

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

|                           |   |            |
|---------------------------|---|------------|
| Complaint no.             | : | 8091/2022  |
| Date of filing complaint: |   | 19.01.2023 |
| First date of hearing:    |   | 25.07.2023 |
| Date of decision          | : | 11.10.2023 |

|   |                    |
|---|--------------------|
| Spaze Towers Pvt. Ltd.<br><b>Regd. office:</b> Tower C, Spazedge, Sector-47, Gurugram, Haryana-122002 | <b>Complainant</b> |
| Versus  |                    |
| Naresho Devi<br><b>Resident of:</b> WZ-572/B2, Naraina village, South West Delhi-110028.              | <b>Respondent</b>  |
| <b>CORAM:</b>   |                    |
| Shri Ashok Sangwan  | <b>Member</b>      |
| <b>APPEARANCE:</b>  |                    |
| Shri Harshit Batra Advocate   | Complainant        |
| Ms. Sukhbir Yadav Advocate  | Respondent         |

**ORDER**

1. The present complaint has been filed by the complainant/builder 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).

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

2. The particulars of the project, the details of sale consideration, the amount paid by the respondent/allottee, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

| Sr. No. | Particulars                                | Details  |
|---------|--|--|
| 1.      | Name of the project                        | "Spaze Tristar", Sector- 92, Gurugram  |
| 2.      | Project area                               | 2.71 acres   |
| 3.      | Nature of the project                      | Commercial Colony  |
| 4.      | DTCP license no. and validity status       | 72 of 2013 dated 27.07.2013 valid up to 26.07.2017   |
| 5.      | Name of licensee                           | Spaze Towers Pvt Ltd   |
| 6.      | RERA Registered/ not registered            | Registered<br>247 OF 2017 DATED 26.09.2017   |
| 7.      | Unit no.                                   | Kiosk-F-25, 2 <sup>nd</sup> floor<br>[As per page no. 50 of complaint]   |
| 8.      | Unit admeasuring area                      | 363 sq. ft.<br>[As per page no. 50 of complaint]   |
| 9.      | Date of execution of Space buyer agreement | 30.07.2018<br>(As per page 46 of the complaint)  |
| 10.     | Possession clause                          | <b>11(a) Schedule for possession of the said unit</b><br>The developer based on its present plans and estimates and subject to all just exceptions endeavors |





|     |                          |   |
|-----|--------------------------|---|
|     |                          | <p>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 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 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..... <b>(Emphasis supplied)</b></p> |
| 11. | Due date of possession   | 30.07.2021<br>(Deemed to be 36 months from the signing of the BBA)  |
| 14. | Total sale consideration | Rs. 23,94,348/-<br>(Page no. 102 of complaint)  |

|     |   |  |
|-----|---|--|
|     |   | BSP- Rs. 21,78,000/-<br>(Page no. 102 of complaint)  |
| 15. | Amount paid by the complainants                                 | Rs.14,63,616/-<br>(Page no. 103 of complaint)  |
| 16. | Occupation certificate /Completion certificate                  | 03.05.2021<br>(Page no. 122 of complaint)  |
| 17. | Offer of possession   | 05.05.2021<br>(Page no. 125 of complaint)  |
| 18. | Reminder letters by the complainant for payment of dues.        | 26.06.2021, 16.07.2021, 24.08.2021, 16.09.2021, 05.10.2021.  |
| 19. | Assured payment scheme  | 25.06.2018<br>(Page no. 16 of Reply)<br>Payment made by complainant-builder- July 2018 to December 2019.<br>(Page no. 11 of Reply)   |
| 20. | Force majeure event delaying Assured payment scheme.            | 28.07.2020<br>(Page no. 21 of Reply)   |
| 21. | E-mail reminders by respondent for payment of Assured payments. | 06.07.2020, 15.07.2020, 01.08.2020, 19.08.2020, 18.09.2020, 19.11.2020, 21.11.2020, 21.12.2020, 11.05.2021, 02.06.2021, 10.06.2021, 21.06.2021, 21.07.2021, 26.08.2021, 18.09.2021, 11.10.2021 |

**B. Facts of the complaint:**



3. The project of the respondent is duly registered with Haryana RERA vide Memo No. HRERA-152/2017/198 bearing registration no. 247 of 2017 dated 26.09.2017, with a validity date till 30<sup>th</sup> of June 2020, which was further extended by 6 months by the Authority vide notification No. 9/3-2020 HARERA/GGM (Admn) dated 02.05.2020, thereby extending the date to 30<sup>th</sup> of December 2020.
4. The original allottee, Naresho Devi and Rajesh Kumar Tanwar booked a unit in the project after having completely verified and satisfied themselves with respect to the development and the status of the project.
5. Subsequent to the application of the respondent, Kiosk-F25 on the 2<sup>nd</sup> Floor was allotted to the respondent and consequently, an agreement was duly executed between the complainant and the original allottees on 30.07.2018.
6. Original allottees filed an application before the complainant for name deletion of co-allottee, Rajesh Kumar Tanwar, which was acknowledged, and all the rights of the co-allottee wrt the unit were transferred to Naresho Devi.
7. The agreement executed between the parties encapsulated the reciprocal obligations of the parties that formed the essence of the agreement and the relationship between the Parties. It was categorically noted that the respondent allottee shall be liable to make the due payments against the unit and take possession of the unit. It is pertinent to note that the aspect of timely payment against the unit was of the essence and voluntarily agreed between the parties. The relevant sections of the Act and the clauses of the

agreement are reiterated, Sections- 19(6), 19(7), 19(8), 19(9), 19(10), 19(11) of the Act, and clauses 3, 8, 12, 13 of the BBA.

8. From the very beginning till date, the respondent has been in continuous default in making timely payments against the unit and hence, miserably failed in making the due payments. The total sale consideration of the unit was Rs. 28,05,872/- and only a sum of Rs. 14,63,616/- had been paid by the respondent.
9. A number of reminders and notices have been sent to the Respondent in this regard but to no avail. A list of the Reminders given is as under:

| S.No | Particular   | Date       |
|------|--------------|------------|
| 1.   | Reminder III | 26.06.2021 |
| 2.   | Reminder IV  | 16.07.2021 |
| 3.   | Reminder V   | 24.08.2021 |
| 4.   | Reminder VI  | 16.09.2021 |
| 5.   | Reminder VII | 05.10.2021 |

10. Additionally, the delay in the completion of the project is also affected by other force majeure circumstances and other circumstances beyond the control of the developer, upon the happening of which, the due date of delivery of possession was bound to be extended as per the terms and conditions of Clause 11(a), (b), (c), (iii) and 42 of the agreement.
11. The complainant was adversely affected by various construction bans, lack of availability of building materials, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of groundwater by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the complainant completed the construction of the project diligently and timely, without imposing any cost



- implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.
12. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of the offer of possession such as the Haryana Pollution Control Board, NGT, Commissioner Municipal Corporation Gurugram, and due to Covid-19 pandemic. A period of 211 days was consumed due to this.
  13. Despite all odds, the respondent was able to carry out construction/ development at the project site, after which, it duly applied for the occupancy certificate on 13.10.2020, which was consequently granted on 03.05.2021
  14. The parties did not agree to a specific date for the offer of possession. In such circumstances, the Hon'ble Authority has been noted to have considered the date of expiry of the registration certificate. As stated above, the validity of the registration certificate was 30.06.2020 and after the extension granted by the Hon'ble Authority, the validity was extended to 30.12.2020. Thus, the proposed due date for the offer of possession can be regarded as 30.12.2020.
  15. Before the completion of the unit, the building plans of the project were duly revised through the Directorate of Town Country and Planning on 14.01.2019. That no objection was received from the allottees.

16. Despite all the difficulties, the complainant had rightly completed the development of the project and after having procured the occupancy certificate dated 03.05.2021, rightly offered possession on 05.05.2021 and requested the respondent allottee to make the due payment, take possession of the unit and execute the conveyance deed, however, the same was not done.
  17. Under the agreement as well as under the Act, that for the delay in making the payments, interest is bound to be paid. That the interest for delayed payments has not been given by the respondent since the very beginning, all of which is bound to be paid. Accordingly, the respondent is bound to pay the outstanding principal of Rs. 13,99,934 and the interest (calculated till 30.12.2022) of Rs. 2,53,728. Hence, a total sum of Rs. 16,53,662 (calculated till 30.12.2022) is bound to be paid by the respondent.
  18. That the Real Estate (Regulation and Development) Act is not retrospective in nature but retroactive hence, the interest on delayed payments caused by the respondent and the interest on delay caused by the complainant, if any, shall be subjected to retroactive effect and not retrospective. The equitable rate of interest payable by the parties, if any, shall be affected from 01.05.2017, i.e., the coming into force of the Act. That before 01.05.2017, the payment of interest by either party shall be as per the terms and conditions of the Agreement and only after the coming into force of the Act, the provision of the act would prevail as the RERA Act is only Retroactive in nature.
- C. Relief sought by the complainant:**
19. The complainants have sought the following relief(s):



- i. Direct the respondent to pay the outstanding dues of Rs. 16,53,662(calculated till 30.12.2022) and direct that the payment of interest shall keep on accruing till the actual payment of the outstanding amount.
- ii. Direct the respondent to take possession of the unit and get the conveyance deed registered, after paying the outstanding dues.

**D. Reply by the respondent**

20. The complainant/Builder has approached this Hon'ble Authority without clean hands and concealed the material facts, therefore the present complaint is liable to be dismissed on this sole ground.
21. The respondent is an allottee/owner of food court space unit no. KIOSK-F25, measuring a super area of 363 Sq. Ft. in the project "Spaze Tristar" situated at Sector - 92, Gurugram,
22. The said food court space was booked on 28.04.2018 under the DP payment plan for a sale consideration of Rs. 23,94,348/- and a builder buyer agreement was executed on 30.07.2018.
23. The respondent/allottee made the payments as per the agreed payment schedule and demand of the complainant/builder and has paid Rs. 14,63,616/- i.e. more than 80% of the total consideration amount. Payment details are produced below:

| Sr. No. | Date         | Amount (In Rs.)  |
|---------|--------------|------------------|
| 1       | 28.04.2018   | 2,00,000         |
| 2       | 20.05.2018   | 12,63,616        |
|         | <b>Total</b> | <b>14,63,616</b> |

24. The respondent stopped making further payments since the complainant was neglecting the grievances raised by the respondent. It is pertinent to mention here that the respondent has bought the space for the food court under the assured return

scheme and for the same purpose an agreement was also executed inter-se the respondent/allottee and the complainant on 25.06.2018 and it was agreed by the complainant that the complainant shall be paying the investment/assured return of Rs. 52/- per square feet of the super area i.e., 363 Sq. Ft. amounting to Rs 18,876/- less TDS per month w.e.f. 01.06.2018 till the date of the offer of possession.

25. The complainant was supposed to pay the assured return till the date of the offer of possession, however, the complainant has remitted the same only for 3 months for the year 2020 i.e., in October 2020, November 2020, and December 2020 which were also dispatched in the month of March 2021 after a huge delay. Assured Returns from 1<sup>st</sup> Feb 2020 to 30<sup>th</sup> Sep 2020 and thereafter from January 2021 till today itself have not been received by the respondent.
26. The respondent sent various emails to the complainant for the remittance of the assured returns for the above-noted period despite receiving a number of emails from the respondent, the complainant never listened to the reasonable demands of the respondent. Further, the complainant in its letter dated 28.07.2020 unilaterally repealed the agreement dated 25.06.2018 and has taken a decision to not pay investment return. It is highly relevant to mention here that the said agreement of assured return does not contain any clause of Force Majeure.
27. The complainant has been showing irresponsible behavior toward the issue raised by the respondent in numerous communications. The respondent has tried to reach the complainant on various



occasions both by email, mobile, and physical interaction, however, the complainant has not given a revert even on a single email of the respondent.

28. The respondent issued an offer of possession dated 11.05.2021 which is not valid. In the said offer of possession, various illegal demands have been raised by the complainant under the head of the labor cess, electrification charges, water, and other charges, etc. It is pertinent to mention here that labor cess Rs. 7623/-, electrification, water, and other charges @ 249/- per sq. ft. amounting to Rs. 1,01,236/-, miscellaneous charges Rs. 41,300/- is over and above the terms of BBA and applicable laws.
29. The complainant is bound to adjust the assured return for all the months from the date of execution of the agreement of the assured return till the actual date of the valid offer of possession, however, the complainant has failed to abide by the terms of the said agreement. The respondent has paid more than 80 % of the total sale consideration and is willing to pay, if due after the adjustment of assured return.

**E. Jurisdiction of the authority:**

30. The plea of the respondent regarding the rejection of the complaint on the grounds 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.1 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 the entire

Gurugram District for all purposes 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 the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

31. So, given 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.I Objection regarding non-payment of Assured return by the complainant-builder.**

32. The respondent states that the parties had entered into an agreement dated 25.06.2018 by which the complainant-promoter had promised payment of investment return on unit no. F-25, 2<sup>nd</sup>



Floor, Tower Tristar. Under the terms of the said agreement, the complainant-builder was to pay an investment return of Rs. 18,876/- per month less TDS. The payment of investment return was to be made w.e.f 01.06.2018 till the date of the offer of possession. The relevant para of the letter dated 25.06.2018 is produced below:

*"We are please to inform you that as per the terms of the understanding between us, the company shall be paying you the investment return of Rs. 52/- per Square Feet of super area i.e. 363 Sq. Fts amounting to Rs. 18,876/- (Rupees Eighteen Thousari Eight Hundred & Seventy Six Only) per month Less TDS as applicable w.e.f 01.06.18. Offer of Possession (permissive or otherwise).*

*The Commitment Amount shall be paid by the Developer to the Allottee w. e. f. 01.06.18 till the date of Offer of Possession (permissive or otherwise) of the Premises. After issuance of Offer of Possession (permissive or otherwise) by the Developer, the Allottee shall not be entitled to payment of any Commitment Amount from the Developer"*

It is the contention of the respondent-allottee that the complainant-builder did not fulfill its obligations under the said agreement and that the payments were only made from July 2018 to December 2019. Further, on 28<sup>th</sup> July 2020, the complainant-builder sent another letter to the allottee whereby the effect of the agreement dated 25.06.2018 was sought to be changed on account of the Covid-19 pandemic. The said letter sought pardon from payment of investment return on account of the pandemic and highlighted the Authority's stance of declaring a period of 6 month as a force majeure event. Relevant part of the letter is produced below:

*"5. That Haryana Real Estate Regulatory Authority, Gurugram has issued order/direction dated 26th of May, 2020 to extend the registration and completion date of Real Estate Projects by 6 months, due to outbreak of Covid-19 (corona virus). The same has been recognised by the Authority to be a Force Majeure event being a calamity caused by nature which is adversely affecting regular development of real estate projects. All these*

*facts have been mentioned hereinabove to highlight to you the devastating impact of Covid-19 on businesses all over the globe."*

Further, as per the said letter dated 28.07.2020, the complainant-builder sought to pay the investment return at the time of the offer of possession. The relevant part of the aforesaid letter is produced below:

*"9. That so far as a payment of outstanding Investment Return payable till 21<sup>st</sup> of March, 2020 and post 1<sup>st</sup> of October, 2020 is concerned, credit of the same shall be given to you at the time of offer of possession. Depending on how this Force Majeure event progresses, we may require additional waivers and the same shall be communicated to you."*

In the context of the aforesaid clauses, and bare perusal of the record available with the Authority, it is evident that the complainant-builder failed to fulfill its obligations under the agreement dated 25.06.2018. Further, the complainant-builder failed to pay the investment return at the time of the offer of possession. Therefore, the complainant-builder defaulted on its obligations under the said agreement. Hence, the complainant-builder is directed to pay the outstanding Assured return till the date of the offer of possession.

**F.II Objection regarding the validity of offer of possession dated 05.05.2021.**

33. The respondent-allottee contends that the offer of possession dated 05.05.2021 made by the complainant is invalid as it raised several illegal demands upon the respondent. She further states that the complainant-builder in the offer of possession dated 05.05.2021, wrongly applied labor cess, electrification charges, water, other charges, and miscellaneous charges.



34. On perusal of the offer of possession, it is the view of the Authority that the application of labor cess and miscellaneous charges is wrong as the explanation for the same is not given either in the BBA or in the offer of possession dated 05.05.2021. Therefore, these two demands are illegal.
35. On the issue of the demand for money for electrification charges, etc. the said demand is deemed to be legal as per the terms of BBA. In the "definitions" clause of the BBA dated 30.07.2018, the term "Total consideration" is defined and it states that the electricity connection charges shall be separate and in addition to total consideration. The said clause is reproduced below:

*"...Total Consideration means any amount payable for the Said Unit which includes basic sale price, EDC, IDC, PLC (if the Said Unit is preferentially located), Additional PLC calculated on per sq.ft. based on the Super Area of the Said Unit but does not include other amounts, charges, security amount etc., which are payable in accordance with the terms of the Application/Agreement, including but not limited to:*

- I. IAC, increase in EDC, IDC, IAC, wealth tax, Service Tax, Property Tax, VAT or/and any other tax/fees or levies of all and any kinds by whatever name called.*
  - II. IFMS*
  - III. Maintenance charges, property tax, municipal tax on the Said Unit.*
  - IV. Stamp duty, registration and incidental charges as well as expenses for execution of the Agreement and conveyance deed etc.*
  - V. Taxes and Cesses.*
  - VI. The cost for electric and water meter as well as charges for water and electricity connection and consumption.*
  - VII. Fixture and Fittings*
  - VIII. Any other charges that may be payable by the Allottee(s) as per the other terms of the Agreement and such other charges as may be demanded by the Developer.*
- which amounts shall be payable by the Allottee(s) in addition to the Total Consideration in accordance with the terms*

*and conditions of the Agreement and as per the demand raised by the Developer from time to time."*

36. Hence, in view of the abovementioned discussion, the offer of possession is deemed valid, though the illegal demands of Labour cess and miscellaneous, and other charges are set aside.

**G. Findings on relief sought by the complainant.**

**G.1 Direct the respondent to pay the outstanding dues with interest till the actual payment of the outstanding amount.**

**G.2 Direct the respondent to take possession of the unit and get the conveyance deed registered.**

37. The complainant/promoter submitted that the respondent/allottee has failed to abide by the terms and conditions of the buyer's agreement by not making the payments in a timely manner as per the payment plan opted by the allottee and by not taking possession of the unit in question as per the terms and conditions of the buyer's agreement. Further cause of action also arose when despite repeated follow-ups by the complainant and the complainant having performed its contractual obligations, the respondent/allottee withheld to perform her contractual obligation. The respondent/allottee shall make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under:

*"Section 19: - Right and duties of allottees. -*

.....



19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

38. As per clause 12 of the buyer's agreement, the respondent/allottee was liable to pay the installment as per the payment plan opted by the respondent/allottee. Clause 12 is reproduced as under:

**Clause 12(a). Time is the Essence**

(a) It is specifically and categorically understood and agreed by the allottee that time is of the essence with respect to allottee(s)' obligations to perform or observe all the other obligations of the allottee under this agreement and/or to pay the total consideration along with other payments such as applicable stamp duty, registration fee and other charges stipulated under this agreement to be paid on or before due date or as and when demanded by the company as the case may be.

39. Keeping in view, the aforesaid factual and legal possession, the respondent/allottee is directed to make the requisite payments and take possession of the subject apartment as per the provisions of sections 19(6), (7), and (10) of the Act, within a period of 60 days from the date of this order failing which the complainant shall be free to proceed with the cancellation of the subject unit allotted to the respondent/allottee as per the terms of the buyer's agreement and as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

**H. Directions issued by the Authority:**

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

- I. The complainant/builder is directed to issue an updated statement of accounts to the respondent/allottee after adjusting the amount on account of assured return within 15 days.
  - II. The respondent-allottee is directed to pay the outstanding dues, if any, to the complainant with the equitable rate of interest i.e. @10.75% within a period of 30 days of receiving the updated statement of account failing which the complainant is free to proceed with the cancellation of the unit and the amount forfeited shall be as per provisions of Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.
41. Complaint stands disposed of.
42. File be consigned to the Registry.

  
**Ashok Sangwan**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.10.2023