

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

Complaint no. : 2449 of 2021
First date of hearing : 13.08.2021
Date of decision : 22.02.2022

Aman

Resident of: - House no. 310/30 Dev Colony
Rohtak, Haryana

Complainant

Versus

Spaze Towers Pvt. Ltd.

Regd. Office: - A-307, Ansal chamber-1,3,
Bhikaji Cama Place, New Delhi-110066

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

सत्यमेव जयते

**Chairman
Member**

APPEARANCE:

Shri. R S Yadav
Shri. J K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed on 22.06.2021 by the complainant/allottee 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 to the allottee as per the builder buyer agreement executed inter-se them.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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 Tristaar Sector-92, Village Dhorka
2.	Project area	2.71875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	72 of 2013 dated 27.07.2013 valid upto 26.07.2017
5.	RERA registered/not registered	247 of 2017 dated 26.09.2017
6.	HRERA registration valid up to	30.06.2020
7.	Unit no.	2034, 2 nd Floor, Block/Tower A (page 39 of complaint)
8.	Unit measuring (super area)	237 sq. ft.
9.	Date of execution of builder buyer agreement	13.10.2014 (page 43 of complaint)
10.	Date of allotment letter	27.09.2014 (page 39 of complaint)
11.	Total sales consideration	Rs. 18,03,494 (as per statement of account dated 03.08.2021 at page 106 reply)
12.	Total amount paid by the complainant	Rs. 19,35,983/- (as per statement of account dated 03.08.2021 at page 107 reply)
13.	Due date of delivery of possession	13.10.2019 (as per clause 1.2 of the BBA annexed with the

	(as per clause 1.2 of the BBA annexed with the complaint Page no.54 Annexure-8)	complaint page no. annexure 8)
14.	Offer of possession	05.05.2021(annexure R15, page 164 of complaint)
15.	Occupation certificate	03.05.2021 (annexure R14, page 161 of reply)
16.	Delay in delivery of possession from due date i.e., 13.10.2019 till the date of offer of possession (05.05.2021) plus two months i.e., 05.07.2021	1 years 8 months 22 days

B. Facts of the complaint:

3. The complainant relying upon the representations made by the respondent and believing those to be true, was very much induced to buy a shop no. 2034 on the 2nd floor, block/tower-A, tentatively admeasuring super area 237.00 Sq. ft. (approx.) in "Spaze Tristaar" Sector-92, Gurugram and as per assurance of the respondent, the complainant had paid the amount of Rs. 21,72,200/- to the respondent. That the basic sale price of the above said unit is Rs. 15,63,252/- and total sale price of the said unit is Rs. 1704504/-. The complainant had already been paid excess amount totalling to Rs. 21,72,200/- (including service tax, VAT & GST) through cheques to the respondent and in this regard, the respondent has issued the acknowledgment/receipts to the complainant. It is submitted that the complainant had paid excess amount

- other than the total sale consideration. But despite receiving the excess amount the respondent has not delivered the possession of the complainant by the due date.
4. The complainant submitted that he had applied for the above-mentioned shop by application code no. SPTR-14-08-0000720 dated 27.09.2014 agreeing to the terms and conditions set out therein for allotment of shop no. 2034, second floor, tower-A, having super built-up area of 237 sq. ft. (approx.). He further submitted that as per clause no. 1.2 of buyer's agreement, the company was required to give possession of the said unit within 60 months from the date of agreement. So according to this clause of the buyer agreement, the respondent had to deliver the possession of the shop by latest October 2019.
 5. That the respondent has allotted the above said shop vide allotment Letter dated 27.09.2014 in favour of the complainant. That after receiving the amount as per terms and conditions of the allotment letter, the respondent company had entered into a buyer's agreement dated 13.10.2014, in which the terms and conditions in respect of allotment of said commercial unit has been settled between the parties. The respondent as and when raised the demands in respect of the above said commercial unit, the complainant paid the amount as mentioned in the table as per payment plan. Despite elapse of more than one and half years, the

respondent has failed to deliver the possession of the commercial unit of the complainant. Even repeated requests, emails, personal visits and other modes had no effect. It is submitted that recently the complainant had received an email on 10.06.2021 and whereby offer of the possession of the above said commercial unit with demand of certain amount was received. However, the complainant had paid the said amount except the misc. charges, which was raised by the respondent.

6. It is submitted that on the spot the work is not completing and the shop which is allotted to the complainant is under construction and the Respondent has illegally and unlawfully demanded the alleged amount without completion the entire work of the shop. It is pertinent to mention here that at the time of booking, the respondent and their authorised person/representative assured the complainant that they will provide the escalator for the second floor but on the spot there is only stair. The respondent has misled the complainant by suppressing true and material facts and played fraud and cheated with the complainant. On the spot there is no facility of escalator.
7. It is submitted that there is delay of one and half years for delivering the possession of the above said shop. However, the possession has not been delivered to the complainant till date and only an offer of possession letter with inflated demands has

been received. That the complainant has invested his hard-earned money in the above said commercial unit but the respondent with their vested interest grabbed the said amount and did not deliver the possession because they have not completed the project well within prescribed time period and still the project is uncompleted.

8. That it is pertinent to mention here that the respondent as per their own accord and convenient mentioned the terms and conditions one sided in the buyers agreement, which is absolutely illegal and unlawful. That the respondent deliberately violated the terms and conditions of the allotment as well as buyers agreement and neither delivered possession of the said commercial unit nor given the penalty on the delayed period only to cause wrongful loss to the complainant and to gain wrongfully themselves.
9. That the conduct on part of respondent regarding delay in delivery of possession of the said commercial unit has clearly manifested that he never ever had any intention to deliver the said commercial unit on time as agreed. It is also clear from the facts that all the promises made by the respondent at the time of sale of the said commercial unit were fake and false. The respondent had made false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said

commercial unit on the basis of its false and frivolous promises, which he never intended to fulfil.

C. Relief sought by the complainant:

- i. To direct the respondent to deliver the possession of commercial shop after completion of work.
- ii. To Direct the respondent to make the payment of penalty for delaying the possession at Rs.40/- per sq. ft. per month at market prevailing rate by the authority.
- iii. To Direct the respondent to execute the conveyance/ sale deed of the above said unit.

D. Reply by the respondent:

- i. The respondent submitted that complainant has 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 the complainant, in the commercial project being developed by the respondent in sector 92, Gurgaon, known as "Spaze Tristaar". It is very respectfully submitted that neither the application form nor the buyer's agreement executed by the complainant and the respondent, provides for any specific date for possession. Thus, the allegation of the complainant that possession of the shop was to be delivered within a period of 60 months from the date of execution of the buyer's agreement is unfounded and totally baseless. The respondent never promised that

possession would be delivered in 60 months from the date of execution of the buyer's agreement and never authorised any representative/broker to make any such promise on its behalf.

- ii. It is respectfully submitted that so far as delivery of physical possession of the unit in question is concerned, it was contemplated in clause 11 (a) of the buyer's agreement dated 13.10.2014 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 the respondent for the extension of the period of registration. It is respectfully submitted that possession of the unit has been offered to the complainant 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 the respondent. It is pertinent to mention here that the time contemplated for completion of the project has not lapsed yet.
- iii. That the complainant had opted for a partly time bound, construction linked plan in which the first three payments are construction linked while the remaining instalments are payable upon achievement of the milestones provided therein. The complainant has been irregular in payment of instalments

- and consequently, the respondent has levied interest on delayed payments, in accordance with the buyer's agreement.
- iv. That in the meantime, the respondent has registered the said project under the provisions of the Act and the application dated 28.12.2020 for extension of period of registration has been filed. The certificate of registration and application for extension of registration certificate are appended.
- v. 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 respectfully submitted that once an application for grant of any permission/sanction or for that matter building plans/zoning plans etc. are 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. Therefore, in accordance with contractual covenants incorporated in buyer's agreement, 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.

- vi. 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 complainant 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 complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
- vii. It is further submitted that the developer has to undertake the financial planning of the project, on the bonafide assumption that all the allottees in the project shall make timely payment of sale consideration in accordance with the respective payment plans. Defaults on the part of the allottees, such as the complainant has a deleterious and detrimental cascading effect on the project as a whole which not only results in exponential

increase in the project costs but also delay in the timelines for its completion. In order to make up for the shortfall due to defaulting allottees, the developer is compelled to obtain loans from banks/financial institutions, at short notice at extremely high rates of interest.

- viii. That it is further submitted that the respondent left no stones 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 was also brought to a standstill.
- ix. That 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. That 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, 2020 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, will be considered as "zero period".

- x. That 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. It needs to be emphasised that once an application for issuance of occupation certificate is submitted before the concerned competent authority the respondent ceases to have any control over the same. 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.

- xi. That the complainant was offered possession of the unit in question through a letter of offer of possession dated 05.05.2021. The complainant was 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 him. However, the complainant intentionally refrained from completing his duties and obligations as enumerated in the buyer's agreement as well as the Act.
- xii. That the complainant has wilfully refrained from obtaining possession of the unit in question. It appears that the complainant did not/do not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement. It needs to be highlighted that an amount of Rs. 2,49,752/- is due and payable by the complainant. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainant is not entitled to contend that the alleged period

of delay continued even after receipt of offer for possession. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement and for not obtaining possession. That it needs to be highlighted that the respondent has credited an amount of Rs. 39,579/- as GST Input credit to the account of the complainant as a gesture of goodwill. The aforesaid amounts have been accepted by the complainant in full and final satisfaction of his alleged grievances.

E. Jurisdiction of the authority

13. 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

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.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

F. Findings on the Relief Sought filed by the complainant:

F.I Execution of conveyance deed

14. With respect to the **conveyance deed**, the provision has been made under clause 14 of the buyer's agreement and the same is reproduced for ready reference:

"14 Conveyance of the said unit

*The developer, its associates/subsidiaries shall execute a conveyance deed to convey the title, of the said unit in favour of the allottee(s), provided the allottee(s) has paid the total consideration and other charges in accordance with this agreement and the allottee(s) is not in breach of all or any of the terms of this agreement.....
(Emphasis supplied)*

15. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

“17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.”

On the other hand, section 19(11) of the Act obligates the allottee to participate towards registration of the conveyance deed of the unit in question as provided under section 17(1) of the Act.

Keeping in view the above provisions, the respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

F.II Delay possession charges

16. In the present complaint, the complainant intends to continue with the project and is 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

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*

17. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

11(a) Schedule for possession of the Said Unit

The developer based on its present plans and estimates and subject to all just exception endeavours to complete construction of the Said Building/Said Unit in terms of the approvals (including the renewal/extended period described therein) and in accordance with the terms 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 or any part thereof and other charges and dues/payments mentioned in this Agreement or any failure on the part thereof 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.

18. Though the possession clause is given in file, but the time period is not mentioned w.r.t. to handover of possession. 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:

"1.2 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.

17. As per clause 1.2 of the buyer's agreement dated 13.10.2014, the possession of the subject apartment was to be handed over by of 13.10.2019. At the outset it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement 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 allottee that even formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. This is just to comment as to how the builder has misused his dominant position and drafted such clause in the agreement and the allottee is left with no option but to sign on dotted lines.

18. **Admissibility of delayed possession charges at prescribed rate of interest:** The complainants are seeking delayed possession charges at the rate of 18% p.a. however, proviso to

section 18 provides 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 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.

19. The legislature in its wisdom in the subordinate legislation under 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.
20. 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., 22.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

21. 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;"

22. Therefore, interest on the delayed payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted in case of delayed possession charges.
23. 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 provisions of the Act. By virtue of the agreement executed between the parties on 13.10.2014, the possession of the subject apartment was to be

delivered within stipulated time i.e. by 13.10.2019. Therefore, the due date of handing over possession is 13.10.2019. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of interest i.e. **9.30% p.a.** w.e.f. 13.10.2019 till the date of offer of the possession i.e., 05.05.2021 besides a period of 2 months i.e upto 05.07.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act:
- i. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - ii. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 13.10.2019 till the date of offer of the possession i.e 05.05.2021 plus a grace period of 2 months

- iii. The respondent is also directed to hand over the possession of the allotted unit to the complainant within a month after adjustment of arrears of delayed possession charges detailed above and receipt of amount due if any thereafter. It is further directed to execute conveyance deed of the allotted unit within a period of 3 months at the expenses of the complainant on his depositing paying necessary charges with regard to stamp duty/ registration charges as admissible and administrative charges to the tune of Rs.15000/- with the respondent builder.
- iv. The respondent shall not charge anything from the complainant which is not the part of the agreement including holding charges.
26. Complaint stands disposed of.
27. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.02.2022