

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

Complaint no. :	6699 of 2019
Date of filing complaint:	27.12.2019
First date of hearing:	22.01.2020
Date of decision :	23.08.2022

Mrs. Indira Mahanta R/O: C-II, 94, Moti Bagh-I, Delhi-110021	Complainant
Versus	
M/s Spaze Tower Private Limited Regd. office: A-307, Ansal chamber-1,3, Bhikaji Cama palace, new delhi-110066	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
None	Complainant
Sh. J.K. Dang (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Spaze "Boulevard II", Sector 47, Gurgaon, Haryana.
2.	Total area of the project	2.219 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no.	220 of 2007 dated 09.09.2007 Renewal dated 16.10.2019
	Validity of license	08.09.2021
	Licensee	Automax Constructions Ltd
5.	Registered/not registered	Registered vide registration no. 387 of 2017 dated 19.12.2017
	Validity of registration	30.06.2020
6.	Application form signed by the complainant for allotment in the said project	17.02.2013 [Page 21 of reply]
7.	Allotment letter	30.01.2015 [annexure C2, page 24 of complaint]



8.	Unit no.	F-146A, 1 st floor [annexure C2, page 24 of reply]
9.	Area of the unit (super area)	430 sq. ft.
10.	Date of execution of buyer's agreement	Not executed
11.	Possession clause	<p>11. POSSESSION</p> <p>(a) Schedule for possession of the Said Unit</p> <p>The Developer based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/Said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Developer or <i>Force Majeure</i> conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the total consideration and other charges and dues/payments mentioned in this Agreement or 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</p>

		payment(s) to the Developer. <i>{unexecuted BBA, page 55 of reply}</i>
12.	Due date of possession	30.01.2020 (Calculated from clause 11 i.e., within a period of sixty (60) months from the date of this agreement)
13.	Total consideration	Rs. 71,08,296/- (as per payment plan, annexure R3, page 33 of reply)
14.	Total amount paid by the complainants	Rs.59,18,548/- (as per the statement of account dated 28.01.2020 at page 92 of reply)
15.	Cancellation letter dated	13.05.2015 [annexure R11, page 124 of reply]
16.	Offer of possession	Not offered
17.	Occupation certificate	<u>During hearing the counsel for the respondent has placed on record the occupation certification bearing Memo No's/319/ID(AS) 2020/13131 dated 27.7.2020 issued by the DTCP in respect of the said project/unit.</u>

B. Facts of the complaint:

- To allure the prospective buyers, the respondent proclaimed that it's said project is situated in the most sought-after destination Gurgaon for people who want more from their lives. The complainant being enticed, lured, and influenced by the representation, statements, and claims of the respondent applied on 16" March 2013 for allotment of a Unit in the said project, that for a total consideration of Rs.71,08,296.00 inclusive of corner PLC, I.D.C.,

E.D.C. etc. It would be worthwhile to note that the respondent had already realized amount of Rs.38,18,548.00 from the complainant prior to the alleged allotment.

4. It would be pertinent to mention herein that the said provisional allotment letter containing conditional offer of allotment didn't constitute any formal allotment and was also subject to the execution of buyer' agreement. It is to be noted that the so-called provisional allotment letter was neither accepted/confirmed by the complainant nor duly signed copy thereof, in token of her acceptance, was ever returned to the respondent making the same ab-initio invalid and inoperative. That the complainant was offered a construction linked payment plan wherein the payments were to be deposited at different stages of construction in the said project launched by the respondent. That on the basis of the assurances and relying upon the commitments of the respondent, the complainant made a total payment of Rs.59,18,548.00 only on different dates. It would also be pertinent to bring on record that the receipt of the said amount of Rs.59,18,548.00 has also been acknowledged by the respondent per its said statement of account.
5. That the respondent thereafter sent its demand letter No. BLRD - II 00002 dated 03" September 2019 to the complainant asking her to make payment of Rs.17,60,656.00 only being the instalment due for the said Unit and another amount of Rs.9,76,560.00 only being interest for delayed payment till 3rd September 2019 both totalling to Rs.27,37,216.00 only. That the complainant has till date paid an admitted amount of Rs.59,18,548.00 to

the respondent which comes to more than 83% of the committed Sale consideration and in spite of receiving the said huge hard-earned money of the complainant, the respondent yet failed to give possession of the said shop although more than 6 (Six) years has elapsed in the meantime. That the buyer's agreement was never executed nor registered between the complainant and the respondent till date.

6. That the complainant caused service of a legal notice dated 31" January 2019 upon the respondent. The said notice was served upon the respondent at his both addresses separately under registered and speed post covers and was duly delivered upon it on 01.02.2019, 02.02.2019 and 04.02.2019 respectively. Since the respondent/ promoter in the instant case charged interest @ 18% from the allottees on delayed payments the complainant is also entitled to claim interest. Thus, applying the same formula, the complainant has calculated the amount of interest she is entitled to receive from the respondent and the same works out at Rs.53,29,400.00 only.
7. That the aforesaid acts are not normal human errors but done intentionally, hence the respondent is liable and responsible to compensate for the same. That the said practices in itself are clear deficiency of service, unfair and malafide trade practices, etc. committed by respondent resulting into major and illegal financial gain to it. The conduct and act of the respondent is absolutely illegal, and prima-facie exhibits clear gross negligence in discharge of its duties/ liabilities towards the complainant. That the said facts clearly reflect the malafide and dishonest intention to

misappropriate/usurp the hard-earned money of the complainant. Hence, the cause of action first arose on 16.03.2013 when the complainant applied for allotment of unit in the respondent's project "Spaze Boulevard-II", then on 30 January 2015 when the respondent dispatched its provisional allotment letter. That cause of action arouse multiple times and is still continuing and subsisting and shall continue to accrue each and every day till the deposited amount along with interest accrued thereon is refunded to the complainant by the respondent.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- Direct the respondent to refund the entire amount paid by the complainant along with interest at the prescribed rate.
 - Direct the respondent to compensate the complainant with adequate compensation.

D. Reply by respondent:

The respondent by way of written reply made the following submissions:

9. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority. The Complainant has filed the present complaint seeking possession, interest, and compensation for alleged delay in delivering possession of the unit booked by her.

10. That the project of the Respondent is an "Ongoing Project" The Complainant has no locus standi or cause of action to file the present complaint. It is pertinent to mention that the complainant has not executed the Buyer's Agreement even after being sent a copy by the respondent on 31.03.2015. In spite of the same, the complainant has been relying on the clauses mentioned therein. Even if for the sake of arguments, it is assumed that the complainant can rely on the clauses mentioned in the unsigned Buyer's Agreement, it shall be evident from the submissions made in the following paras of the present reply that this 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 the unsigned Buyer's Agreement. The complainant had been allotted a unit bearing no. F-146A admeasuring 430 sq. ft approximately, in the project known as Spaze Boulevard I, Sector 47, Sohna Road, Gurugram vide allotment letter dated 30.01.2015 (Annexure R2). It is pertinent to mention that no buyer's agreement had been executed by the complainant even after a copy of the same had been sent to her by the respondent for execution. It had also been mentioned in the aforesaid allotment letter that the said letter is merely a conditional offer of allotment and does not constitute any formal allotment of the retail space. Furthermore, only after the execution of the buyer's agreement shall the unit in question shall be formally allotted to the

complainant. So far as alleged non-delivery of physical possession of the unit is concerned, it is submitted that in terms of Clause 11(a) of the unsigned buyer's agreement, the time period for delivery of possession was 60 months from the date of execution of the document, subject to delays or failure due to departmental delay or due to any circumstances beyond the power and control of the respondent (Force majeure conditions) as mentioned in clause 11(b) and 11(c). It is pertinent to mention that the application for approval of building plans was submitted on 12.06.2012 and the approval for the same was granted on 22.02.2013. It was further expressed therein that the allottee had agreed to not claim compensation of any nature whatsoever for the said period extended in the manner stated above. In the case of the complainant, she had delayed payment of instalments and consequently is not eligible to receive any compensation from the respondent as alleged. It is submitted that there is no default on part of respondent in delivery of possession in the facts and circumstances of the case. The demand notices and reminders for payment of the instalment due were issued as per the construction linked plan opted by the complainant. Furthermore, when the allottee default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and at the same time inflicts substantial' loss to the developer. That even after sending multiple reminder letters to the complainant to pay

the outstanding balance amount, she did not make the full payment to the respondent. The respondent vide letters dated 08.02.2015 and 16.05.2014 afforded one last and final opportunity to the complainant to pay her outstanding dues in respect of the said unit. It was also mentioned in the aforesaid letter that would if the complainant failed to pay outstanding dues, her allotment will stand cancelled, and she would be left with no right, title, or interest in the said unit. But the complainant chose to ignore the aforesaid letters dated 08.02.2015 and 16.05.2014. In view of the same, the respondent had no choice but to cancel the allotment of the complainant for the said unit vide letter dated 13.05.2015. It was categorically stated in the cancellation letter that the complainant had to pay a balance amount of Rs.13,35,493/- as on the date of cancellation along with interest amounting to Rs. 1,24,033/- It is respectfully submitted that respondent was not obliged to send multiple reminder letters to the complainant but had done so as a special gesture. Upon the refusal of the complainant to pay her outstanding amount even after multiple opportunities had been afforded to her, the respondent had no choice but to cancel her allotment. However, on the request of the complainant and the assurances offered by her, the respondent reinstated the allotment of the said unit. However, the complainant continued to make default in making timely payments of the instalments due.

11. That for the purpose of promotion, construction and development of the project referred to above, a number of sanctions/permissions were required. It is respectfully 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. As far as respondent is concerned, it has diligently and sincerely pursued the matter for the concerned statutory permissions/sanctions with the authorities.
12. That from the facts and circumstances mentioned above, it is comprehensively established that the time period mentioned hereinabove, was consumed in obtaining of requisite permission/sanctions from the concerned statutory authorities. It is respectfully submitted that the project in question could not have been constructed, developed, and implemented by respondent without obtaining the sanctions referred to above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore, the same is not to be taken into reckoning while computing the period of 60 months as has been explicitly provided in the unsigned buyer's agreement. That it is pertinent to mention that respondent had submitted an application for grant of environment clearance to the concerned statutory authority in the year 2012. Thus, the

allegations of delay against the respondent are not based on correct and true facts. That as per the terms and conditions of the application form, it is further provided that compensation for any delay in delivery of possession shall only be given to such allottees who have not defaulted in payment as per the payment plan incorporated in the agreement. The complainant, having defaulted in payment of instalments, is not entitled to any interest/compensation.

13. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project, earnestly fulfilled its obligations and is fully committed to complete the project as expeditiously as possible in the facts and circumstances of the case. Therefore, cumulatively considering the facts and circumstances of the present case, no delay whatsoever can be attributed to the respondent by the complainant. However, all these crucial and important facts have been deliberately concealed by her from the authority. That the complaint has been preferred on absolutely baseless, unfounded and legally and factually unsustainable surmises which can never inspire the confidence of this Authority. The accusations levelled by the Complainant are completely devoid of merit. The complaint filed by the complainant deserves to be dismissed.

14. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

15. 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.

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 complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.1 Objections regarding default on behalf of the complainant:

16. It was pleaded on behalf of respondent that the complainant failed to make timely payments with regard to consideration of the subject unit and never came forward to get execute the buyer's agreement and other documents. As a consequence, the unit of the complainant was cancelled vide letter dated 13.05.2015 but the same was reinstated. The complainant alleged that she has paid an amount of Rs. 59,18,548/- towards total consideration of Rs. 71,08,296/- constituting approximately 83% of total consideration. The authority observes that the complainant opted for construction linked payment plan and the same is evident from application form filed by her. It was the obligation on part of the respondent to allot a specific unit in

respect of application filed by the complainant before raising any further demands from her. Therefore, the plea advanced by the respondent is devoid of merit and hence, is rejected.

G. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the amount of Rs. 59,18,548/- being the principal amount paid by the complainant to the respondent against the sale consideration of the subject unit at prescribed rate.

The complainant was allotted a unit in the project of respondent detailed above on 30.01.2015 for a total sale consideration of Rs.71,08,296/-. No builder buyer agreement was executed between the parties. The complainant paid a sum of Rs.59,18,548/- up to 08.03.2016. As per clause 11 of the unsigned BBA, the possession of subject unit was to be offered within 60 months from the date of execution of builder buyer agreement. The due date for completion of project and offering possession of the unit comes to 30.01.2020. But the respondent failed to carry out the construction of the project and which led to her withdrawal from the project and seeking refund by filing of complaint on 27.12.2019. However, it is pleaded on behalf of the respondent that though the complainant booked a unit in its project but failed to execute the BBA. The project has been completed and OC has been received on 27.07.2020. But, keeping in view all these facts, it is pertinent to note that the respondent has been using the amount paid by the complainant. It is also to be observed that she came to file complaint before due date of possession which made her intention clear to sought refund and not to continue with the project. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P.*

and *Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil)* No. 13005 of 2020 decided on 12.05.2022. it was observed: -

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof..

The matter is covered under section 18(1) of the Act of 2016. Thus, the respondent is liable to refund the entire amount received from the complainant along with prescribed rate of interest within timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

The authority hereby directs the promoter to return to the complainant, the amount received by it i.e., **Rs. 59,18,548/-** with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

G.II. Direct the respondent to pay adequate compensation in favour of the complainant.

The complainant is claiming compensation in the above-mentioned relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/right which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

17. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

18. i.) The respondent /promoter is directed to refund the amount of Rs. **Rs. 59,18,548/-** with interest at the rate of 9.80% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.08.2022