the flat within 42 months from the date of signing of the flat buyers agreement dated 17.07.2013 with an extended period of six months or approval of building plan.
9. The complainant submitted that he regularly visited the site but was surprised to see that construction work was not in progress and no one was present at the site to address the queries of the complainant. It appeared that the respondent has played fraud upon the complainant and the only intention of the respondent was to take payments for the Tower without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receipt of payments against the demands raised by the respondent for the said Flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted Flat to the complainant within stipulated period.

10. The complainant submitted that the construction of the block in which the complainant flat was booked was not completed within stipulated time for the reasons best known to the respondent and which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
11. The complainant submitted that due to this omission on the part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the Flat on time. That as per clause 3(c)(iv) of the flat buyer agreement dated 17.07.2013 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant compensation @ Rs.5/- per sq.ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at such nominal rate of Rs.5/- per sq.ft per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. That the respondent cannot escape the liability merely by mentioning



a compensation clause in the agreement. The respondent incorporating the said clause one sided and arbitrary.

12. The complainant submitted that on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant @18%per annum to be compounded from the promised date of possession till the flat is actually delivered to the complainant.
13. The complainant submitted that the complainant has requested the respondent several times to deliver possession of the flat in question along with interest @ 18% per annum on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

#### **RESPONDENT'S REPLY**

14. The respondent submitted that the project of the respondent is an "ongoing project" under RERA and the same has been registered under Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017, vide registration certificate bearing no. 385 of 2017.

15. The respondent submitted that Mr. Hirdey Ram, husband of the complainant had been allotted a residential apartment bearing no.22 admeasuring 2905 sq. ft. approximately, located on the second floor in Tower Kalistaa situated in the project known as Privy AT4, Sector 84, Gurugram vide allotment letter dated 11.01.2013. Thereafter, builder buyer's agreement dated 17.07.2013 had been executed between Mr. Hirdey Ram (original allottee) and the respondent.
16. The respondent further submitted that, Mr. Hirdey Ram had requested the respondent to transfer the said unit in the name of his wife, Mrs. Kusum Bala (complainant). The said unit had eventually been transferred in the name of the complainant. It is pertinent to mention that the complainant is bound as per the terms and conditions laid down in the builder buyer's agreement dated 17.07. 2013 in respect of the said unit.
17. The respondent submitted that the contractual relationship between the complainant and respondent is governed by the terms and conditions of the builder buyer's agreement dated 17.07.2013. The said agreement was voluntarily and consciously executed by the original allottee. Thereafter, the said unit had been transferred to the complainant by the original allottee. Hence, the complainant is bound as per the



terms and conditions laid down in the builder buyer's agreement dated 17.07.2013 in respect of the said unit. Once a contract is executed between the parties, the rights and obligations of the parties are determined entirely by the covenants incorporated in the contract. No party to a contract can be permitted to assert any right of any nature at variance with the terms and conditions incorporated in the contract.

18. The respondent submitted that the complainant has completely misinterpreted and misconstrued the terms and conditions of buyer's agreement dated 17.07.2013. 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 17.07.2013, the time period for delivery of possession was 42 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. It is pertinent to mention 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 42 months and grace period of 6 months as stipulated in the contract has to be calculated from 17.07.2013 subject to the provisions of the buyer's agreement.

19. The respondent submitted that as per clause 3 (b) of buyer's agreement dated 17.07.2013 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.
20. The respondent submitted that for the purpose of promotion, construction and development of the project referred to above, a number of sanctions/permissions were required to be obtained from the concerned statutory authorities. It is respectfully submitted that once an application for grant of



any permission/sanction or for that matter building plans/zoning plans etc. are submitted for approval in the office of any statutory authority, the developer ceases to have any control over the same. The grant of sanction/approval to any such application/plan is the prerogative of the concerned statutory authority over which the developer cannot exercise any influence. As far as respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authorities for obtaining of various permissions/sanctions.

21. The respondent submitted that it is pertinent to mention that it was categorically provided in clause 3(b)(iii) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession would be extended accordingly, solely on the developer's discretion till the payment of all of the outstanding amounts to the satisfaction of the developer. Since the complainant has defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner alleged by the complainant. It is submitted that the complainant from the beginning had deliberately failed to clear her outstanding dues against the

demands raised by the respondent company and had regularly defaulted in timely payments and as on 15-03-2019 the complainant is liable to pay delayed payment interest amounting to Rs. 3230/-.

22. The respondent submitted that there is no default on part of respondent in delivery of possession the complainant has defaulted in payment of amounts demanded by respondent under the buyer's agreement and therefore the time for delivery of possession deserves to be extended as provided in the buyer's agreement.
23. The respondent submitted that the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by respondent and flouted in making timely payments of the instalments which was an essential, crucial and indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and at the same time inflicts substantial losses to the Developer. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. The respondent despite defaults of several allottees earnestly fulfilled its





obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case.

24. The respondent submitted that without admitting or acknowledging in any manner the truth or legality of the allegations put forth by the complainant and without prejudice to any of the contentions of the respondent, it is submitted that only such allottees, who have complied with all the terms and conditions of the buyer's agreement including making timely payment of instalments are entitled to receive compensation under the buyer's agreement. In the case of the complainant, they had delayed payment of instalments and consequently they were not eligible to receive any compensation from the respondent as alleged.

25. The respondent submitted that an application for grant of environment clearance to the concerned statutory authority in the year 2012. However, for one reason or the other arising out of circumstances beyond the power and control of respondent, the aforesaid clearance has not been granted till date, despite due diligence having been exercised by respondent in this regard. No lapse whatsoever can be attributed to respondent insofar non-issuance of environment clearance is concerned. The issuance of an

environment clearance referred to above is a precondition for submission of application for grant of occupation certificate.

26. The respondent submitted that the building in question has been completed in all respects and is very much eligible for grant of occupation certificate. However, for reasons already stated above, application for issuance of occupation certificate cannot be submitted with the concerned statutory authority by the Respondent. Thus, the allegation of delay against the respondent is not based on correct and true facts.
27. 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 and 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.
28. The respondent submitted that in case of delay caused due to non- receipt of occupation certificate or any other permission/sanction from the competent authorities, no compensation shall be payable being part of circumstances beyond the power and control of the developer.



29. Therefore, cumulatively considering the facts and circumstances of the present case, no delay whatsoever can be attributed to the respondent by the complainant.
30. The respondent submitted that the complaint has been preferred on absolutely baseless, unfounded and legally and factually unsustainable surmises which can never inspire the confidence of this honourable authority. The accusations levelled by the complainant are completely devoid of merit.

#### **FINDINGS OF THE AUTHORITY**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the findings of the authority are as under:

31. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.***
32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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

33. Arguments have been heard. The authority is of the considered view that 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 and 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 allotted unit.

**Directions of the authority**

34. 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, the Authority hereby pass this order, issuing the following directions:
- i. The respondent is directed to give interest to the complainant at the prescribed rate i.e. 10.20% on the



amount deposited by the complainant from the due date of possession i.e. 17.07.2017 till actual offer of possession of the allotted unit;

- 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 apartment buyer agreement.

25. Complaint is disposed of.

26. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 29.01.2020  
Judgment uploaded on 02.06.2020