

PROCEEDINGS OF THE DAY

Day and Date	Monday and 29.10.2018
Complaint No.	166/2018 case titled as Mr. Lavan Syal V/s M/s Spaze Towers Pvt. Ltd.
Complainant	Mr. Lavan Syal
Represented through	Shri Sukhbir Yadav, Advocate for the complainant.
Respondent	M/s Spaze Towers Pvt. Ltd.
Respondent Represented through	Shri Ashish Bhandari, authorized representative on behalf of respondent No.2. S/Shri J.K.Dang and Ishaan Dang Advocates for respondent No.1 and Shri Vijender Parmar, Advocate for respondent No.2
Last date of hearing	3.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard in detail.

Written arguments filed by respondent No.1 placed on record.

As per clause 11(a) of the Builder Buyer Agreement which clearly mentions/gives a due date of delivery of possession as 60 months from the date of signing of agreement which was signed on 10.12.2014 and the due date of delivery comes out to be 9.12.2019. Complainant has expressed fears/apprehensions which are not well founded at this juncture. Since RERA Act has come into force and it ensures transparency as well as efficiency in relationship between both the builder and the buyer in a responsible manner.

As such, if the respondent fails to deliver the possession on due date of commitment, the respondent will be liable to pay prescribed rate of interest @ 10.45% under the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The project is registered and due date of possession has been mentioned in the registration certificate is 30.6.2020. However, the builder promises that he will adhere to the due date as mentioned in the B.B.A and will hand over the possession by 9.12.2019. As on date, the complaint is pre-mature. As such, the complainant is advised to wait till he gets possession on due date.

Complaint stands disposed off. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint No. : 166 of 2018
First date of hearing: 16.05.2018
Date of Decision : 29.10.2018

Mr. LavanSyal,
R/o. H.No. K-3/104, DLF Phase - II,
Gurugram, Haryana-122001

Complainant

Versus

1. M/s Spaze Towers Pvt. Ltd.,
Regd. Office: A-307, Ansal Chambers-I,
3, Bikaji Cama Place, New Delhi- 110066

2. Hometryst Realty Pvt. Ltd.
Regd. Office: G-208, Palam Vihar,
Gurugram, Haryana- 122017

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Ishaan Dang
Shri Vijender Parmar

Advocate for the complainant
Advocate for the respondent 1
Advocate for the respondent 2

ORDER

1. A complaint dated 17.04.2018 was filed under section 31
of the Real Estate (Regulation & Development) Act, 2016



read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Lavan Syal, against the respondent company Space Towers Pvt. Ltd. and the promoter, Hometruster Realty Private Ltd. on account of violation of the right of buyer to handover the possession within the promised time of 30 months from the date of the commencement of the excavation (as stated by the office bearers of respondent 1 on enquiry by the complainant dated 19.05.2014) which is an obligation under section 11(4)(a) of the Act *ibid*, in respect of shop/unit no. 0061, ground floor, in the project 'Tristaar'. There is no specific clause in the agreement stating the due date of possession by the allottees.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Tristaar", sector 92, Gurugram
2.	DTCP license no.	72 of 2013 dated 27.07.2013
3.	Nature of real estate project	Commercial
4.	Shop/unit no.	0061 on ground floor
5.	Flat measuring	455 Sq. Ft.
6.	RERA Registered/ unregistered.	Registered (Regd. no. 247 of 2018)
7.	Booking date	01.11.2013
8.	Date of execution of buyer's agreement	10.12.2014



9.	Payment plan	Construction linked payment plan
10.	Total consideration	Rs.62,86,931/-
11.	Total amount paid by the complainant till date	Rs.36,73,718/-
12.	Percentage of consideration amount	Approx. 58 Percent
13.	Date of delivery of possession As per clause 11 read with clause 1.2 of the agreement: - 60 months from the date of signing of agreement. [Environment Clearance granted on 06.08.2014]	i.e. 10.12.2019
14.	Delay of number of years / months/ days till date	No delay
15.	Revised date of delivery of possession	30.06.2020
16.	Penalty Clause as per buyer's agreement dated 10.12.2014	Not mentioned

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 10.12.2014 is available on record for the subject shop/unit no. 61, according to which the possession of the same was to be delivered by 60 months from the date of the application. Neither the respondent has delivered the possession of the said unit to the purchaser nor they have paid any compensation. As per the Respondent 1 the due date of possession is June,2020



and they never mentioned about the time of possession to be 30 months from the date of the application.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The reply was filed by the each respondent separately on 07.06.2018 alongwith an affidavit stating the status of the project. The case came up for hearing on 16.05.2018. The respondent appeared on 16.05.2018, 05.07.2018, 18.07.2018, 26.07.2018, 16.08.2018, 12.09.2018, 03.10.2018 and 29.10.2018.

Facts of the complaint:

5. Briefly stated, the facts of the case as culled out from complainant's version are that on 28.10.2013 the complainant received a call from the respondent 2 and he marketed about the upcoming project of respondent 1 at prime location of sector 96, Gurugram. Based on the representation of the respondent, complainant booked a shop on 01.11.2013 by paying Rs. 1,00,000/- as booking amount. In pursuance to the booking of the complainant, respondent vide allotment letter dated 14.11.2014 allotted



shop no. 61 on ground floor, in the project ' Tristaar', sector 92, Gurugram in favour of the complainant. On 10.12.2014, buyer's agreement for the allotted shop/unit was executed between the parties wherein the developer has agreed to handover the possession of the unit within 30 months' from the date of booking.

6. The complainant submitted that the buyer filed a complaint before the Real Estate Regulatory Authority Gurugram, Haryana. On 23.04.2018, the respondent company replied to the complainant before the Real Estate Regulatory Authority Gurugram and gave his written statement on affidavit denying all the allegations made by the complainant or that they owe any compensation towards the complainant as the construction work has not stopped but is at slow pace due to the force majeure as per the clause 39 of the agreement which clearly depicts that the respondent cannot be held responsible for the delay/hindrance caused in performing its obligations. On 19.05.2014, complainant met the office bearer of respondent no. 1 and asked for development of project on



which the office bearer stated that excavation of project has been started and the project will be delivered within 30 months.

7. The complainant alleged that the terms and conditions incorporated in the preprinted/drafted agreement are one sided and arbitrary best suited to the respondent. The complainant informed about the same to respondent no. 2 and asked to add the terms for specific time of possession of project and penalty clause in case respondent no.1 defaults in giving possession on time, on which the respondent no. 2 backed out from his responsibility. Thereafter, the complainant lodged his grievance to respondent no.1 but nothing happened instead the CRM staff of the respondent no. 1 cited the terms and conditions, clause no. 2 and clause no. 11 of application form and stated that if complainant will not execute the said shop buyer agreement, they shall forfeit 15% of the total sale consideration and due to this the complainant had to sign the said agreement.



8. The complainant submitted that he continued to pay the remaining installments as per the payment schedule and have already paid more than 58% amount i.e. 36,73,718/- inclusive of interest and other charges. A legal notice was served by the advocate of complainant demanding refund of money with interest on account of delay in handing over possession of the project, the respondent replied to the said notice on 11.03.2016. Since 2016, the complainant has been regularly visiting the office of the respondent no. 1 as well as the construction site and making efforts to get the possession of the shop, but has derived no information about the same. The project was launched in the year of 2013 and after completion of more than 4 years structure of project is yet not completed. As per reply along with provide document and declaration in RERA, due date of possession is 30.06.2020, but when Sukhbir Yadav (advocate of complainant) enquired about the said project from respondent no. 1 through email, respondent claimed that building will be ready in next one month and construction has reached 4th floor. This shows the



contradictory statement between the HRERA declaration and the enquiry made by the complainant's advocate, which implies that respondent no. 1 and his office bearers provides fake promises and are involved in unfair trade practices.

9. The complainant submitted that he had purchased the shop with the intention to earn rental income from the shop. It was promised by the respondent no. 1 at the time of receiving money that the possession of fully constructed shop would be handed over to the complainant within 30 months. The complainant, with the unfair terms and conditions of the shop buyer agreement have been harassed mentally as well as financially therefore, the complainant seeks punishment for the respondent no. 1. There is an apprehension on the mind of the complainant that respondents have played fraud and are trying to embezzle the hard earned money of the complainant. The complainant holds no grudges with the respondents rather are a common man. As per section 18 of Real Estate(Regulation and Development) Act, 2016, the



respondent no. 1 is liable to pay compensation to the complainant for delay in handing over the possession of the shop.

10. The complainant further submitted that the respondent no. 1 revised building plan for project on date 31.05.2018 and did not take any permission from the complainant, the said act of the respondent no.1 is the violation of the section 14(1) of the Act, *ibid*. The respondent no. 1 and respondent no. 2 are liable towards the complainant. Respondent no. 2 is the beneficiary party in this transaction/booking, he is liable under section 10(c) (i) of RERA Act for involving in unfair trade practices, false misrepresentation or misleading representation about the project.

Issues raised by the complainant are as follow:

- i. Whether the respondent no. 1 has forced the complainant to accept one sided and arbitrary terms of the shop buyer's agreement?
- ii. Whether there is any reasonable justification for delay to give possession of the shops?



- iii. Whether there has been deliberate or otherwise, misrepresentation on the part of the respondent no. 1 for delay in giving possession?
- iv. Whether the complainant is entitled for refund of all money paid to respondent no. 1?
- v. Whether complainant is entitled for compounding interest @ 18% p.a. from the date of booking till date?

Reliefs sought:

- i. Direct the respondents to refund Rs. 36,73,718/- as paid by the complainant to the respondent no. 1 towards the purchase of shop along with the interest @18% per annum from the date of the deposit.
- ii. Direct the respondent to pay Rs. 10,00,000/- for deficiency in services and Rs. 10,00,000/- as compensation for mental harassment caused to the complainant.
- iii. Respondents may kindly be directed to pay an amount of Rs. 5,00,000/- as litigation expenses.



Respondent no. 1's reply:

11. The respondent no. 1 contended that the present complaint is not maintainable in law or on facts before this

hon'ble authority. Further that the complaint 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 read with the rule 29 Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this authority.

12. The respondent no. 1 contended that the complainant is not an "aggrieved party" or an "allottee" as defined under the Act instead he is an investor who has admittedly purchased the shop in question as an investment. The complainant himself stated in the facts of the case that he had purchased the unit in order to enjoy rental income from the same. The complaint is barred by limitation to the extent the same impugns the buyer's Agreement executed on 10.12.2014. Further contending that the complainant has no locus standi or cause of action to file the present complaint as it based on erroneous interpretations of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 10.12.2014.



13. The respondent submitted that very foundation on the basis of which the present complaint has been preferred, is erroneous as the allegations made by the complainant that possession of the shop was to be delivered in 30 months is totally baseless as the respondents never promised any such thing. The complainant had opted for a partly time bound, construction linked plan and from the very beginning, the complainant has been irregular in payment of installments and consequently the respondents levied interest on delayed payments in accordance with the shop buyer's agreement. The respondents have registered the project under the provisions of the Act and the period has been granted up till 30.06.2020. it is also submitted that present petition is nothing but an abuse of law and is liable to be dismissed.

Respondent 2's reply:

14. The respondent contended that complaint filed by the complainant is not maintainable and this hon'ble authority has no jurisdiction to entertain the present complaint. It is also submitted that the section 12, 14, 18 and section 19 of



the said Act provides that the penalty and compensation may be levied against the promoter in case of any default of the provisions of this Act, but these provisions do not have any application on real estate agent as an agent cannot be made liable for refund of the amount paid by the allottee to the promoter.

15. The reasons and objects of the said Act have been enacted for effective consumer protection and not for the protection of the interests of investors. As the said Act has not defined the term consumer, therefore the definition given under Consumer Protection Act, 1986 has to be referred. The complainant in the present application is not a consumer but an investor. He is registered a real estate agent and has been in this business since a long time. The complainant has booked the subject shop as an investment to gain profit from its resale, demanding of any penalty or compensation for any loss or damage would be misnomer and would be the abuse of process of law and tactics to extort money from the respondent no. 2. It is further submitted stated that the respondent no. 2 never



persuaded or convinced the complainant to purchase any of the product of the respondent no. 1 whether commercial or residential and the allegations made by the complainant are false and frivolous and hence, the present complaint is liable to be dismissed.

16. The respondent submitted that the complainant himself being a real estate broker having been registered on several online portal as real estate agent is falsely representing the fact that the respondent no. 2 presented a rosy picture of the project of respondent no. 1. The entire story of the complainant is concocted and the complainant being well versed about all the minor details of real estate got misrepresented by the other agent is hard to believe. The complainant has made false and baseless allegations with a mischievous intention to extort money from the respondent no.2 and is also trying to destroy the career of the respondent out of the jealousy. The respondent was not the party to the shop buyer's agreement as there is no privity of contract between the



complainant and the respondent and on this ground alone the present complaint ought to be dismissed.

17. On the last date of hearing the hon'ble authority could not conduct the proceeding as the presiding officers were busy, therefore, the case was adjourned to 12.09.2018 for arguments. By the last hearing the project was registered.

Determination of issues:

18. After careful study of the case and hearing of arguments as tendered by both the parties, the authority determines each issue below-
19. Regarding the **issue i**, on perusal of the buyer's agreement dated 10.12.2014 executed between the parties, it can be seen that terms and condition of the agreement is totally silent about the scheduled date / time of delivery of possession and also about the penalty charges which shall be payable for delay. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt Ltd vs.**



UOI and Ors. (W.P 2737 of 2017), wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

20. As regards **issue ii, iii and iv** raised by the complainant, as the specific date/period of delivery of possession is not incorporated in the terms of agreement, so the authority is of the view that the due date of delivery of possession be taken and calculated in terms of clause 11(a) read with clause 1.2 para 2 of the agreement dated 10.12.2014. Relevant portion of clause 1.2 para 2 of the agreement is reproduced below –

“.....escalation charges shall be computed at the expiry of sixty (60) months from the date of this agreement or at the time of offer of possession (permissive or otherwise), whichever is earlier.....”

So, by taking the 60 months' period as schedule time for delivery of possession, the due date for delivery of



possession comes out to be 10.12.2019 which has not been expired till date. On this count, this complaint is premature and since the due date of delivery of possession is yet to come, so the complainant is not entitled for refund of the paid amount at this stage.

21. Regarding **issue v**, for the award of compensation by the respondent, the complainant will have to make a separate application in this regard before the adjudicating officer, as the award of compensation outside the purview of the authority.

Findings of the authority

22. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



23. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has registered its project under the Real Estates (Regulation and Development) Act, 2016 and hence has not violated section 3 of the Act, *ibid* and also does not attract any penalty under section 59 of the said Act.

Decision and directions of the authority

24. 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 hereby issues the following order in the interest of justice :

25. If the respondent fails to deliver the possession on due date of commitment, the respondent will be liable to pay prescribed rate of interest @ 10.45% under the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.



26. The project is registered and due date of possession has been mentioned in the registration certificate is 30.06.2020. However, the builder promises that he will adhere to the due date and will hand over the possession by 9.12.2019. As on date, the complaint is pre-mature. As such, the complainant is advised to wait till he gets possession on due date.

27. Order is pronounced.

28. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 29.10.2018

HARERA
GURUGRAM

