

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 07.02.2019
Complaint No.	1324/2018 Case Titled As Ajay Kumar Maanocha And Karuna Manocha V/S Spaze Towers Pvt Ltd.
Complainant	Ajay Kumar Maanocha And Karuna Manocha
Represented through	Complainant with Shri S.S.Hooda, Advocate
Respondent	M/S Spaze Towers Pvt Ltd
Respondent Represented through	Shri Ashish Bhandari, AGM on behalf of respondent-company with Shri Ishaan Dang Advocate
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 3 (a) of the Builder Buyer Agreement dated 29.2.2012 for unit No.073, 7th floor, Tower C1, in project "SPAZE PRIVY AT4" Sector-84, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of approval of building plans or from the date of execution of BBA whichever is later i.e. 6.6.2012 + 6 months grace period which comes out to be 6.12.2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.64,05,153/- to the respondent against a total sale consideration of Rs.64,44,313/-.

The main reason for non-delivery of possession is that the respondent has not yet get environment clearance, as a result of which he is not getting occupation certificate, as such, it has been apprised by counsel for respondent that offence committed by him has been compounded by the competent authority in its meeting held on 29.1.2019, as such the main hitch for not getting occupation certificate has been removed and the respondent shall be getting OC. The project is registered vide No.385/2017 and the revised date of delivery of possession is **31.6.2019**. The buyer is well within his right to seek interest for the delayed possession charges. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **6.12.2015**, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession. If the respondent fails to deliver the possession of the unit on the revised date of possession in that case complainant is entitled for refund.

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 subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

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

Samir Kumar
(Member)
7.2.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 1324 of 2018
First date of hearing : 07.02.2019
Date of decision : 07.02.2019

Mr. Ajay Kumar Maanocha
Mrs. Karuna Maanoch
Both address: D-57, Greenwood City, Sector-46, **Complainants**
Gurugram-122003

Versus

1.M/s Spaze Towers Pvt. Ltd.
2.Mr. Arvind Dhingra
3.Mr. Vivek Sharma
Corporate office: Spazedge, Sector-47,
Gurugram-Sohna Road, Gurugram,
Haryana-122002 **Respondents**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Satvir Singh Hooda Advocate for the complainants
Shri Ashish Bhandari AGM on behalf of the respondent
company
Shri Ishaan Dang Advocate for the respondents

ORDER

1. A complaint dated 17.11.2018 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 complainants Mr. Ajay Kumar Maanocha and Mrs. Karuna Maanoch against the promoters M/s Spaze Towers Pvt. Ltd., on account of violation of the clause 3(a) of buyer's agreement executed on 29.02.2012 in respect of unit described as below for not handing over possession by the due date i.e. 06.12.2015 which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 29.02.2012 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 contractual 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 complaint case are as under: -

***Nature of project:** Group housing colony

***DTCP license no.:** 26 of 2011 dated 25.03.2011



1.	Name and location of the project	"SPAZE PRIVY AT4", Sector-84, Village Sihi, Gurugram
2.	Project area	10.512 acres
3.	RERA registered/ not registered	Registered (385 of 2017)
4.	Revised date of registration	31.06.2019
5.	Unit no.	073, floor 7 th , tower C-1
6.	Unit measuring	1465 sq. ft'
7.	Booking date	04.05.2011
8.	Allotment letter	16.07.2011
9.	Date of buyer's agreement executed on	29.02.2012
10.	Tripartite agreement	30.08.2014
11.	Date of approval of building plans as annexed R3	06.06.2012
12.	Basic sale price	Rs.51,37,755/-
13.	Total sale consideration	Rs. 64,44,313/-
14.	Total amount paid by the complainants till date	Rs.64,05,153/-
15.	Payment plan	Instalment linked plan
16.	Due date of delivery of possession (36 months from the date of approval of building plans or the date of signing of this agreement, whichever is later + 6 months grace period) clause 3(a).i.e	06.12.2015
17.	Delay in handing over possession till date	3 years and 2 months
18.	Penalty clause as per buyer's agreement dated 29.02.2012	Clause 3 (c)(iv) of the agreement i.e. Rs.5/- per sq. ft.' of the super area.



4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondents. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 06.12.2015 as per the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 07.02.2019. The reply has been filed on behalf of the respondents and has been perused.

BRIEF FACTS OF THE COMPLAINT

6. The complainants submitted that the matter in dispute relates to intentional, wilful, deliberate and vexatious non-offer of actual, physical and vacant possession of a two bedrooms residential unit bearing no. 073, floor 7th, tower C1 having super area measuring 1465 sq. ft. along with one covered parking space of a multi-storeyed project in the name and style "Spaze Privy AT4" complete in all respects over the land situated within the revenue estate of village



Sihi, Sector-84, District Gurugram. The buyer's agreement dated 29.02.2012 within the agreed period of 36 months with a grace period of 6 months from date of building plan or date of signing of the buyer's agreement whichever is later on or before 28.02.2015 and at the most with the grace period on or before 28.08.2015.

7. The complainants submitted that vide application dated 04.05.2011, the complainants booked for provisional allotment or a residential unit no. 073, floor 7th, tower C-1 having super area measuring 1465 sq. ft. along with one covered parking space.
8. The complainants submitted that in order to perform their part of contractual obligation in terms with the aforesaid buyer's agreement dated 29.02.2012, the complainants availed a loan facility of Rs. 35,00,000/- from the state bank of India by executing tripartite agreement dated 30.08.2014 between them and the complainants were made to bear interest at enormous rates.
9. The complainants submitted that upon the words and assurance of the respondents to offer possession of the said



unit at the most on or before 28.08.2015 including grace period of 6 months after execution of the buyer's agreement dated 29.02.2012, the complainants shifted to Gurugram and started residing in a rental accommodation at house no. D-57, Greenwood City, Sector-46, Gurugram with a monthly rent of Rs. 35,000/- + electricity + maintenance charges totalling Rs.40-45,000/- per month.

10. The complainants submitted that despite being financially burdened from all fronts, the complainants closed their loan accounts by repaying the loan of the State Bank, duly acknowledged by their banker vide letter dated 21.04.2016, but still the respondents failed to offer actual physical possession of the unit.
11. The complainants submitted that the complainants till date have paid a total sum of Rs.64,05,153/- against the total sale price of Rs. 64,78,808/-.



12. ISSUES RAISED BY THE COMPLAINANT

- i. Whether the respondents failed to perform their part of contractual obligations in terms with the buyer's agreement dated 29.02.2012?
- ii. Whether the respondents failed to give possession of the unit to the complainants as per the agreement?
- iii. Whether the respondents are liable to pay compensation @ Rs.5/- per sq. ft. of the super area to the complainants?
- iv. Whether the respondents are liable to pay compensation @ 24% per annum over the amounts paid by the complainants?
- v. Whether the complainants are entitled to refund of the amount of Rs.2,24,39,771 paid to the respondents?

13. RELIEF SOUGHT

The complainants are seeking the following reliefs:

- i. The respondents may kindly be directed to handover the actual possession of the unit.



- ii. That the respondents be directed to pay compensation @ Rs.5/- per sq. ft. of the super area per month till the actual date of offer of possession.
- iii. That the respondents be directed to pay interest @ 24% per annum over the amounts paid by the complainants.
- iv. Any other relief which this authority deems fit and proper.

RESPONDENT'S REPLY

14. The respondents submitted that the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this hon'ble authority. The complainants have filed the present complaint seeking refund, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that complaints 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 (hereinafter referred to as "the Act" for short) read with rule 29 of the Haryana Real Estate (Regulation and Development)



Rules, 2017, (hereinafter referred to as “the rules”) and not by this hon’ble authority. The present complaint is liable to be dismissed on this ground alone.

15. That the complaint is bad for mis-joinder of respondents no. 2 and 3. It is submitted that the complainants had consciously and voluntarily executed the buyer’s agreement with respondent no. 1. The rights and obligations of complainants as well as respondent number 1 are completely and entirely determined by the covenants incorporated in the buyer’s agreement which continues to be binding upon the parties thereto with full force and effect. Respondents number 2 and 3 have got nothing to do personally with the dispute subject matter of present litigation. Moreover, respondent number 2 has already left the service of respondent number 1. The complaint preferred by the complainants is nothing but an abuse of process of law.

16. That the complainants have completely misinterpreted and misconstrued the terms and conditions of buyer’s agreement dated 29.02.2012. 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 29.02.2012 the time period for delivery of possession was 36 months excluding 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 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.



17. That it was further provided in clause 3 (b) of buyer's agreement dated 29.02.2012 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.

18. That in accordance with contractual covenants incorporated in buyer's agreement dated 29.02.2012 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: –

S.no.	Nature of Permission/ Approval	Date of submission of application for grant of Approval/sanction	Date of Sanction of permission/grant of approval	Period of time consumed in obtaining permission/approval
1	Environment Clearance	30.05.2012	not received till date	-
2	Zoning Plans	27-04-2011	03.10.2011	5 month



	submitted with DGTCP			
3	Building Plans submitted with DTCP	26.08.2011	06.06.2012	9 months
4	PWD Clearance	08.07.2013	16.08.2013	1 month
5	Approval from Deptt. of Mines & Geology	17.04.2012	22.05.2012	1 month
6	NOC from AAI	24.01.2017	01.02.2017	-
7	Approval granted by Assistant Divisional Fire Officer acting on behalf of commissioner	18.03.2016	01.07.2016	4 months
8	Clearance from Deputy Conservator of Forest	05.09.2011	15.05.2013	19 months
9	Aravali NOC from DC Gurgaon	05.09.2011	20.06.2013	20 months



19. 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 complainants have 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 complainants. It is submitted that the complainants from the beginning had deliberately failed to clear their outstanding dues against the demands raised by the respondent company. It is submitted that the complainants had regularly defaulted in timely payments and as on 01.12.2018 the complainant is liable to pay delayed payment interest amounting to Rs.2,57,261/-.

20. It is further pertinent to mention that the complainants have an outstanding amount of Rs. 47,857/- to their account and the statement of account dated 01.12.2018 establishing this fact. It is submitted that there is no default on part of respondent no. 1 in delivery of possession in the facts and circumstances of the case. Interest ledger dated 01.12.2018 depicting periods of delay in remittance of outstanding



payments by the complainants as per schedule of payment incorporated in the buyer's agreement has been annexed as annexure R4. Thus, it is comprehensively established that the complainants have defaulted in payment of amounts demanded by respondent no. 1 under the buyer's agreement and therefore the time for delivery of possession deserves to be extended as provided in the buyer's agreement. The demand notices and reminders for payment of the instalment due as per the construction linked plan opted by the complainants.

21. 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 no. 1. Thus, the allegation of delay against the respondents is not based on correct and true facts. The photographs comprehensively establishing the completion of construction/development activity at the spot have been appended with this reply as annexure R6 (colly). It is further



submitted that the **respondent no. 1 expects to deliver the possession of the unit in question by May 2019.**

That it is pertinent to note that all construction activities involving excavation, civil construction were stopped in Delhi and NCR Districts from 01.11.2018 to 10.11.2018 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 no. 1 had to suspend its construction activities for the said period. respondent no. 1 cannot be held liable for any delay caused due to this fact as well.

DETERMINATION OF ISSUES

After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings of the authority are as under:

22. With respect to **first and second issues** raised by the complainants, the authority came across clause 3(a) of



buyer's agreement. The clause regarding the possession of the said unit is reproduced below:

"3(a) Possession

36 months from the date of approval of building plan or the date of signing of this agreement, whichever is later + 6 months grace period."

The authority is of the view that the respondent has delayed the delivery of possession of the booked unit. This is fortified from the fact that as per clause 3(a) of the agreement dated 29.02.2012, the construction was to be completed within the date of approval of building plan or the date of signing of this agreement, whichever is later + 6 months grace period (date of approval of building plan is 06.06.2012. Therefore, due date of possession will be calculated from 06.06.2012. The due date of possession comes out to be 06.12.2015 which has already lapsed but the possession has not been delivered till date and therefore, the respondents are liable to pay interest on the delayed possession. Thus, the complainants are entitled for interest on the delayed possession at the prescribed rate of 10.75% p.a. under the Act. Delay charges



will accrue from the due date of possession i.e. 06.06.2012 till offer of possession.

23. With respect to **third and fourth issue** raised by the complainants, the delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 3(c)(iv) of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondents 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."



24. Hence the promoter is liable under section 18(1)(a) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainants regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1)(a) is hereby allowed. The authority issues directions to the respondents u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants with the promoter from the due date of possession i.e. 06.12.2015 till the date of offer of possession.

25. With respect to **fifth issue** raised by the complainants, as per statement of the respondents that the building in question has been completed in all respects and is very much eligible for grant of occupation certificate. The main reason for non-delivery of possession is that the respondents have not yet got environment clearance, as a result of which he is not



getting occupation certificate, as such, it has been apprised by counsel for respondents that offence committed by him has been compounded by the competent authority in its meeting held on 29.01.2019, as such the main hitch for not getting occupation certificate has been removed and the respondents shall be getting OC. The project is registered vide RERA registration: **registered (385 of 2017)** valid upto: 31.06.2019 with the authority. The authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the other allottees. Therefore, the relief sought by the complainants cannot be allowed. However, as per proviso to section 18(1) of the Act, the complainants shall be paid interest for every month of delay calculated at the prescribed rate of 10.75% per annum till the handing over of the possession.



FINDINGS OF THE AUTHORITY

26. The preliminary objections raised by the respondents 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.

27. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

28. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

29. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.



30. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
31. As per clause 3 (a) of the builder buyer's agreement dated 29.2.2012 for unit no.073, 7th floor, tower C1, in project "SPAZE PRIVY AT4" Sector-84, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of approval of building plans or from the date of execution of BBA whichever is later i.e. 06.06.2012 + 6 months grace period which comes out to be 06.12.2015. However, the respondents have not delivered the unit in time. Complainants have already paid Rs.64,05,153/- to the respondents against a total sale consideration of Rs.64,44,313/-.
32. The main reason for non-delivery of possession is that the respondents have not yet get environment clearance, as a result of which he is not getting occupation certificate, as such, it has been apprised by counsel for respondents that offence committed by him has been compounded by the competent authority in its meeting held on 29.01.2019, as



such the main hitch for not getting occupation certificate has been removed and the respondent shall be getting OC. The project is registered vide no.385/2017 and the revised date of delivery of possession is **31.6.2019**. The buyer is well within his right to seek interest for the delayed possession charges. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **06.12.2015**, as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession. If the respondents fails to deliver the possession of the unit on the revised date of possession in that case complainants are entitled for refund.

33. The respondents are directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.

Decision and 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 hereby issues



the following directions to the respondents in the interest of justice and fair play:

- i. The respondents are duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession w.e.f 06.12.2015 to till the date of offer of possession. If the respondents fails to deliver the possession of the unit on the revised date of possession in that case complainants are entitled for refund.
- ii. The arrears of interest accrued so far shall be paid to the complainants 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 subsequent month. The order is pronounced.
- iii. The respondents are directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.



35. The complaint stands disposed of.

36. The order is pronounced.

37. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.02.2019

Judgement Uploaded on 01.03.2019



HARERA
GURUGRAM

