

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

<b>Complaint no.</b>	:	<b>2882 of 2021</b>
<b>Date of filing complaint:</b>		<b>02.08.2021</b>
<b>First date of hearing</b>	:	<b>21.10.2021</b>
<b>Date of decision</b>	:	<b>21.07.2022</b>

Mr. Pradip Kumar Singh  
Mrs. Minu Singh  
**Both RR/o:** - H.no-40/27-U, DLF Phase-3, block U,  
Gurugram-122001

**Complainants**

Versus

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri V.K. Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri. Sukhbir Yadav  
Shri. J.K. Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 under the provision of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details.**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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 Boulevard' Sector-47, Gurgaon.
2.	Project area	2.851 acres.
3.	Nature of the project	Commercial Project
4.	DTCP license no.	219 of 2007
	License valid/renewed up to	10.09.2024
	Name of licensee	Automax (Unit of Omax Autos Ltd.)
5.	HRERA registered/ not registered	Registered (4 of 2018 dated 02.01.2018)
	HRERA registration valid up to	01.01.2018 to 10.09.2021
6.	Unit no.	2044, 2nd floor, tower A admeasuring 281 sq. ft. (annexure P3, page 35 of complaint)
7.	Date of allotment letter	03.09.2014 (annexure P3, page 35 of the complaint)
8.	Date of execution of buyer's agreement	03.12.2014 (Page 38 of the complaint)
9.	Payment plan	Construction Linked Payment Plan (Page no. 36 of complaint)
10.	Total Sale Consideration	Rs. 23,08,894/-

		(As per SOA on Page no. 108 of reply)
11.	Total amount paid by the complainants	Rs. 23,44,044/- (As per SOA on Page no. 109 of reply)
12.	<p>Due date of delivery of possession: Though the possession clause is given in file, but the time period is not mentioned. Therefore, the due date is calculated as per clause 1.2, relevant part is reproduced below:</p> <p><i>Escalation charges shall be computed at the expiry of sixty month 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 sixty 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.</i></p>	03.12.2019 (as per clause 1.2 of buyer's agreement)
13.	Offer of possession to the complainants	05.05.2021 (annexure R15, page 165 of reply)
14.	Occupation certificate	03.05.2021 (annexure R14, page 162 of reply)

### B. Facts of the complaint

The complainants have submitted as under: -

3. That the complainants in November 2013, received a marketing call from a real estate agent, who introduced himself as authorized agent of the respondent and marketed about the commercial project namely "Spaze Tristaar" situated at Sector - 92, Gurgaon. They visited the Gurugram office and project site of the respondent/builder with their family members. They also have consultation with the marketing staff of builder and got information about the project. The marketing staff and office bearers of the respondent allured with the proposed specification and assured that project would be ready for possession within 36 months of booking.
4. That the complainants booked one shop bearing no. A-2044, on 2<sup>nd</sup> floor, admeasuring 281 sq. ft. on 14.11.2013 and paid Rs. 2,00,000/- as booking amount and signed a pre-printed application form. The shop was purchased under the construction linked payment plan for a sale consideration of Rs. 22,42,436/-.
5. That the respondent on 03.09.2014, issued an allotment letter conforming the allotment of shop no. A-2044 on second floor for size admeasuring 281 sq. ft. It is pertinent to mention here that the booked and allotted shop was a corner one. Therefore, the complainants have agreed to pay PLC of Rs. 1,20,886/-. On 03.12.2014, a pre-printed, unilateral, arbitrary shop buyer agreement was executed inter-se the respondent and the complainants. That at the time of booking the respondent assured them that the possession of the unit would be delivered within 36 months from the date booking. It is germane to mention here that the shop was booked on 14.11.2013 and therefore, the due date of

- possession was 14.11.2016. They had paid 23,44,044/- till 26.12.2019 i.e., 100% of the total sale consideration.
6. On 05.05.2021, the respondent issued a notice for the offer of possession and raised a demand of Rs. 2,67,499/- in favour of "Spaze Towers Pvt. Ltd. Tristaar-Rera Designated Account" and demanded unreasonable amount under various heads i.e., Rs. 80,878/- as external electrification water, sewer & other charges & Rs. 6,090/- as labour cess @Rs. 21 sq.ft. and also an extra demand of Rs. 43,50/- in favour of "Preserve Facilities Pvt. Ltd" & Rs. 58,000/- in favour of "Preserve Facilitiez Pvt. Ltd. It is pertinent to mention here that the respondent has also revised the super area of the shop by 9 sq.ft. from 281 sq.ft. without any justification and calculations. It is again pertinent to mention here that the notice for possession contained illegal and unjustifiable demands, not tenable in the eyes of law.
  7. That the complainants on 27.05.2021, sent a grievance letter to the respondent and asked to clarify the unreasonable demands raised in the offer of possession letter and also asked to give a copy of OC received from the competent authority. They also asked it to arrange an inspection of the corner unit before payment.
  8. The complainants have sent various emails and reminder letters to the respondent regarding the change in the location of their corner unit and asked to provide the building plan/floor layout plan depicting the unit no. 2044 as corner unit & also asked to allot the original unit to them, allotted at the time of booking. It is pertinent to mention here that when they visited the project site, they were shocked to see that the location of their unit has been changed by it without even the consent of them. It is again pertinent to mention

here that at the time of booking, they have booked the corner unit as mentioned in the payment schedule and BBA and also paid the corner PLC charges for the shop of Rs. 1,20,866/- for the unit as shown in the statement of account. But thereafter without the consent of the allottees, the respondent has changed the location of the unit.

9. Since 2016, the complainants are regularly contacting the office bearers of the respondent as well as sending emails to it and making efforts to get possession of the allotted corner shop but all in vain. Despite several visits and requests by them, the respondent did not give possession of the shop. They were never able to understand the actual state of construction. Though the tower seems to have been built, but there was no progress observed on finishing and landscaping work and amenities for a long time.
10. The main grievance of complainants in the present complaint is that despite they paid more than 100% of the actual cost of the shop and ready and willing to pay the remaining amount, the respondent has failed to deliver the possession of shop on promised at the time of receiving payment for the shop that the possession of a fully constructed shop and the developed project shall be handed over to them as soon as construction completes.

**C. Relief sought by the complainants.**

The complainants are seeking the following relief:

- Direct the respondent to handover the possession of the allotted shop.
- Direct the respondent to pay delay possession interest from due date of possession till the actual date of possession.

- Direct the respondent to allot the corner shop/unit to the complainants as booked by them at the time of booking.
- Direct the respondent to provide area calculation.

**D. Reply by the respondent.**

The respondent had contested the complaint on the following grounds:

11. That the present complaint is not maintainable in law or on facts. The complainants had filed the present complaint seeking refund, possession and interest for alleged delay in delivering possession of the unit booked by them. It is submitted that complaint pertaining to refund, compensation and interest is 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 authority.
12. It is respectfully submitted that the contractual relationship between the parties is governed by the terms and conditions of the buyer's agreement dated 03.12.2014. The said agreement was voluntarily and consciously executed by the complainants after reading and understanding the contents thereof and comprehending and appreciating the implications and consequences of the provisions of the buyer's agreement. Once a contract is executed between the parties, the rights and obligations are determined entirely by the covenants incorporated in the contract. No party to a contract can be permitted to assert any right

of any nature at variance with the terms and conditions incorporated in the contract.

13. The complainants have filed the present complaint seeking interest, compensation etc. ostensibly on the ground that the respondent has delayed delivery of possession of the shop booked by them, in the commercial project being developed by it. It is very respectfully submitted that the very foundation on the basis of which the present complaint has been preferred, is erroneous and misconceived in as much as neither the application form nor the buyer' agreement executed by parties, provides for any specific date for possession. Thus, the version that possession of the shop was to be delivered within a period of 36 months from the date of booking of the unit in question is unfounded and totally baseless. The respondent never promised that possession would be delivered in 36 months from the date of booking of the unit in question and never authorised any representative/broker to make any such promise on its behalf.
14. That furthermore without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that so far as delivery of physical possession of the unit in question was concerned, it was contemplated in clause 11(a) of the BBA dated 03.12.2014 that respondent would endeavour to complete the construction of the project in terms of the approvals. The project has been registered under the Act and application dated 28.12.2020 has been filed by it for the extension of the period of registration. It is respectfully submitted that possession of the unit has been offered to them 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 it. It is pertinent to mention here that the time contemplated for completion of the project has not lapsed yet.

15. The allotment letter dated 03.09.2014, was issued by the respondent to the complainants and the BBA executed between the parties on 03.12.2014. The complainants had opted for a partly time bound, construction linked plan in which the first three payments were construction linked while the remaining instalments were payable upon achievement of the milestones provided therein. However, from the very beginning, they have been irregular in payment of instalments and consequently the respondent has levied interest on delayed payments, in accordance with the buyer's agreement. It is pertinent to note that the time was of essence regarding the payment of total consideration and other charges, deposits and amounts payable by them and performance of all their obligations under the buyer's agreement. The complainants by delaying the remittance of the amount to the respondent has extended the time for delivery of possession of the unit in question in terms of the buyer's agreement.
16. That in the meantime, the respondent has registered the said project under the provisions of the Act. The certificate of registration and application for extension certificate are appended herewith as annexure R6 and annexure R7 respectively. In other words, the respondent has always been committed to completion of the project and delivery of the unit to them within the timelines prescribed in the sanctions accorded to it, subject to *force majeure*

conditions and timely payment of instalments and compliance of the terms and conditions of the buyer's agreement by them. Thus, the institution of the present complaint is highly premature and misconceived and the same is liable to be dismissed at the very threshold.

17. That for the purpose of promotion, construction and development of the project referred to above, a number of sanctions/permissions were required to be obtained from the concerned statutory authorities. It is submitted that once an application for grant of any permission/sanction or for that matter building plans/zoning plans etc. is submitted for approval in the office of any statutory authority, the developer ceases to have any control over the same. The grant of sanction/approval to any such application/plan is the prerogative of the concerned statutory authority over which the developer cannot exercise any influence. As far as respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authorities for obtaining of various permissions/sanctions.
18. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest and

other reliefs cannot be called to aid in derogation and in negation of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and in negation of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

19. It is further submitted that the respondent left no stone unturned to complete the construction activity at the project site but unfortunately due to the outbreak of COVID-19 pandemic and the various restrictions imposed by the governmental authorities, the construction activity and business of the company was significantly and adversely impacted and the functioning of almost all the government functionaries were also brought to a standstill. Since the 3rd week of February 2020, the respondent has also suffered devastatingly because of outbreak, spread and resurgence of COVID-19 in the year 2021. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, in the interregnum, large scale migration of labour had occurred, and availability of raw material started becoming a major cause of concern. Despite all the odds, the respondent was able to resume remaining construction/development at the project site and obtain necessary approvals and sanctions for submitting the application for grant of occupation certificate.

20. The hon'ble authority was also considerate enough to acknowledge the devastating effect of the pandemic on the real estate industry and resultantly issued order/direction to extend the registration and completion date or the revised completion date or extended completion date by 6 months & also extended the timelines concurrently for all statutory compliances vide order dated 27th of March 2020. It has further been reported that Haryana government has decided to grant moratorium to the realty industry on compliances and interest payments for seven months to September 30 for all existing projects. It has also been mentioned extensively in press coverage that moratorium period shall imply that such intervening period from March 1, 2020, to September 30, 2020, would be considered as "zero period".
21. It is further submitted that occupation certificate dated 03.05.2021 has been issued by Directorate of Town and Country Planning, Haryana, Chandigarh. The respondent has already delivered physical possession to a large number of apartment owners. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in terms of the buyer's agreement. As far as respondent is concerned, it has diligently and sincerely pursued the development and completion of the project in question.
22. That the complainants were offered possession of the unit in question through letter of offer of possession dated 05.05.2021.

The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to them. However, they intentionally refrained from completing their duties and obligations as numerated in the buyer's agreement as well as the Act. The complainants wilfully refrained from obtaining possession of the unit in question. It appears that the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, they have preferred the instant complaint. Therefore, there is no equity in favour of the complainants. It needs to be highlighted that as per statement of account, an amount of Rs. 3,68,999/- is due and payable by the complainants. The complainants have intentionally refrained from remitting the aforesaid amount to the respondent. It is submitted that the complainants have consciously defaulted in their obligations as enumerated in the buyer's agreement. The complainants cannot be permitted to take advantage of their own wrongs. The instant complaint constitutes a gross misuse of process of law. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainants was to be constructed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of

delay continued even after receipt of an offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, they are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. It needs to be highlighted that the respondent has credited an amount of Rs. 46,927/- as GST Input credit to the account of the complainants as a gesture of goodwill. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amount deposited by the allottees/complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments etc. It is submitted that the respondent has acted strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse on the part of the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations of delay against the respondent is not based on correct and true facts. The photographs comprehensively establish the completion of construction/development activity at the spot have been appended with this reply as annexure R16 to annexure R22. Thus, the complaint preferred by the complainants against the respondent is totally baseless and do not merit any consideration by this hon'ble authority.

**E. Jurisdiction of the authority**

The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

#### **E. I Territorial jurisdiction**

23. 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 purposes with office 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.

#### **E. II Subject matter jurisdiction**

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

##### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

##### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-

compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage

### **G.I Findings on the objections raised by the respondent.**

#### **Findings on the relief sought by the complainants.**

**F1: - The respondent be directed to pay interest at the prevailing rate of interest from due date of possession till legitimate possession of office.**

24. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

25. Clause 1.2 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*"Clause 1.2: - Escalation charges shall be computed at the expiry of sixty (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 sixty (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"*

26. At the outset it is relevant to comment on the preset clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the



complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the

*rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

28. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.07.2022 is @7.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.80%.
30. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. — For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.80% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

**F.2: - Allotment of corner shop/unit to the complainants as booked by them at the time of booking.**

32. The complainants have contended in the complaint that they were allotted a corner unit/shop which was also confirmed by the booking letter dated 03.09.2014 executed between the parties. The complainants also paid PLC charges to the amount of Rs.1,20,886/- which is reflected in the payment plan as annexure II page 85 of complaint. The relevant provision with regard to PLC in the buyer agreement is reproduced below:

*"Preferential Location charges (PLC)" means charges for the preferential location attribute(s) of the said unit payable/as applicable to be calculated on the per sq.ft. based on super area of the said unit, as mentioned in this agreement.*

33. The respondent has admitted the change of layout plan leading to the change of location of the unit. As mentioned in the above clause, PLC is charge for preferentially located unit. Therefore, both the parties are directed to work out as to the corner unit/shop available for the complainants and allot the same to them and if it is not feasible to materialise such preferential allotment, the respondent is directed to refund the preferential located charges charged from the complainants with interest.
34. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing

over possession by the due date as per the agreement. By virtue of clause 14 of the agreement executed between the parties on 03.12.2014, the possession of the subject apartment was to be delivered within stipulated time i.e., by 03.12.2019. The respondent failed to handover possession of the subject unit within in the due date.

35. 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 complainants are entitled to delay possession at prescribed rate of interest i.e. 9.80% p.a. w.e.f. 03.12.2019 till the expiry of 2 months from the date of offer of possession (05.05.2021) which comes out to be 05.07.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.

**G. Directions of the authority**

36. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate i.e., 9.80 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 03.12.2019 till the expiry of 2 months from the date of offer of possession (05.05.2021) which comes out to be 05.07.2021. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The complainants are further directed to take possession of the allotted unit, within a period of 2 months as per section 19(10) of the Act and failing which legal consequences as per the provisions of the Act will follow.
  - iv. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
37. Complaint stands disposed of.
38. File be consigned to registry.

*V.I - 3*  
(Vijay Kumar Goyal)  
Member

*[Signature]*  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.07.2022