

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

Order pronounced on: 28.02.2024

Name of the Builder		Spaze Towers Pvt. Ltd.	
Project Name		Spaze Towers, "Tristaar", Sector - 92, Gurugram	
S. No.	Complaint No.	Complaint Title	Attendance
1.	2591/2022	Pawan Kumar Sharma Vs Spaze Towers Pvt Ltd	Shri Sukhbir Yadav Shri Harshit Batra
2.	2531/2022	Sheela Sharma and Manu Sharma Vs Spaze Towers Pvt Ltd	Shri Sukhbir Yadav Shri Harshit Batra
CORAM			
Shri Ashok Sangwan			Member

ORDER

1. This order shall dispose two complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar and the complainant in the above-referred matters had executed a BBA with the respondent for the purchase of units in the project, namely, Spaze Towers "Tristaar" being developed by the same respondent/promoter i.e., Spaze Towers Pvt. Ltd. The terms and conditions of the BBA form the fulcrum of the issues involved in all these cases about failure on the part of the promoter to issue timely possession of the units in question and seeking award of delayed possession charges.
3. The details of the complaints, reply status, unit no., date of BBA, possession clause, the due date of possession, the offer of possession, total sale consideration, the amount paid up, and reliefs sought are given in the table below:

Sr. no	Complaint no./title/ date of filing the complaint	Unit No. and area admeasuring	Date of execution of apartment buyer's agreement.	Due date of possession & occupation certificate date & offer of possession	Total sale consideration and amount paid by the Complainant (s) and amount waived off.	Relief Sought
1.	CR/2591/2022 titled "Pawan Kumar Sharma Vs Spaze Towers	1108, 1 st Floor 278 Sq. ft. (Initially) 286 Sq. Ft. (Final)	17.11.2014	Due date: 17.11.2019 Occupation Certificate: 03.05.2021	Total sale consideration: Rs. 28,08,786/- Amount paid:	i. Possession of the unit at the initial allocation, else refund of the amount paid. ii. In case of

	Pvt. Ltd.* Date of filing complaint: 03.06.2022 Reply received on: 31.08.2023			Offer of possession: 05.05.2021	Rs. 32,02,898 /-	allotment at place of initial allocation, refrain the respondent from charging labour cess, charges in lieu of increased area. iii. Direct the respondent to pay delayed possession charge from due date of possession till handing over of possession. iv. Revocation of HARERA registration of the said project.
2.	CR/2531/2022 titled "Sheela Sharma and Manu Sharma Vs Spaze Towers Pvt. Ltd.*"	1109, 1 st Floor 278 Sq. ft. (Initially) 286 Sq. Ft. (Final)	20.12.2014	Due date: 20.12.2019 Occupation Certificate: 03.05.2021 Offer of possession: 05.05.2021	Total sale consideration: Rs. 28,08,786/- Amount paid: Rs. 32,02,898 /-	i. Possession of the unit at the initial allocation, else refund of the amount paid. ii. In case of allotment at place of initial allocation, refrain the respondent from charging labour cess, charges in lieu of increased area. iii. Direct the respondent to pay

						delayed possession charge from due date of possession till handing over of possession. iv. Revocation of HARERA registration of the said project.
--	--	--	--	--	--	--

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of BBAs, executed between the parties inter se in respect of the purchase of units for seeking award of delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance with the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2591/2022** titled "**Pawan Kumar Sharma Vs Spaze Towers Pvt Ltd.**" are being taken into consideration for determining the rights of allottee(s) qua delay possession charges inter alia.

A. Unit and project-related details

7. 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:

CR/2591/2022 titled "Pawan Kumar Sharma Vs Spaze Towers Pvt Ltd."

Sr. No.	Particulars	Details
1.	Name of the project	Spaze Towers, "Tristaar", Sector - 92, Gurugram
2.	Project area	2.718 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.	Name of licensee	M/s Spaze Towers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 247 of 2017 dated 26.09.2017 valid upto 30.06.2020
7.	Unit no.	1108, 1 st Floor (Location changed) (Page 47 of complaint)
8.	Unit area measuring	278 sq. ft. (Initially) (Page 47 of the complaint) 286 Sq Ft (At time of possession) (Page 104 of complaint)

9.	Date of execution of Space buyer agreement	17.11.2014 (Page 43 of complaint)
10.	Possession clause	<p>11. POSSESSION</p> <p>(a) Schedule for possession of the Said Unit</p> <p><i>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 in terms of the approvals (including</i></p> <p><i>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 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 payments) to the Developer.</i></p> <p>Due date of delivery of possession: Though the possession clause is given in file, but the time period is not mentioned. Therefore, the due date is calculated as per clause 1.2, relevant part is reproduced</p>

		below: <i>Escalation charges shall be computed at the expiry of sixty month from the date of this agreement or at the time of offer of possession (permissive or otherwise), whichever is earlier. The RBI indexes for the month of execution of this agreement and for the month at the expiry of sixty months from the date of this agreement / month of offer of possession (permissive or otherwise), whichever is earlier, shall be taken as the opening and closing indexes respectively to compute the escalation charges.</i>
11.	Due date of possession	17.11.2019 (calculated as 60 months from the date of execution of buyer's agreement)
12.	Total sale consideration	Rs.28,08,786/- (Page 97 of complaint)
13.	Amount paid by the complainants	Rs.32,02,897 /- (Page 102 of complaint)
14	Public notice inviting objections to change in building plans to DTCP	16.11.2018 (Page no. 118-119 of Reply)
15.	Notice to Allottee inviting objections to revised building plans sent by the respondent. (To be given to STP Gurugram)	16.11.2018 (Page no. 121 of Reply)

16.	Approval for revised building plans by DTCP	14.01.2019 (Page no. 122 of Reply)
17.	Occupation certificate	03.05.2021 (Page 114 of the reply)
18.	Offer of possession	05.05.2021 (Page 104 of complaint)

B. Facts of the complaint:

8. The complainant got to know about SPAZE "Tristar", a project situated at Sector - 92, Gurugram through a real estate agent.
9. In October 2013, the complainant Mr. Pawan Kumar Sharma received a call from a real estate agent who introduced himself as an authorized agent of the respondent/developer and marketed the commercial project of Spaze Towers Pvt. Ltd. at the prime location of Sector -92, Gurgaon. The complainant along with the real estate agent visited the project site and marketing office of the respondent. The location was excellent and he consulted the local representative of the developer. The local representative of the developer allured the complainant with the special characteristics of the project. The respondent in collusion with the real estate agent showed a rosy picture of the project and assured that the project would be ready for possession within 60 months of booking.
10. Relying on the representations and assurances of the respondent, the complainant applied for registration of retail space in the commercial project of the respondent. The shop was booked for a total sale consideration of Rs. 27,34,853/- including B.S.P., E.D.C., I.D.C., and PLC

under the construction link payment plan. Furthermore, PLC was charged at Rs. 1,51,121/-

11. The respondent issued an allotment letter confirming the allotment of unit no. 1108 on the first floor tentatively admeasuring super area 278.00 Sq. Ft. for a total sale consideration of Rs. 27,34,853/-
12. After a long follow-up on 17.11.2014, a pre-printed, unilateral, arbitrary builder-buyer's agreement was executed between the respondent and the complainant. The agreement contained plethora of clauses and maximum clauses are one-sided and arbitrary, further, there is no firm date of the offer of possession of the shop in said BBA. The BBA was executed on 17.11.2014 and the due date of possession was 16.11.2019. The complainant lodged the protest on the arbitrary terms and conditions of BBA and asked for a change in terms and conditions, but the respondent threatened to deduct the earnest money @ 20% of the sale consideration, therefore, under the compelling circumstances, the complainant signed the BBA. Further, the building plans were approved on 05.03.2014, thereafter, BBA was executed, and therefore, without the written consent of the allottee(s), the builder cannot alter the building plans and cannot relocate the shop.
13. The complainant kept paying the demands as and when raised by the respondent.
14. On 05.05.2021, the respondent sent a letter for the offer of possession and raised un-reasonable demand for an increase in area (278 - 286), PLC charges, electricity, labor cess, etc.
15. In May 2021, the complainant visited the project site and found that the respondent has changed the location of his shop, consequently the location of the unit of the complainant is totally changed and now it is in the back

row. After the change in location, the now unit no. 1108 is a non-prime location unit/back location unit. Aggrieved by the change in location, the complainant visited the office of the respondent and asked for possession of the shop as per the allotted location, but the respondent completely ignored the just and reasonable request of the complainant.

16. On 16.05.2021 & and 28.05.2021 the complainant sent a grievance email to the respondent and specifically mentioned that his shop is piazza-facing and he has also paid PLC charges for the unit. The respondent altered the location of the complainant's shop and allotted a back-row shop which is completely illegal. Thereafter, the respondent sent a reply email on 08.06.2021 as the respondent forwarded the details to the accounting department and they will update the complainant very soon.
17. On 03.09.2021 after a long follow up the complainant sent a notice to the respondent and raised a list of queries on the offer of possession and also sent an email to the respondent and its authorized persons and raised specific objections pertaining to the offer of possession.
18. In April 2022, the complainant visited the office of the respondent and asked for a refund along with interest on account of failure to give possession at the allotted location. The respondent did not obtain written consent/permission from the allottee (including the complainant) prior to the change in the sanctioned plan. The above-said project is RERA registered to vide Registration No. 247 of 2017 and as per RERA Act, HARERA Rules and Regulations, the respondent is under obligation to comply with the terms of registration and other approvals. The change in sanction plans without prior consent/permission of allottees is a serious offence and violation of the Act. As per Section 12 of the Act, it is the

obligation of the promoter to the veracity of the advertisement or prospectus. As per Section 14 of the Act, the promoter shall adhere to sanctioned plans and project specifications.

C. Relief sought by the complainant:

19. The complainants have sought the following relief(s):

- i. Direct the respondent to give the possession of shop no. 1108 (Piazza Facing), (complete in all respects as promised in B.B.A. and shown in the brochure), and if the builder fails to give possession of the allotted location, this Hon'ble Authority kindly may pass an order directing the respondent to refund the paid amount along with the prescribed interest from the date of payment till the date of realization of money.
- ii. Direct the respondent to restrain from charging labor Cess.
- iii. Direct the respondent to restrain from raising demand on account of the increase in area.
- iv. Cancellation/revocation of HARERA registration under Section 7 of the RERA Act, read with Rule 7 of HARERA Rules, 2017 for violation of the provision of the RERA Act, the Rules and Regulations.

D. Reply by the respondent

20. The project is duly registered with Haryana RERA vide Registration No. 247 of 2017 dated 26.09.2017, originally valid till 30th of June, 2020, which was further extended by 6 months vide notification no. 9/3-2020 HARERA/GGM (Admn) dated 02.05.2020, thereby extending the date to 30.12.20220.
21. Thereafter, on 12.01.2021 the respondent applied for the extension of the registration under section 6 of the Act for which project registration proceedings were carried on under complaint no. 883 of 2021, wherein, the

request for extension of the project was approved, as is evident from the proceedings dated 04.10.2021. After the grant of extension, the end date of expiry was further extended.

22. The complainant, Pawan Kumar Sharma being interested in the real estate project of the respondent under the name and style "SPAZE TRISTAAR" situated in Sector-92, Village Dhorka, Gurugram, Haryana tentatively applied for the allotment of the commercial shop in the project of the respondent vide application form dated 14.11.2013 and was consequently allotted the shop bearing no. 1108, 1st floor, tentatively measuring 278 sq. ft., in the project of the respondent vide allotment letter dated 03.09.2014. Thereafter, a Shop Buyer Agreement was mutually agreed upon and executed between the complainant and the respondent on 17.11.2014.
23. As per clause 11 of the agreement, the due date for the delivery of possession was subject to the approvals (*including the renewal/extension period*) and in accordance with the terms of the agreement, however, 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. The validity of the registration certificate was 30.06.2020, firstly extended till 30.12.2020 and further extended vide order dated 04.10.2021, as noted above, thereby extending the validity further beyond October 2021.
24. The due date for the offer of possession was extendable if there was a delay or failure by a concerned department or on the occurrence of *Force Majeure* conditions that are beyond the power and control of the developer. The Project was gravely hit by various *Force Majeure* conditions beyond the control of the respondent which are directly consequential to timely completion of the construction of the project and allow extension of

timelines for completion. The said project has been hindered on account of several orders/ directions passed by various authorities/ forums/courts as has been delineated herein below:

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	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 movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.

			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.		
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	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.



			authorities and have the Environment Clearance from the competent Authority.			
3.	8 th Nov, 2016	Nov,	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 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	7 th Nov,	Nov,	Environment	Till date the	90 days	The bar for the closure

	2017		Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice.	order has not been vacated		of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017	Nov and	National Green		9 days	On account of passing of the aforesaid order,



17 th 2017	Nov,	Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th			no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
--------------------------	------	---	--	--	--

		Nov, 17.			
6.	29 th October 2018	<p>Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi</p>	1 st Nov to 10 th Nov, 2018	10 days	<p>On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.</p>

		and other NCR Districts from 1 st Nov to 10 th Nov 2018.			
7.	24 th July, 2019	<p>NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery</p>		30 days	<p>The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.</p>

		of compensation relatable to the cost of restoration.			
8.	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
9.	3 rd week of Feb 2020	Covid-19 pandemic	25.03.2020 to	To date	Since the 3 rd week of March 2020, the

			25.09.2020	(3 months Nationwide lockdown)	Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. 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, during the interregnum, large-scale migration of labour occurred and the availability of raw materials started becoming a major cause of concern.
			Total days	467 days	

25. 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, and, rules and regulations.

26. The complainants have caused delays in the payments beyond the due date. Reminders dated 31.03.2014 and 03.05.2014 were made to the complainants. A number of allottees of the project have defaulted in making the payment against their units, which has gravely affected the development of the project.
27. Despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application vide an application dated 09.10.2020 before the concerned Authority and successfully attained the occupation certificate dated 03.05.2021. Once an application for a grant of occupation certificate is submitted to the concerned statutory 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 influence in any manner whatsoever over the same. There is a delay of around 7 months caused due to the non-issuance of the occupation certificate by the statutory authority while calculating the period of delay. Therefore, the time period utilized by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilized for the implementation of the project.
28. After obtaining the requisite permissions, the respondent legally offered possession of the unit to the complainant on 05.05.2021. However, the complainant miserably delayed in taking possession. There is no delay on the part of the respondent in offering the possession. The due date was extended by this Ld. Authority on 04.10.2021, and after obtaining the occupancy certificate, the offer of possession was made on 05.05.2021 i.e.,

before the expiry of the due date and before the expiry of the validation of the RERA certificate.

29. After the grant of occupancy certificate and offer of possession are made, it is mandatory on the part of the allottee to take the possession. The use of the word "Shall" in section 19(10) of the RERA Act, 2016 denotes the mandatory nature of the obligation bestowed upon the allottee, out of which the allottee cannot rightly wriggle. With the use of the word "shall", the intention of the legislature also needs to be seen as regards the literal interpretation of "shall" which denotes the mandatory obligation of taking possession by the allottee.
30. The Real Estate (Regulation and Development) Act is not retrospective in nature but retroactive, hence, the interest on delay caused by the respondent, if any, shall be subjected to retroactive effect and not retrospective. The Respondent shall only be liable to issue interest on payments made by the complainant against the said unit, as per the terms defined in the builder buyer agreement, and *only against the payments made after the enactment and implementation of RERA*, the provision of the act would prevail as the RERA Act is only Retroactive in nature.
31. The complainant himself is at default by not taking over the possession duly offered to him and cannot benefit from their own wrongs. It is a matter of fact that the complainant has caused an inordinate delay in taking possession of the unit which was issued by the respondent on 5th May 2021, thereby violating Section 19(10) of the Act as have failed to take possession of the Unit even after One Year and 5 months (515 days) of offer of possession in violation Section 19(10) and 19(11) of the Act.

32. The building plans, area of the unit, and the location of the unit were tentative and the respondent had the complete right to revise the building plans with the resultant change in area and location of the unit as per clauses 1.6 and 9 of the agreement.
33. In accordance with the agreed terms and conditions and in compliance with the laws, rules, and regulations, the respondent sought to revise the building plans from the earlier approved building plan vide DTCP memo No. ZP-925/AD(RA)/2018/16527 dated 31.05.2018 to the in-principal approval vide DTCP Memo No. ZP-95//AD(RA)/2018/31440 dated 13.11.2018. The respondent put forth public notices in regard to the said revision in the project in an english newspaper (Indian Express), a hindi newspaper (Dainik Bhaskar), and a local newspaper (The Tribune, Gurugram). The respondent vide the said public notices, invited objections to the said revision. It was noted that apart from the plans being available at the website of the respondent and its office, the same were also made available at the project site, and in the offer of STP, Gurugram. The proposed changes were also marked in different colors.
34. It is a matter of record that no objections/suggestions were obtained by the complainants. That the approval of the revision was obtained on 14.01.2019 vide Memo No. ZP-95//AD(RA)/2018/1065, wherein the Chief Town Planner noted that "Vide Memo No. 8733 dated 21.12.2018, STP, Gurugram has informed that no objections has been received from any allottee in respect of amendments made in the building plans by you. Hence, final permission is hereby granted....".
35. The respondent has, at all times, ensured the compliance of not only the Act and the agreement but also the DTCP rules and regulations. When the

complainant did not object to the revision, they cannot be allowed to make any objections in this instance.

36. Furthermore, it is to be noted that the area of the unit was also tentative until the construction of the said project was complete. That the same was wilfully agreed by the complainant also vide clause 1.8 of the agreement.
37. Upon the revision of the building plan, the area was increased from 278 sq. ft. to 286 sq. ft. That the change in the area amounts to only a 2.8 % increase in the area which is the permissible limit for an increase in area, as agreed between the parties in the agreement. Accordingly, the complainant is liable to make the payment for the increase in area. That the respondent has ensured complete compliance with the terms and conditions of the agreement and the Act of 2016.
38. The respondent had to inform the complainant about such a change in the area, only if the same was beyond 20% as per clause 10 of the agreement. However, in the present case, the change in area is less than 20% (only 2.8%), and hence, as per the terms and conditions of the agreement, wilfully and voluntarily executed between the parties, no intimation was required. Hence, the demand for an increase in area is justified.
39. Despite the same, the communication about the increased area was rightly made on 24.05.2021. This change was also validly accepted by the complainant, as evident from the communications annexed by the complainant itself.
40. The Complainant was made aware of the charges for PLC, electricity, and other charges at the time of booking of the unit. The costs and sale consideration were categorically agreed between the parties and the complainants were charged according to their payment plan and the

buyer's agreement only. In regard to the charging of labor cess, the said charge was agreed to between the parties, as per the Agreement.

E. Jurisdiction of the authority:

41. 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.

42. 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 Force Majeure

43. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT to stop construction, notification of the Municipal corporations Gurugram, Haryana state pollution control authority, etc. The plea of the respondent regarding various orders of the NGT, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region were for a very short period of time, and such exigencies should have been accounted for at the very inception itself and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the due date of possession was 17.11.2019, and therefore the respondent cannot take benefit of the delay due to COVID-19. 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 complainant.

G.1 Direct the respondent to provide possession of the unit at the location of initial allocation, else refund of the amount paid.

44. The complainant contends that he had entered into an agreement dated 17.11.2014 with the respondent, whereby he was promised unit no. 1108,

1st floor admeasuring 278 Sq. Ft. He further contends that he had paid an amount of Rs. 1,55,470/- as PLC (Preferential location charge) for the piazza facing unit. He contends that when the offer of possession was made on 05.05.2021, the location of the unit was changed from initially agreed piazza facing location to another location. The complainant argues that he be provided the unit only at the initial location agreed, and if not, he be allowed complete refund of the amount paid.

45. On the other hand, the respondent argues that the change in location of the unit was due to the change in building plans which was duly approved by the concerned authority i.e. the Director general town and country planning (DTCP). It contends that the complainant was duly intimated regarding the proposed changes in building plans vide letter dated 16.11.2018, and the public notices regarding the change in building plan was made in newspapers on 16.11.2018, and only after obtaining the requisite approvals from the DTCP on 14.01.2019 was the building plans changed. Furthermore, it contends that as per clause 1.6, 9 of the agreement dated 17.11.2014, changes can be made in the building plans.
46. On perusal of the records brought before this Authority, and the submissions made by both the parties, it is of the view that the respondent is in violation of section 14(2) of the Real Estate (Regulation & Development) Act, 2016. The said section is reproduced below:

"....(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—
(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature

of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only."

47. It is the view of this Authority that the respondent was obligated to comply with the provisions of the Act of 2016 since the project was "ongoing" in nature and it had been registered with the Authority vide no. 247 of 2017 dated 26.09.2017. Since the respondent had already registered with this Authority and it was still "ongoing", it should have complied with all the provisions of the Act of 2016. The authority is of the view that the provisions of the Act are quasi-retroactive to some extent in operation and

would apply to the agreements for sale entered into even prior to coming into operation of the Act where the transaction is still in the process of completion. Therefore, the provisions of the Act, rules, and agreements have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situations in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Therefore, the process provided in the Act for alterations in plans, etc. has to be followed and not the one provided in the agreement dated 17.11.2014. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 and which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...*
- 122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the*

Standing Committee and Select Committee, which submitted its detailed reports.

48. It is the view of this Authority that the building plans were proposed to be changed in November 2018, long after coming into force of the Act of 2016. Since the Act had come into force by the said date, the respondent was under an obligation to comply with the provisions of the Act w.r.t the change in building plans. The Act mandates that when any alteration not being minor alteration is made in sanctioned plans, layout plans, etc. the promoter shall obtain written consent of atleast 2/3rd allottees of the said project. In the instant case, even though the respondent has produced documents pertaining to the intimation to the complainant inviting objections to changes in plans, or public notices in newspaper, it has failed to show that it has obtained written consent of the allottees. It is important to emphasise that the written consent of 2/3rd allottees was necessary and not necessarily of the complainant. Since, it failed to produce any such document, it can be said that the respondent is in violation of the section 14(2) of the Act of 2016.
49. It has come on record that against the sale consideration of Rs.28,08,786/, the complainant has paid a sum of Rs. 32,02,897/- to the respondent. However, the complainant contended that the unit offered to him was in violation of the agreement to sell dated 17.11.2014 signed between them as the unit was not piazza facing as was agreed upon. He contends that he had paid Rs. 1,51,232/- as preferential location charge for piazza facing unit, and now the respondent had allotted him another unit at another location without complying with the procedure prescribed in the Act of 2016. On perusal of record brought before this Authority, it is of the view that the respondent has violated the provisions of the Act of 2016 and the agreement to sell.

50. Hence, in case allottee wish to withdraw from the project, the promoter is liable on demand to return the amount received by the promoter with interest at the prescribed rate if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale. This view was taken by 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 the case of *M/s Sana Realtors Private Limited & other vs. Union of India & others SLP (Civil) (supra)* wherein it was observed as under: -

"The unqualified right of the allottees 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. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed".

51. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016 or the rules and regulations made thereunder or to the allottees as per the agreement for sale under section 11(4)(a) of the Act. The promoter is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the

amount received by respondent/promoter in respect of the unit with interest at such rate as may be prescribed.

52. Thus, in such a situation, the complainant cannot be compelled to take possession of the unit and he is well within the right to seek a refund of the paid-up amount.
53. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding a return of the amount received by the promoter in respect of the unit with interest on the failure of the promoter to complete or inability to give possession of the unit in accordance with the terms agreed between them. The matter is covered under section 18(1) of the Act of 2016.
54. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to a refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as of 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*.

H. Directions issued by the Authority:

55. Hence, the Authority hereby passes this order and issues 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:
- The respondent/promoter is directed to refund the amount i.e., Rs.32,02,897/- received by it from the complainant/allottee along

with interest at the rate of 10.85% p.a. 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.

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

56. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
57. Complaints stand disposed of
58. File be consigned to the Registry.


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.02.2024