



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

28

Day and Date	Wednesday and 06.04.2022
Complaint No.	CR/4622/2021 Case titled as Suleman Ahmad and Sadam Hussien VS Spaze Towers Private Limited
Complainant	Suleman Ahmad and Sadam Hussien
Represented through	Shri Gulab Singh Jarodia Advocate
Respondent	Spaze Towers Private Limited
Respondent Represented	Shri J.K. Dang Advocate
Last date of hearing	28.01.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings through VC

The present complaint has been received on 07.12.2021 and the reply was received on 21.02.2022.

Succinct facts of the case as per complaint and reply are as under:

Sr. No.	Particulars	Details
1.	Name of the project	Spaze Tristaar, Sector 92, Gurugram, Haryana.
2.	Allotment letter	14.11.2014 (annexure R2, page no. 36 of reply)
3.	Unit no.	2009, 2nd floor, tentatively admeasuring 237 sq.ft. (annexure R2, page 36 of reply)
4.	Date of execution of buyer's agreement	06.12.2014 (annexure R4, page 38 of complaint)

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016की धारा 20के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016का अधिनियम संख्यांक 16



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CR/4622/2021

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5. Possession clause

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 within a period of sixty months from the date 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 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. In case there is any delay on the part of the allottee(s) in making of payments to the developer then notwithstanding rights available to the developer elsewhere in this agreement, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the allottee(s) in remitting payment(s) to the developer.....
(Emphasis supplied)

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CRJ/622/2021

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		<p>Though the possession clause is given in file, but the time period is not mentioned w.r.t. to due date. Therefore, the due date is calculated from 60 months from the date of this agreement, which is mentioned in clause 1.2 of buyer agreement. The relevant clause is reproduced under:</p> <p><i>Escalation charges shall be computed at the expiry of sixty 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. (Page 39 of complaint)</i></p>
6.	Due date of delivery of possession (as per clause 1.2 of the BBA annexed with the complaint page no. P-22)	06.12.2019
7.	Total sale consideration	Rs 18,03,494/- (Annexure R5, page no 67 of reply the SOA dated 29.01.2022)
8.	Total amount paid by the complainants	Rs. 6,03,241/- (Annexure R5, page no 68 of reply the SOA dated 29.01.2022)
9.	Occupation certificate	03.05.2021 (annexure R13, page 91 of reply)
10.	Offer of possession	Not offered

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CR/1622/2021

11.	Termination/cancellation letter	19.06.2021 (annexure R10, page 87 of reply)
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Observations on Cancellation of the unit:

The complainants were allotted unit no. 2009, 2nd floor, tentatively admeasuring 237 sq.ft. in the project "Spaze Tristaar" by the respondent builder for a total consideration of Rs. 18,03,494/- under the payment schedule given on page P-40 of the complaint. The basic sale price of the unit was Rs.1704504/- and the demand regarding labour cess, external electrification charges and misc. charges (without any specific mention) totalling to Rs.98990.00 is unjustified. A BBA was executed on 06.12.2014, the unit was booked under the construction linked payment plan and the respondent/builder continued to receive the payments against the allotted unit. It has been brought on record that the complainants had deposited several amounts against the allotted unit and paid a total sum of Rs. 6,03,241/- as per unit statement dated 29.01.2022 at page 68 of the reply. The last payment was made by the allottee on 25.04.2016 amounting to Rs.5747/-. The payment plan opted is construction link plan where payments are to be made as per stage of construction. The OC of the building was applied on 13.10.2020 and same was granted by DTCP vide memo No.ZP-925/SD (DK) 11018 dated 03.05.2021. It shows that building was at different stages of construction from the date of last payment made i.e. 22.04.2016 to the date of applying for OC. It is also a fact that during this period, no payment was made although there were reminders dated 26.04.2018, 25.05.2018, 18.06.2018, 26.07.2018, 16.08.2018, 22.10.2018, 26.11.2018, 22.12.2018, 23.06.2019 and 28.05.2019 as contained in Annexure-R7 (page 75 to 84 of the reply). Thereafter two final opportunities were also granted vide letters dated 19.06.2019 and 28.05.2021 (Annexure R8 and R9). The counsel for the complainant took the stand that there is nothing on site accordingly payments were stopped, whereas the situation is different as the promoter has applied for OC on 13.10.2020 which was granted by DTCP on 03.05.2021 which means that construction was going on during the intervening period from the last payment uptil the date of applying for OC which clearly establishes that the stand taken by counsel for the complainant is not as per ground realities. The counsel for the respondent very categorically stated that cancellation has been done as per BBA. The due date as per possession clause has not been specifically mentioned but is being taken as 60 months from the date of agreement as per clause 1.2 of the buyer's agreement and which comes to 06.12.2019. It has come on record that the complainants paid the above-mentioned amount upto 25.04.2016 and did not pay the remaining amount on the ground of construction was not going as per the schedule. Ultimately after receipt of occupation certificate on 03.05.2021, the unit was cancelled on 19.06.2021 by issuance of a letter forfeiting the amount deposited by complainants.



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Though, the complainants have not challenged that action of the respondent and claimed DPC, but to decide the issue of DPC it is to be decided as to whether cancellation is valid and as per the provisions of the buyer's agreement. A perusal of letter dated 19.06.2021, issued by the respondent to the complainants shows that while cancelling the allotted unit against a basic sale consideration of Rs.17,04,504/-, the respondent did not deduct 10% of the basic sale price and refunded the remaining amount to the allottees as per regulation 11 of 2018 framed by HARERA, Gurugram. Rather, they forfeited the whole amount deposited by the complainants and found an amount of 2,74,528/- against them, bypassing the above-mentioned provisions of law.

Keeping in view the above facts the authority observes that the cancellation of the unit has been done by the respondent as per provisions of the BBA and on failure of complainants to make due payments despite number of reminders. The respondents have not refunded the amount after deducting 10% of the earnest money. Accordingly, the respondent is directed that after deducting 10% of the earnest money balance amount be refunded to the complainants within the time limit as per law.

No case is made out for delayed possession charges in view of findings recorded above.

Matter stands disposed of. File be consigned to the registry.

V.I-3
Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
06.04.2022