

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

Complaint no. : 1688 of 2019

First date of hearing : 19.09.2019

Date of decision : 22.10.2020

Divya Chanana
R/o: H. no. 688, B-Block, Palam Vihar
Gurugram-122001

Complainant

Versus

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Shri Col. M.S. Sehrawat
Shri J.K. Dang and Ishaan
Dang

Advocate for the complainant

Advocates for the respondent

ORDER

1. The present complaint dated 22.04.2019 has been filed by the complainant/allottee in Form CRA 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 Tristaar", Sector-92, Gurugram.
2.	Project area	2.71875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no.	72 of 2013 dated 27.07.2013
	License valid/renewed upto	26.07.2017
	Name of licensee	Spaze Towers Pvt. Ltd.
5.	RERA registered/not registered	Registered vide no 247 of 2017 dated 26.07.2017
6.	RERA registration validity	30.06.2020
7.	Allotment letter dated	27.11.2014 [Page 51 of complaint]
8.	Unit no.	2110, 2 nd floor [Page 58 of complaint]
9.	Unit measuring (super area)	289 sq. ft.
10.	Date of execution of buyer's agreement	20.12.2014 [Page 54 of complaint]
11.	Payment plan	Construction linked payment plan



		[Page 52 of complaint]
12.	Total consideration as per statement of account dated 10.09.2019 at page 78 of reply	Rs. 24,51,587/-
13.	Total amount paid by the complainants as per statement of account dated 10.09.2019 at page 79 of reply	Rs. 23,88,501/-
14.	Due date of delivery of possession as per clause 1.2 of the said agreement i.e. 60 months from the date of execution of this agreement.	20.12.2019

15. 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 20.12.2014. Relevant portion of clause 1.2 para 2 of the agreement is reproduced below –

Clause 1.2 of SBA "Escalation charges shall be computed at the expiry of 60 months from the date of this agreement or at the time of offer of possession (permissive or otherwise), whichever is earlier. The RBI indexes for the month of execution of this agreement and for the month at the expiry of 60 months from the date of this agreement/ month of offer of possession (permissive or otherwise), whichever is earlier, shall be taken as the opening and



closing indexes respectively to compute the Escalation Charges”.

Hence, considering the above and taking expiry of 60 months' period as schedule time for delivery of possession, the due date for delivery of possession comes out to be 20.12.2019.

16. The complainant submitted that, on 18.01.2014, she submitted an application to the respondent for unit no. 2110, 2nd floor having an area of 289 sq. ft. along with booking amount of Rs. 2,00,000/-. This being a corner property of complainant's choice, she agreed to pay additional cost towards "Preferential Location Charges'. That on 20.12.2014, respondent produced one buyer's agreement for signatures of the complainant which was signed by both the parties. A specific clarification was sought from the respondent as to by which date the possession of the allotted unit would be handed over. It was explained that since license was valid upto June 2017 and also the market trend is to hand over within 36 months from the date of signing of the BA, similarly they shall also hand over possession within 36 months i.e. by June 2017. That during Jan 2019, it got revealed to the complainant that



the respondent has unilaterally and arbitrarily changed the layout of the project, without any notice or intimation to the complainant. Further, pictorial representation of the project, indicates that unit 2110 allotted to the complainant is no longer a 'corner' unit for which PLC was charged and aggrieved the complainant sent a legal notice to the respondent on 14.01.2019. Hence, this complaint inter alia for the following reliefs:

- i. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant for the delayed period of handing over possession till handing over of possession.
- ii. Direct the respondent to refund the amount charged for PLC for the unit in question.

17. On the date of hearing, the Authority explained to the respondents/promoters 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.



18. The respondents contested the complaint on the following grounds:

- i. That as per the clause 1.2 of the buyer' agreement dated 20.12.2014 which provides that the respondent would endeavour to complete the construction of the project within a period of 60 months from the date of execution of the builder buyer agreement. The project has been registered under the Act and the period of registration is still valid upto 30.06.2020.
- ii. That the possession of the unit shall be offered to the complainant in accordance with the buyer's agreement, within the period of registration under the Act, subject to force majeure conditions and events beyond the power and control of the respondent.
- iii. That the buyer's agreement was dispatched to the complainant for execution in the month of September, 2014 itself and the same was duly delivered at the address provided by the complainant on 09.09.2014. The complainant subsequently informed the respondent that



she had changed her address in the month of June' 2014 but had failed to update her address in the records of the respondent. Eventually, the buyer's agreement was executed on 20.12.2014 willingly, voluntarily and without any objection being raised by the complainant with regard to the terms and conditions thereof.

iv. That the complainant had opted for a partly time bound construction linked plan in which the first three payments are construction linked while the remaining instalments are payable upon achievement of the milestones provided therein. That right from the very beginning, the complainant has been irregular in payment of instalments and consequently the respondent levied interest on delayed payments, in accordance with the terms of buyers' agreement.

v. That despite being fully aware that the respondent had not committed any specific date for completion of the unit and delivery of its possession, the complainant addressed a false and frivolous legal notice dated 14.01.2019 to the



respondent. The respondent sent its reply dated 29.01.2019 denying the allegations made by the complainant.

- vi. That the complainant was well aware and had unconditionally agreed that the building plans shown to her are tentative in nature and are subject to change. The complainant permitted the respondent as per clause 1.6 of the buyers agreement to make all alteration, changes and modifications in the said project. Furthermore, the complainant was specifically made aware in clause 1.9(ii) that if due to any change in the lay-out plan/building plan of the project the unit of the complainant ceases to be preferentially located or becomes preferentially located or becomes additionally preferentially located then the adjustments to the amount paid in lieu of PLC shall be accordingly made as per the clause 1.9(ii) of the said agreement.
- vii. That the unit in question was preferentially located on account of being a corner unit as well as Piyaza facing

unit. If the unit ceases to be preferentially located, the preferential location charges if liable to be refunded, shall be adjusted in accordance with the terms and conditions of the buyer's agreement dated 20.12.2014, at the time of offer of possession of the unit.

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 and explanation and other submissions made and the documents filed by both the parties is of considered view that there is no need of further hearing in the complaint.

Findings of the authority:

9. 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 complainants at a later stage.

10. During the hearing the counsel for the complainant submitted that they were allotted a corner unit for which PLC was applicable but later on unilaterally the respondent changed the location as well as building plans.
11. On perusal of the buyer's agreement dated 20.12.2012 executed between the parties, it transpires that terms and condition of the agreement are totally silent about the scheduled date / time of delivery of possession and also about the penalty charges which shall be payable for such delay. Further, as per clause 11(a) of the buyer's agreement, the company only provides schedule for possession of the said unit but the said clause no where states the specific proposed date of handing over of the possession of the said unit. The said clause is reproduced herein below:

11(a) Schedule for possession of the said unit"

The developer based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the said Building/ said unit in terms of the approvals (including the renewal/extended period described therein) and in

accordance with the terms of this Agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions including but not limited to reasons mentioned in Clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total consideration or any part thereof and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement”.

12. Hence, it is evident that the terms of the agreement have been drafted mischievously by the respondent and are completely one sided as has been held in para 181 of **Neelkamal Realtors Suburban Pvt Ltd vs. UOI and Ors. (W.P 2737 of 2017)**, passed by Bombay HC. The said para is reproduced as under:

“...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.”

On consideration of the documents available on record and submissions made by both the parties, the Authority is



satisfied that the respondents are in contravention of the provisions of the Act.

15. Further, the specific date/period of delivery of possession is not incorporated in the terms of agreement, therefore the authority is of the view that the due date of delivery of possession be calculated in terms of clause 11(a) read with clause 1.2 para 2 of the said agreement dated 20.12.2014, which clearly mentions due date of delivery of possession shall be 60 months from the date of signing of agreement. The agreement which was signed on 20.12.2014 and the due date of delivery comes out to be 20.12.2019. Keeping in view the above the due date of possession shall be 20.12.2019.
16. Further, with regards to the PLC charges, the authority is of the view that since the allotted/booked unit is no more a corner plot, therefore PLC charges are not applicable. The amount paid by the complainant may be adjusted accordingly in terms of the agreement.
17. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the buyer's agreement



dated 20.12.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delayed possession charges i.e. interest at prescribed rate @ 9.30% p.a. w.e.f. 20.12.2019 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

18. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 20.12.2019 till the offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of

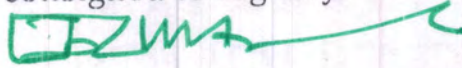


possession shall be paid before 10th of each subsequent month.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge any amount from the complainant which is not part of the buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
- vi. PLC charges shall not be charged by the respondent.

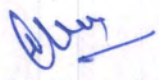
19. Complaint stands disposed of.

20. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 22.10.2020

JUDGEMENT UPLOADED ON 10.12.2020