

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

Complaint no. : 5817 of 2019
Date of first hearing : 27.01.2020
Date of decision : 04.10.2021

HARERA, Gurugram
R/o New PWD Rest House, Civil Lines,
Gurugram

Complainant



M/s Spaze Towers Pvt Ltd
Spazedge, Sector-47,
Gurugram-Sohna Road
Gurugram 122002

Respondent

CORAM:

Shri KK Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

Chairman
Member
Member

APPEARANCE:

Sh. Bharat Kumar

Director for the respondent

HARERA
ORDER
GURUGRAM

1. The present matter relates to the violation of proviso to section 3(1) of the Real Estate (Regulation and Development) Act, 2016 wherein it is provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall



make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act.

2. The particulars of the project have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Spaze Business Park", Sector-66, Gurugram
2.	Area of project	2.481 acres
3.	Nature of the project	Commercial
4.	DTCP license no.	27 of 2009 dated 15.06.2009
5.	Registered/ not registered	Not registered

3. During proceedings in the complaint vide no. CR/688/2018 filed by Mr. Ashok Kumar against M/s Spaze Towers Private Limited in respect of the project "Spaze Business Park" located in Sector-66, Gurugram, it has come to the notice of this authority that the promoter have not obtained Part CC / Part OC / Completion / Occupation Certificate for this project so far.



4. That as on that date the promoter doesn't have completion/occupation/part completion/part occupation certificate for the same before coming into force of the Act *ibid*. Therefore, the project is not saved from requirement of registration under exceptions as provided under section 3(2) of the Real Estate (Regulation and Development) Act, 2016 which provides as under: -

"(2) Notwithstanding anything contained in subsection (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project."



5. The project is covered under the definition of “on-going projects” as defined under Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 which provides that “ongoing project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date. Also, it is not covered in exclusion sub-rules provided there. The proof of completion of project is obtaining completion certificate from the competent authority.
6. As per the provisions of the RERA, Act “ongoing projects” where completion certificate has not been issued are required to be registered with the authority within three months from the date of commencement of the RERA Act. The Real Estate (Regulation and Development) Act, 2016 came into force on 1st of May 2017 in its entirety and promoters of incomplete projects were required to register their projects before 31st of July 2017.
7. Keeping in view the above facts, and as per the records of the authority the project is registerable under section 3 of the Act



ibid and the promoter has not registered the project with the Haryana Real Estate Regulatory Authority as on date. This omission on the part of promoter is violation of proviso to section 3(1) of the Act ibid which provides as under: -

"Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:"

8. Accordingly, a show cause notice no. HARERA/GGM/2018/Suo Motu/Non-Reg./210 dated 14.02.2019 and RERA-GRG-5817-2019 dated 29.11.2019 to M/s Spaze Towers Pvt Ltd was issued for above violations of the Real Estate (Regulation and Development) Act, 2016.
9. The promoter didn't submit any reply to the show cause notices issued even after being given time to file the reply during the hearings held in the matter. Therefore, another show cause notice vide no. RERA-GRG-5817-2019/1 dated 08.07.2021 was issued to the promoter.
10. The promoter had submitted his reply on 19.08.2021 against the show cause notices stating that the promoter applied for



occupation certificate on 23.01.2017 against which the DTCP on 21.06.2018 directed the promoter to submit composition charges amounting Rs. 7,29,70,768/-. The promoter filed the appeal against the demand raised by DTCP before the Principal Secretary, Department of Town and Country Planning, Govt of Haryana, Chandigarh and the decision was pronounced in favor of promoter on 31.10.2018. Thereafter the DTCP issued occupation certificate on 30.04.2019. The promoter had also obtained completion certificate on 17.02.2021.

11. Sh. Bharat Kumar Director of the promoter company appeared before the authority and submitted that the reply submitted by the promoter needs to be considered. Keeping in view the reply submitted by the company, the authority is of the considered view that neither the occupation certificate nor the completion certificate was issued to the promoter on or before publication of Real Estate (Regulation and Development) Act,2016 and Haryana Real Estate (Regulation and Development) Rules,2017 and the project was registrable as the project is not saved from requirement of registration under exceptions as provided under section 3(2) of the Real Estate (Regulation and Development) Act,2016.




12. On consideration of the circumstances, the evidence and other records and submissions made by the promoter during the course of hearings, the authority is satisfied that the promoter has violated the section 3(1) of the Real Estate (Regulation and Development) Act, 2016. This omission of the promoter is punishable under section 59 (1) of the Act *ibid*. Section 59(1) of the Act is reproduced below: -

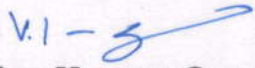
"If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten percent of the estimated cost of the real estate project as determined by the Authority."

13. Therefore, the authority in the light of the above-mentioned reasons decided to impose a token penalty of Rs. Twenty-Five Lakh (25,00,000/-) on the promoter under section 59(1) for violating the section 3(1) of the Real Estate (Regulation and Development) Act, 2016 which shall be deposited with the authority within one month and shall be credited in the government account within a prescribed period as per the Rules.
14. Further OC as well CC of the project has been received vide memo no. ZP-563/SD(DK)/2019/10823 dated 30.04.2019

and LC-1624-JE-(VA)-2021/3850 dated 17.02.2021 respectively but the project was registrable at the time of coming into force of the Real Estate (Regulation and Development) Act, 2016. Accordingly, the promoter is directed to complete the registration formalities and fill the online information of the project.

15. The matter stands disposed off.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.08.2021

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