

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

**Complaint No. : 279 of 2018**  
**Date of First**  
**Hearing : 17.07.2018**  
**Date of Decision : 11.04.2019**

Privvy 93 Owners Association

Address: I-601, Park View Spa, Sector 47,  
Gurugram- 122018

**Complainant**

Versus

M/s Spaze Towers Pvt. Ltd.

Corporate Office: Spazedge, Sector- 47,  
Gurgaon Sohna Road, Gurugram

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Subhash Bhatt, Shri  
Aditya Verma, Ms. Preeti and  
Shri Shanker Vij  
Shri J.K. Dang

Advocate for the complainant

Advocate for the respondent



**ORDER**

1. A complaint dated 16.05.2018 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 complainant Privvy 93 Owners Association, against the promoter M/s Spaze Towers Pvt. Ltd., on account of violation of the obligations of the promoter under section 11 (4) (a) of the Act ibid.

2. Since, the buyer's agreement annexed with the paper book has been executed on 26.04.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively.
3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. The respondent company made a "permissive possession" on 06.11.2018. The flat builders being in a dominating position have made a one-sided agreement. The promoter has not fulfilled his committed liability by not giving possession as per the terms of the buyer's agreement. Neither paid any compensation i.e. Rs.5/- per sq. ft. per month for the period of delay as per buyer agreement dated 26.04.2013.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 17.07.2018. The case came up for hearing on 17.07.2018, 24.07.2018, 06.09.2018, 09.10.2018 and 25.09.2018 and 11.04.2019. The reply was filed by the respondent on 07.08.2018. The complainant has filed a rejoinder wherein he has re-asserted the contentions raised in the complaint.

#### **Facts of the complaint**

5. Briefly stating the facts of the complaint, the complainant submitted that the project was launched by the promoter in the middle of 2011. After payment of 30% of the basic cost of the apartment, the promoter sent a one sided buyers agreement to be executed by the buyers. The BBA had to be signed by the complainant under duress as a substantial amount of money had already been paid and was at stake.

6. The apartments were committed to be delivered within 3 years from the date of the buyer's agreement. From those who had applied in 2011, 95% of the basic sale plus all other



charges were demanded by the promoter by January, 2015 by which time the apartments were already due for delivery.

7. The complainant have received a demand letter dated 06 November, 2017 whereby the promoter has raised illegal demands which arise out of i) unjustified increase in the super area ii) vaguely defined words/clauses in the BBA and iii) wrong interpretations of some of the terms of the BBA.
8. The promoter has not registered the project under RERA despite the fact that construction activity is still going on. They avoided registration by hurriedly applying for the occupation certificate which has not received. The fallacy of this position is clear from the fact that the occupation certificate has not received even till date.
9. The complainant submitted that the grievances of the complainants arise mainly out of i) demands raised in the letter at Annexure-3, ii) poor quality of workmanship, iii) offering of possession without occupation certificate, iv) illegal enrichment of the promoter through over charging of EDC/IDC and V) Non-provision of facilities promised by the promoter at



the time of sale of the project etc. All the grievances are enumerated below:

**Facade Repair Charges:**

The promoter has demanded an amount at the rate of Rs. 25.00 per sq. ft. of super built area towards this charge. On query, it has been advised verbally that this amount is being demanded in advance to provide for expenses that may be required to be incurred in future – say 3 years from date. Obviously, there is no justification for this charge as on date.

**External Electrification (including 33 KV) Water, Sewer and Meter Charges:**

A huge amount of Rs.170,000 plus is demanded under this head. The promoter has not provided any justification for the nature as well as the quantum of this charge. As the complainant understand, the major component of this charge relates to HT line drawn from the electric sub- station to the residential complex. It is contended that having paid the EDC/IDC for the complex, all the external services should be available to the apartment buyers at the doorstep without any



additional expense on their part. As such this charge is totally unjustified on the apartment buyers.

Unjustified charges on account of misinterpretation of clauses of the builder buyer agreement:

The demand letter dated 06.11.2018, contains two charges related to unjustified charged on this count. Both of these relate to BBA clause no.55( imposition of additional taxes). These are:

i. Labour Cess : The promoter has not explained the nature of this charge. Despite queries, it has not been shown when this charge was imposed for it to be considered an additional tax. Nor the quantum of the charge from each buyer been justified with reference to the total tax. In the opinion of the complainants, there is no such new tax which is chargeable to them as an additional tax. In fact, labour cess is as per the BOCW Act,1996 and has been in existence for long.

ii. VAT-1 and VAT-2: It is contended that this is not a new tax so that it could be considered as additional tax. VAT tax was imposed in Haryana in 2003 and its applicability to residential buildings was well established by 2010. As such, this is not a tax that has been imposed additionally on the promoter after the date of





issuance of the booking form. Also, the value added tax has virtually replaced the works contract tax which has existed for many years and has always been borne by the promoter.

One Sided BBA:

From the above it should be quite clear that the BBA between the buyer and the promoter is a one sided document that the buyers have signed in good faith without realizing the pitfalls willfully created by the promoter. The BBA needs to be set aside so far as these insidious clauses are concerned and the transaction viewed purely on equity.

Permissive possession offered without occupation certificate.

Through their letter dated 06.11.2017, the promoter has offered what they call a permissive possession. Despite various representations, the promoter has refused to define the scope of this term and has only contended that it is legally permissible. The so called possession has been offered without receipt of an occupation certificate from the competent authority in respect of the concerned towers. On representation, the promoter has withdrawn this demand in a few cases, while in others they



continue to illegally demand this payment. In fact, in some cases, the buyers have accepted their offer of possession and have moved into the complex. Further, the promoter offered a discount of Rs. 1,00,000/- in the beginning of Feb, 2018 ( valid for possessions taken till 28.02.2018) in order to induce more buyers to accept possession. In this connection, the complainants wish to draw attention to the stipulations on page 2 of the letter dated 09.11.2012 from the DTCP, Haryana to the promoter granting approval for building plans as under:

*“ No person shall occupy or allow any other person to occupy any new building or part of the same for any purpose what so ever until such building or part thereof has been certified by the Director General or any person authorized by him in this behalf as having been completed in accordance with the permission granted and an occupation certification in prescribed form has been duly issued in your favour.”*



The promoter has not only allowed some buyers to occupy the apartments before receipt of the occupation certificate, but in fact has induced them to do so by offering a discount as stated above.

Subvention:



Some of the complainants had booked the apartments under a subvention plan. As per this plan, the interest on housing loans taken by the complainant to finance the purchase of the apartment was to be paid by the promoter till offer of possession. In the garb of the illegal “ permissive possession” offered vide letter dated 06.11.2017 as stated in the previous para, the promoter has stopped paying the interest on these housing loans in violation of the agreement.

Non-provision/ inadequate provision of promised facilities/ amenities/ features

The permissive possession offered by the promoter has been offered even before making provision for a number of facilities, amenities and features in the complex. There is also no indication of whether these are going to be provided in future and the time frame for the same. The missing facilities, amenities and features are listed below:

- i) Green Cover: while selling the apartments, the promoter had advertised the project with 80% green cover. The promoter is claiming the same even in their recent publicity material. A copy of such a brochure issued in



2011-12 is attached as Annexure P-14. Also a copy of a similar brochure issued recently is attached as Annexure P- 15. Both the brochure are substantially same. The actual position obtaining in the complex is very disappointing with 7 small lawns which don't provide more than 25% green cover.

- ii) Community centre – No provision has been made for the amenity stipulated on page 5 of the approval of building plans.
- iii) Swimming pool and kids pool: small pools have been provided which are definitely inadequate for a complex with 551 apartments. The pools provided can at best be called splash pools for a complex of this size.
- iv) Basketball Court- A half court has been provided which is definitely inadequate for the community.
- v) Tennis Court – A single court has been provided which is inadequate.
- vi) Badminton Court – here also a single court has been provided.
- vii) Water fountain



- viii) Maze
- ix) Party Lawn
- x) Skating rink
- xi) Meditation Court
- xii) Jogging track
- xiii) Shopping street – the promoter has built a row of shops outside the complex in an area that was earlier earmarked as a green belt.
- xiv) Sand pit.
- xv) The promoter is required to prove that provisions regarding solar water heating system and compact fluorescent lights as stipulated in the building approval letter have been made.
- xvi) It is also feared by the complainants that material used by the promoter is not as per specifications advertised. The promoter must allow the complainants to inspect the apartments after they are fully finished with the help of their own competent person.
- xvii) Preferential location charges



xviii) A majority of the apartments have been sold by the promoter with a green facing PLC. In order to deceive the buyers, the promoter has shown them publicity material that portrays the complex as a heaven of greenery. A cursory look at the brochures and the actual position obtaining in the complex is enough to reveal the fraud played upon the buyers by the promoter. In actuality, there is a small lawn in one corner of the complex and most of the apartments are not green facing. As such, the promoter has miserably failed to deliver upon his promises.

Excess charged EDC/IDC

The external development charge (EDC), and the infrastructure development charges (IDC) for external services to be provided by the Haryana government as on date of grant of license are not included in the basic price of the apartment. The allottee shall pay external development charges @ Rs. 316.37 per sq.ft. on proportionate basis.



Clearly, EDC/IDC is collected by the developers on behalf of the govt. authorities and deposited with them. The promoter, however, has cheated the complainants even here by collecting a much higher charge than the actual charge by the govt. authorities. This becomes clear from the publicity material of the promoter itself. As per the brochure received as late as 05.05.2018, the actual cost of EDC and IDC to the promoter is no higher than Rs.198.82 per sq. ft. for EDC and Rs. 25.79 for IDC. This is the admitted maximum cost to the promoter. As such, the promoter has over charged the complainants @ Rs.124.07 on account of EDC/IDC. The amount over charged by the promoter needs to be refunded to the complainants & punitive action needs to be instituted against the promoter for committing this fraud.

Non responsive attitude of the promoter

The promoter has been extremely unresponsive to the queries raised by the buyers regarding the apartments. For the last 3 years, email communication to the promoter have largely remained un-respondent. This



cavalier attitude has been prominently evident since the issuance of the letter dated 06.11.2017 offering permissive possession. Most of written/email communications have not been replied to by the promoter. Even during verbal discussions, they are not willing to commit to anything in writing. Letters/emails sent to the promoter in mid Feb, 2018, remain unanswered on date. When reminded on phone, the standard answer is that the legal department is looking into all responses. There is no commitment regarding the date by which a response will be sent. This attitude has caused tremendous undue anguish to the buyers and needs to be punished.

Offer of possession without completing the apartments

Even the permissive possession offered in Nov, 2017 is without completing the apartment. The apartments are still in a very raw stage and the promoter is asking for a further 4 weeks' time to complete the apartment after full payment has been made.

NO Approach Road





The promoter has offered possession of the apartments without completing the construction of the 24 meter road providing access to the main road. This is one of the conditions imposed upon them in the License issued to them. As a result, there is no proper approach road for the complex as on date from the entry planned for the complex.

Provision not made for sufficient power back up:

The promoter has promised a power back-up of 5 KVA for bigger apartments. It is contended that the generators installed by the promoter are not sufficient to meet the peak time demand on full occupation of the complex. The promoter should be made to make sufficient provision in this regard with proof.

Illegal demands being raised even after agreeing that legal possession has not been offered:

The promoter has now started demanding payment of certain charges/deposits which are payable only at the time of possession e.g. IFMS from some of the complainants. They need to be told to desist from such



practices to harass the complainants and the recent demands to be declared void.

Recent unilateral increase in charges to fleece customers:

Recently the promoter has hiked the administrative charges being levied by them for transfer of the apartment for a secondary market sale. Till 19.04.2018, they were charging Rs.100 per sq. ft. which itself was very high for the limited amount of work/service that they need to provide. Since then, this charge has been suddenly increased to Rs. 250 per sq.ft. which is exorbitant. In fact, at the current market price, the charge being taken by them is more than 60% more than the registration stamp duty to be levied by the Govt. authorities. To illustrate, in the sample case, while the registration charge will be about Rs.2.63 lakhs, the promoter will levy an administrative charge exceeding Rs.4.24 lakhs for simply recording a transfer in his books. These exorbitant charges are being demanded for just two reasons:



- i) For unjust and easy enrichment of the promoter,  
and
- ii) To discourage secondary market transactions so  
that they can sell the inventory still lying unsold  
with them.

The promoter needs to be stopped from this unfair  
and monopolistic practice.

10. It is apparent from the foregoing that the promoter has defaulted on many of their commitments and have also tried to cheat the buyers. He has tried to fleece the buyers of the apartments in whatever manner is possible. In fact, some of the actions of the promoters are with malafide intentions. Exemplary punishment/penalty needs to be imposed on him for his illegal acts of commission and omission.

**11. Issues raised by the complainant:**

- I. Whether the promoter has registered the project under RERA?
- II. Whether the promoter is liable to receive an additional payment from the complainant on account of increase in super area, whereas as per the calculations the floor



area being delivered is less than the floor area shown in the building plan shared by the promoter at the time of sale?

- III. Whether the promoter is liable for penalty for offering possession before receipt of occupation certificate?
- IV. Whether the complainant is entitled to compensation for delayed possession ?

## 12. Relief sought

- I. Direct the respondent to refund the amount Rs. 1,17,323/- for difference in super area.
- II. Direct the respondent to give the penalty for increase in delayed possession.
- III. Direct the respondent for reasonable penalty for acute mental anguish caused due to delay in possession and due to lack of response to genuine queries of the complainant.



## Respondent's reply

### Preliminary Objections:

- 13. The respondent submitted preliminary objections upon the maintainability of the complaint. The scheme of the Real Estate (Regulation and Development) Act, 2016, complaints under

section 31 of the Act can only be filed with regard to non-compliance or violation of the provisions of the Act. The provisions of the Act are not applicable to the project in question in as much as the construction of the project already stands completed and the respondent has already made an application for issuance of the occupation certificate before the competent authority. The same is not an 'ongoing project' u/r 2(1)(o) as defined under the rules and hence does not require registration.

Reply on merits:

14. The respondent submitted that section 31 of the Act contemplates filing of a complaint by the association of allottees or any voluntary consumer association registered under any law for the time being in force. The section thus contemplates that there will be a single association which will be representative of the interests of all the allottees in the project. The allottees in the project have also agreed and undertaken to become members of the association of apartments to be formed by the respondent under the



provisions of the Haryana apartment Ownership Act, 1983, at the time of filing the deed of declaration under the provisions of the Act.

15. The respondent submitted that even by the complainant's own admission, the complainant association is not even representative of its own members let alone all the allottees in the project. It has been admitted in the complaint that some of the so called members of the complainant association have booked their apartments as late in June-July 2017.

16. It is submitted by the respondent that it is admitted by the complainant, in the prayer clause of the complaint that since the super area and rate differ for each allottee, it is not possible to quantify the relief sought. It is further submitted that the so called 'sample case' of Mrs. Vibha Narula Gupta is not a "subvention case", hence amounts needs to be determined for other cases which might be subvention cases.

17. The respondent further contended in the reply that relief pertaining to payment of compensation etc is concerned, it is submitted that the question of grant of such relief can only be





decided by the adjudicating officer under section 71 of the Act and not by the hon'ble authority.

18. The respondent submitted that the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of allotment.

19. The allottees, Mrs Vibha Narula Gupta and Chitaranjan Gupta (the so called sample case on the basis of which the present false and frivolous complaint has been filed) have clearly purchased the apartment in question as a speculative investment. The said allottees never intended to reside in the said apartment and have admittedly booked the same with a view to earn a huge profit from the resale of the same. The said allottees are owners of the recently purchased a residential apartment in which they are currently residing (in Park view Spa Next, Sector-47, Gurugram) and also from the fact that the complainant has specifically sought permission from the hon'ble authority to sell their flat while continuing to



prosecute the present false and frivolous complaint and have also impugned the transfer/administrative charges for sale of apartments in the project.

20. The respondent submitted that the project is delayed for reasons beyond the control of the respondent or due to delays by statutory/competent authorities in according approval as well in cases where the allottee has failed to comply with all his/her obligations under the agreement, including but not limited to timely payment of demanded amounts. The complainant is deliberately twisting and misinterpreting the clauses of the buyer's agreement.

#### Determination of issues

21. In regard to the **first issue** raised by the complainant the project is not registered under RERA. After considering the facts submitted by both the counsel of the parties and perusal of record on file, the finding of the authority on the issue is that as per proviso to section 3(1) of the Act *ibid*, ongoing project on the date of commencement of this Act have to be registered



with the authority. 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:”*

22. Rule 2(1)(o) of the Rules ibid, defines ongoing project as a project for which development works are going on and for which no completion/ part occupation certificate has been granted on or before publication of these rules. Rule 2(o) is reproduced as hereunder:

*“on going 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, but does not include:*

*(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and*

*(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.”*



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 respondent have not registered the project with the Haryana Real Estate Regulatory Authority as on date. Consequently the above act on their behalf is a punishable offence under section 59(1) of the Act *ibid*. Section 59(1) provides as under:-

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

23. With respect to the **second issue**, raised by the complainant those allottees who want to contest on the point of additional charges may agitate their grievances before the adjudicating officer.

24. In regard to the **third issue** raised by the complainant, the occupation certificate was received on 20.07.2018 and permissive possession was offered on 06.11.2017. The possession offered without OC is no possession in the eyes of law, if any letter for offer of possession has been issued that



will be considered void. Offer of possession can be given only after obtaining the OC.

25. Regarding the **fourth issue** in the complaint, the complainant reserves his right to approach the adjudicating officer for compensation.

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

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

#### Findings of the authority

28. The respondent admitted the fact that the project Space Privy is situated in sector-93, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification



no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.

29. **Jurisdiction of the authority-** The authority has complete jurisdiction to decide the complaint regarding 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.

30. The complaint has been filed by Ms. Vibha Narula on behalf of the association of allottees. A common cause complaint has been filed against the respondent on account of non-delivery of the possession of the booked units. Besides this, charging of unilateral and arbitrary levies which are not tenable as per the provisions of BBA.



31. The authority is of the view that the complaint filed by the Ms. Vibha Narula, complainant has not attached documents pertaining to the formation of association and its registration with the registrar of co-operative society. The contentions of



the affected allottees, namely Vikram Munshi, Vimal Prakash, Derik Rajan Sharma, Abhay Garg, Dharendra Kumar Kharakwal and Rajnesh Khurana who are present in the court were heard patiently. Shri Shanker Vij, advocate appearing on behalf of the 17 allottees had lodged a complaint before the police commissioner, Gurugram that a group of people have not signed any complaint and their signatures have been forged in the complaint.

#### **Decision and directions of the authority**

32. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is directed to hand over the possession of the allotted unit to the respective buyers. Since the OC has been received by the respondent, as such, the respondent is directed to offer the possession to the allottees urgently within a weeks' time. All the affected home buyers are directed to take possession from the respondent



within a period of 30 days after the receipt of offer of possession.

- (ii) As per section 19(6) of the Real Estate(Regulation and Development)Act, 2016 those allottees who want to contest on the point of additional charges being sought by the respondent may agitate their grievances before the adjudicating officer.

33. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

34. The complaint is disposed of accordingly.

35. The order is pronounced.



36. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date:11.04.2019

Judgement uploaded on 25.04.2019



**HARERA**  
**GURUGRAM**

