

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

Complaint no.	:	1684/2022
Date of filing complaint:		20.04.2022
First date of hearing:		11.07.2022
Date of decision	:	03.01.2024

Rakesh Makkar Resident of: B 1202 Oberoi Splendor JVLR Jogeshwari East Opposite Majas Bus Depot Mumbai.	Complainant
Versus	
M/s Spaze Towers Pvt Ltd Regd. office: Spazedge sector 47, Sohna Road, Gurugram-122002	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Sukhbir Yadav Advocate	Complainant
Shri Harshit Batra 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 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 provisions 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, 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	"Privy the address, Sector - 93, Gurugram
2.	Project area	10.866 acre
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	07 dated 15.01.2011. Valid up to 14.01.2021.
5.	Name of licensee	M/s Spaze Towers Pvt Ltd and 3 others.
6.	RERA Registered/ not registered	Un registered
7.	Payment plan	Subvention plan
8.	Unit no.	G-153, Tower G, 15 th Floor (Page no. 37 of complaint)
9.	Unit area admeasuring	2532 Sq. Ft. (Page no. 38 of complaint) 2743 Sq. Ft. (Final) (Page no. 78 of complaint)

		An increase of 211 Sq. Ft.
10.	Date of execution of Flat buyer agreement.	18.05.2012 (Page no. 35 of complaint)
11.	Tripartite agreement	23 rd February 2013 (Page no. 71 of complaint)
12.	Possession clause	<p>Clause 28(a)</p> <p>Time of handing over of possession</p> <p>That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. If, however understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block / Towers as and when completed.</p>
13.	Due date of possession	18.05.2015
14.	Total sale consideration	Rs. 1,00,93,550/- (Page no. 59 of complaint)

15.	Amount paid by the complainants	Rs. 1,18,38,949/- (Page no. 83 of complaint, SOA dated 3 rd March 2022)
16.	Offer of possession (Permissive).	8 th November 2017
17.	Occupation certificate /Completion certificate	20.07.2018

B. Facts of the complaint:

3. As per section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act. And is under the territorial jurisdiction of this Hon'ble Regulatory Authority.
4. As per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant falls under the category of "Allottee" and has rights and obligations under the Act.
5. In March 2012, the complainant Rakesh Makkar received a marketing call from a real estate agent, who represented himself as authorized agent of the respondent and marketed the respondent's project situated at Sector - 93, Gurugram. The complainant visited the Gurugram office and project site of the respondent with the family members and real estate agent. There she met with the marketing staff of builder and got information about the project "PRIVVY THE ADDRESS". The marketing staff gave him a Brochure and Pricelist etc. and allured him.

6. The marketing staff of builder assured the complainant that possession of the flat will be handed over within 36 months of the booking.
7. Believing on representation and assurance of respondent, the complainant Rakesh Makkar, booked one Apartment/ Flat bearing No. G-153 on 15th Floor of Tower No. – G for tentative size admeasuring 2532.00 sq. ft. on 10.04.2012 and issued one Cheque of Rs. 10,00,000/- vide cheque No. “472394” dated 07.04.2012, the flat/apartment was purchased under the Subvention Payment Plan for a sale consideration of Rs. 1,00,93,550/-.
8. On 19.04.2012, the respondent issued an allotment letter and payment schedule in name of Rakesh Makkar, conforming the allotment of apartment no. G-153 on 15th Floor of tower no. – G for tentative size admeasuring 2532.00 sq. ft. (Super Area) for sale consideration of Rs. 1,00,93,550/- inclusive of EDC/IDC etc.
9. After a long follow-up on 18.05.2012, a pre-printed, unilateral, arbitrary flat buyer agreement was executed inter-se the respondent and the complainant. According to Clause 28(a) of the flat buyer agreement, the respondent had to give possession of the said flat within 36 months from the date of the signing of this agreement, therefore, the due date of possession was 18.05.2015.
10. The complainant kept paying the demands raised by the respondent on time. The complainant had taken a loan from “First Blue Home Finance Limited” of Rs. 75,00,000/- which was regularly paid by the complainant.
11. On 08.11.2017, the respondent issued a letter for the offer for possession and demanded Rs. 13,63,676/- under different heads in

favour of "Spaze Towers Pvt. Ltd." and Rs. 2,89,300/- in favour of "Preserve Facilitieez Pvt. Ltd. The respondent increased the super area of the flat by 211 sq. ft. without any justification, moreover, the respondent demanded Rs. 31,544/- under labour cess, Rs. 2,36,364/- under external electrification charges, Rs. 27,677/- security deposit for electrical, water & sewer, Rs. 68,575/- under repair charge and Rs. 53,900/- under club development charges. The above-mentioned demands are over and above the agreed sale consideration and the respondent is misusing its dominant position and extracting the hard-earned money of the allottee. Due to the increase in the area, the total cost of the flat also increased to Rs. 1,12,38,716/-.

12. After receipt of the offer for possession, the complainant lodged his protest on arbitrary demands and unjustified increase in area. The complainant visited several times the office of the respondent to resolve the issues, but all went in vain. Thereafter the complainant paid Rs. 12,40,000/- on 10.10.2018 under protest to avoid cancelation of the flat.
13. As per the statement of account dated 03.03.2022, issued by the respondent, the complainant has paid Rs. 1,18,38,949/- till 08.07.2021 i.e., more than 100% of total sale consideration. The respondent debited Rs. 1,00,000/- with remarks "Interest on subvention plan extra credit vide entry no. 08.07.2021.
14. On 11.02.2021, the complainant visited the office of the respondent for rectification of final demand and delayed possession interest as per RERA, but the builder/respondent outrightly refused the request of the complainant.

C. Relief sought by the complainants:

15. The complainants have sought the following relief(s):
- Direct the respondent to handover possession of the aforesaid unit.
 - Direct the respondent to pay interest on delayed possession at the rate determined by this Hon'ble Authority for every month of delay from due date of possession till actual possession.
 - Direct the respondent party to provide area calculation.
 - Refrain the respondent party from charging labour Cess, external electrification charges, security deposit for electrical water, & sewer, façade repair charge, club development charges.

D. Reply by the respondent.

16. The complainant being interested in the real estate project of the respondent, group housing colony known under the name and style "PRIVY THE ADDRESS", Sector 93, Gurugram, Haryana tentatively applied for allotment via application form dated 10.04.2012 and were consequently allotted unit no. G-153, 15th-floor a, Tower B2 having a tentative super area of 2532 sq. ft. vide allotment letter dated 19.04.2012.
17. Thereafter, the buyer's agreement dated 18.05.2012 was mutually executed between the original allottees and the respondent.
18. The complainant has been a continuous defaulter. As per clause 26 of the agreement, the complainant was under an obligation to make the timely payment of instalments however, the complainant has failed to fulfil his obligation. That details qua demands, reminders and receipts are as below:

Sr. No.	Date of Demand	Milestone	Reminders	Date of receipt
1	10.04.2012	At the time of booking	NA	10.04.2012
2	20.04.2012	Within 30 days from the date of booking	NA	-
3	05.05.2012	Within 60 days from the date of booking	05.05.2012 09.05.2012 11.03.2013 20.03.2013 04.04.2013	05.05.2012 09.05.2012 20.03.2013 22.03.2013 03.04.2013
4	08.11.2017	On possession	-	-

19. That from the above it is evident that the complainant has himself defaulted in fulfilling the obligations under the agreement and thus he cannot benefit from his own wrongs.
20. Despite the continuous delay in payment by the complainant, the construction of the unit was completed, and the complainant was offered possession of his unit along with a compensation of Rs. 3,35,785 and GST input tax credit of Rs. 44,875.
21. The complainant in his complaint has further alleged that he had lodged several protests and had even paid certain amount in 2018 under protest. The complainant has only made vague allegations and has failed to substantiate his allegations by not placing on record any document. It is the complainant's stand that possession was offered on 08.11.2017 and at para 15 of his complaint, he has

stated to having visited the office of the respondent on 11.02.2021. The complainant visited the office of the respondent and alleged of having lodged some protest as regard possession dated 08.11.2017 only after a lapse of more than 4 years. Hence, the respondent be not made liable for the default on the part of the complainant.

22. As per clause 28 of the Buyer's Agreement, the delivery of possession of the unit was proposed to be within 36 months from the date of execution of the agreement i.e., 18.05.2012 subject to compliance of the allottee with all provisions of the BBA. The delivery of possession of the unit was extendable in case of delay in payment by the allottees as per clause 28(b)(iii).
23. The complainant and other allottees have defaulted in timely payment of the instalments which has gravely affected the development of the project. However, despite the default caused by the allottees in fulfilling their obligations diluted the timeline of possession, the respondent did not default and instead completed the construction of the project.
24. Furthermore, the delivery of the possession was also subject to *force majeure* conditions as spelled out in clause 28(b) of the BBA. The respondent was adversely affected by various construction bans, lack of availability of building material, 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 which in turn affected the mobilisation and demobilisation of the labourers at the site, yet, the Respondent

completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done. The several orders/directions passed by various forums/authorities/courts, as have been delineated hereinbelow: -

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped the movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.



2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 यत्ते to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
			Total days	67 days	

25. That a period of 67 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and

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the Covid-19 Pandemic, as noted above. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. However, despite all odds, the respondent was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions, and has ensured compliance under the agreement, laws, rules, and regulations.

26. As per clause 1.1 of the BBA, the area of the unit was tentative and was subject to change till the construction of the group housing complex is complete. In accordance with the agreed terms of the buyer's agreement, the super area of the unit was increased from 2,532 sq. ft. to 2,743 sq. ft. That the change in area amount to only 8.8 % increase in the area which is within the permissible limit for an increase in area, as was also agreed between the parties.
27. The respondent has not charged any other charges which were not part of the agreement which was voluntarily entered into by the complainant. It is submitted that the charges for external electrification charges, water, sewage, and meter charges were categorically agreed to between the parties along with other payments, as is *ex-facie* evident from a perusal of the agreement. The complainant was made aware of all these charges at the time of booking of the unit. It is submitted that the costs and sale consideration were categorically agreed between the parties and the complainant was charged according to the agreement only.

E. Jurisdiction of the authority:

28. 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. 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 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.

29. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objections regarding force Majeure.

30. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by the district administration Gurugram, Hon'ble Punjab & Haryana HC, NGT, shortage of labor and construction material, etc. The pleas of the respondent advanced in this regard are devoid of merit. First of all the possession of the unit was to be offered by 18.05.2015. Hence, the events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, the orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

G. Findings on relief sought by the complainants.

G.1 Direct the respondent to hand over possession of the aforesaid unit.

31. In the instant case, the flat buyer agreement was executed between the complainant and the respondent on 18.05.2012, and as per clause 28(a) of the said agreement, the possession was to be

handed over within 36 months from the date of the signing of agreement. The said clause is reproduced below:

"That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. If, however understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block / Towers as and when completed."

Therefore, the due date of possession comes out to be 18.05.2015.

32. The complainant-allottee has paid Rs. 1,18,38,949/- against the total sale consideration of Rs. 1,00,93,550/- for the unit in question to the respondent.
33. The respondent issued a permissive offer of possession on 08.11.2017 way before obtaining the occupation certificate. Hence it cannot be termed as a valid offer of possession. There has been a delay in obtaining the occupation certificate by the respondent, and OC with respect to tower/block in question was obtained only on 20.07.2018. Thereafter no offer of possession been made by it to the complainant till date. After this, the complainant filed a complaint with this Authority on 20.04.2022.
34. Despite the fact that the occupation certificate has already been obtained by the respondent on 20/07/2018, and has received more

than 100% payment against the sale consideration of the unit in question from the complainant, the respondent has failed to handover the possession of the unit to him which is a clear violation of Sec-17(1) of the Act of 2016. Sec-17(1) of the Act of 2016 is reproduced as under for ready reference:

"17 (1) The promoter shall execute a registered conveyance deed in favor 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 or the 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 the 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."

35. Therefore, in view of the factual as well as legal provisions, the respondent is directed to handover physical possession of the subject unit within a period of 90 days after making a valid offer of possession and also execute a conveyance deed in his favor on payment of registration charges and stamp duty as applicable.

G.2 Direct the respondent to pay interest on delayed possession for every month of delay from the due date of possession till actual date of possession.

36. In the instant case, the complainant wishes to continue with the project and is seeking DPC as provided under the proviso to sec 18(1) of the Act. Sec 18(1) proviso reads as under:

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"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, —

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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."

37. In the instant case, the possession of the aforesaid unit was to be delivered on 18.05.2015 as per clause 28(a) of the agreement dated 18.05.2012 but the same was not delivered. The relevant clause of the agreement signed between the parties is reproduced below:

"That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. If, however understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block / Towers as and when completed."

38. **Admissibility of delay possession charges at prescribed rate of interest:** 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 sub-section (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's 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.

39. 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.
40. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as of the date i.e., 03.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., **10.85%**.
41. The definition of the 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 that 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;"

42. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
43. On consideration of the circumstances, the documents, submissions made by the parties, and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 28(a) of the agreement executed between the parties on 18.05.2012, the possession of the subject unit was to be delivered within 36 months from the date of the execution of the agreement. Therefore, the due date for handing over possession was 18.05.2015. 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. The authority is of the considered view that there is a delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 18.05.2012 executed between the parties.

44. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 18.05.2013 to hand over the possession within the stipulated period. 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 allottee shall be paid, by the promoter, interest for every month of a delay from the due date of possession i.e. 18.05.2015 till the date of the valid offer of possession plus 2 months at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.3 Direct the respondent to provide area calculation.

45. The complainant contends that the area of the unit has been increased from 2532 Sq. Ft. (original allotment) to 2743 Sq. Ft. (Final). The complainant seeks precise calculation of the area of the unit. It is the view of this Authority that as per section 19(1) of the Act of 2016, the promoter-builder is under an obligation to provide the allottee with all the specifications of the unit allotted. Therefore, the respondent is directed to provide calculation of the area to the complainant within a period of one month from the date of this order.

G.IV Refrain the respondent party from charging labour Cess, external electrification charges, security deposit for electrical, water, & sewer, façade repair charge, club development charges.

46. The complainant contends that the respondent has raised several illegal demands upon him such as labour cess, external

electrification charges, security deposit for electrical, water, and sewer, façade repair charges, and club development charges. The said charges have been dealt with in succeeding paragraphs.

I. Labour cess:

1. The respondent has charged as sum of Rs. 31,544/- as labour cess upon the complainant. It is the view of the Authority that such cess is illegal and unjustified. The labour cess is levied @1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no. 962 of 2019 titled **Mr. Sumit Kumar Gupta and Anr, Vs Sepset Properties Private Limited** where it was held that since labor cess is to be paid by the respondent, no labor cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labor cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labor cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount. Hence, the respondent cannot charge the said amount.

II. External electrification charges:

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1. The respondent has charged as sum of Rs. 2,36,364/- as external electrification charge upon the complainant. The complainant contends that the external electrification, sewage, and water charges raised by the respondent are unjustified. On the other hand, the respondent contends that as per clause 8(vii) of the agreement, the allottees undertake to pay extra charges on account of external electrification as demanded by HUDA/any other concerned authority. On perusal of the record brought before this Authority, and relying on the findings of the inquiry report dated 18.12.2020 submitted by investigating commissioner Suprabha Dahiya (IAS) which was constituted by this Authority vide Reference letter no. CR/GRG/279/2018 dated 13.03.2020, constituted to inquire into complaint filed by Privy-93 owners association against M/s Spaze Towers Pvt Ltd, the Authority is of the view that the allottee has consented to payment of these charges as per clause 8 of the agreement to sale. Furthermore, in view of this Authority's order in "CR/4031/2019 and others" in the case titled "Varun Gupta Vs Emmar Mgf Ltd" wherein it was held that electrification charges cannot be raised but electric, sewage, etc. connection charges can be raised as per the actual charges incurred by the builder. The relevant para of the order is produced hereunder.

"xiii. Electrification charges: The promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary."

"xiv. Electric, water and sewerage connection charges: The promoter would be entitled to recover the actual charges paid to the concerned departments' from the

complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads."

2. Therefore, the respondent has rightfully raised the said demand since it is in the form of connection charges, and the complainant are entitled to get proof of the actual charges incurred by the respondent.

III. Security deposit for electrical, water, and sewer.

1. The respondent has raised demand of security deposit for electrical, water, and sewer worth Rs. 27,677/-. The complainant contends that the said demand is illegal and unjustified. After considering the documents available on record, the Authority is of the view that the said demand is illegal as no justification for the same has been provided by the respondent.

IV. Façade repair charge.

1. The respondent has raised façade repair charges worth Rs. 68,575/-. The complainant contends that the said demand is illegal and unjustified. The respondent on the other hand contends that the said demand is legal and justified as per the terms of agreement to sale executed between the parties. The respondent further relies on the inquiry report dated 18.12.2020 submitted by investigating commissioner Suprabha Dahiya (IAS) which was constituted by this Authority vide Reference letter no. CR/GRG/279/2018 dated 13.03.2020, constituted to inquire into

complaint filed by Privy-93 owners association against M/s Spaze Towers Pvt Ltd.

2. On perusal of the facts brought before this Authority, it is of the view that the said demand raised is legal and justified as per clause 38(c) of the agreement dated 18.05.2012.

V. Club development charges.

1. The respondent has raised club development charges worth Rs. 53,900/- upon the complainant. The complainant contends that the said charges are illegal and unjustified. It is the view of this Authority that the said charges are justified as per clause 9 of the agreement signed between the parties. The said clause is reproduced below:

"That in accordance with the development plan of the Complex, the DEVELOPER proposes to develop a Club for the purpose of social activities and the FLAT ALLOTTEE (S) has agreed to avail membership of this Club. This Club may be developed simultaneous to or after development of the Said FLAT and for the membership of the Club, the FLAT ALLOTTEE(S) agrees to pay Club Membership Registration Charges (CMRC), Security and Club Development Expenses."

Therefore, the said demand raised is justified and legal.

H. Directions issued by the Authority:

47. 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 respondent is directed to make a valid offer of possession to the complainant.



- II. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession i.e. 18.05.2015 till the date of valid offer of possession plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default, shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- IV. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- V. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- VI. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
48. Complaint stands disposed of.
49. File be consigned to the Registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.01.2024