

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

**Complaint no.** : 910 of 2018  
**Date of filing** : 12.09.2018  
**Date of decision** : 20.02.2024

- 1. Mohit Garg**
- 2. Amit Singla**

**R/o:** - G-102, GPL Eden Heights, Sector-70,  
Darbari Pur Road, Gurugram, Haryana.

**Complainants**

**Versus**

M/s Spaze Towers Pvt. Ltd.  
**Office:** Spazedge, Sector-47, Gurugram-Sohna  
Road, Gurugram, Haryana.  
**2<sup>nd</sup> Address:** A-307, Ansal Chambers, 13 Bikaji  
Cama Place, New Delhi-110066. सत्यमेव जयते

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Rajan Gupta  
Sh. J.K. Dang

**Counsel for complainants**  
**Counsel for respondent**

**HARERA**  
**GURUGRAM**  
**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. No.	Heads	Information
1.	Name and location of the project	"Spaze Palazo", Sector-69, Gurugram
2.	Nature of the project	Commercial Project
3.	DTCP license no.	32 of 2008 dated 19.02.2008
4.	RERA registered/ not registered and validity status	<b>Not registered</b>
5.	Application for booking	12.08.2013 [Page 16 of complaint]
6.	Unit no.	G-31A, ground floor [Page 22 of complaint]
7.	Unit admeasuring	490 sq. ft. (Super area) [Page 22 of complaint]
8.	<b>Increase in area</b> of the unit as per statement of account dated 05.01.2015, page 30 of complaint	515 sq. ft.
9.	Date of allotment	10.09.2013 [Page 22 of complaint]
10.	Date of flat buyer's agreement	Not executed
11.	Total consideration	Rs. 78,92,528/- (As per payment plan annexed with the allotment letter at page 23 of complaint)

		Rs.83,57,845/- (As per statement of account dated 05.01.2015 at page 30 of complaint)
12.	Total amount paid by the complainants.	Rs. 87,29,838/- (As per statement of account dated 05.01.2015 at page 31 of complaint)
13.	Possession clause	<b>Note:</b> Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.
14.	Due date of delivery of possession	10.09.2016  In view of the above-mentioned reasoning, the date of signing of allotment letter ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 10.09.2016.
15.	Application for occupation certificate	08.01.2014 (As per page 87 of reply)



16.	Offer to handover permissive possession of unit for doing interiors	04.08.2014 [Page 24 of complaint]
17.	Occupation Certificate	03.05.2018 [Page 45 of reply]
18.	Demand Letter raised by the respondent for clearing outstanding dues of Rs. 7,15,537/-	04.05.2018 [Page 29 of complaint]
19.	Completion Certificate	30.04.2019 [Additional document filed by the respondent]

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:

I. That respondent had developed a commercial colony named "Spaze Palazo" at Sector-69, Gurugram. The respondent had spent a huge amount of money for the launch of the above project and assured the interested buyers that it is a dream project for investors. The respondent came out with a 30:70 payment plan, means 30% payment within 90 days and rest 70% at the time of giving possession. The complainants believing the promises made by company became inclined towards the project and invested his hard-earned savings in the project.

II. That the complainants on 12.08.2013 booked a commercial space in the above project having unit no. G-31A, Ground Floor, having area of approximate 490 sq. ft. in the said project for sale consideration of Rs. 78,92,528/-. However, the area of the said unit has been revised from



490 sq. ft. to 515 sq. ft. The complainants paid an initial amount of Rs. 6,90,602/-. It is pertinent to mention here that at the time of booking it was informed to the complainants that respondent shall offer possession of the said property to the applicant within a period of 12 months from the date of application i.e. 12.08.2013 and balance payment of 70% be made either 12 months from the date of application or on offering possession, whichever is later.

- III. That the complainants received offer of possession from the respondent even before the completion 12 months vide letter dated 04.08.2014, stating that the project is now ready and accordingly offered the possession of the said unit to the complainants. That it is also mentioned in the said letter that though the execution of buyer agreement was pending but still asked to make the balance payment i.e. 70% as per statement of account within 30 days otherwise interest and holding charges will be levied. The complainants made the balance payment as per the letter dated 04.08.2014. However were shocked to know that the said unit was not ready, respondent had not obtained the occupation certificate and the respondent made cheating with the complainants by raising an illegal demand for balance 70% payment and enforcing it through interest and holding charges and offering illegal possession letter.
- IV. That even though the complainants had made the 30% payment as per the terms i.e. an amount of Rs. 22,56,389/- and balance 70% payment i.e. an amount of Rs. 64,73,449/-, which amounts to a total sum of Rs.



87,29,838/- to the respondent, but surprisingly till today the respondent had failed to hand over actual physical possession of the said unit to the complainants i.e. after expiry of so many years from the date of first payment made to the respondent. This clearly shows that the intention of the respondent from the very beginning was to cheat the complainants, as the said unit was not ready at the time of offer of possession and only motive of the respondent was to collect remaining 70% payment illegally and ran away from its liability to pay late possession charges.

- V. That the respondent had illegally raised the demand vide offer of possession letter dated 04.08.2014, and therefore respondent is liable to return back the amount received in the name of offer of possession, i.e. Rs. 64,73,449/- and also liable to pay interest on the said amount i.e. Rs. 41,66,532/- calculated at the rate of 18% from the date of payment till today, interest till realization and the delay possession penalty of 14,10,056 calculated at Rs. 60/- per sq. ft. till today. As the respondent can only ask the 70% payment once they have obtained occupation certificate and made a formal offer of possession, not before that.
- VI. That complainants through its number of mails asked the respondent to provide the occupation certificate issued by the competent authority for the said unit and also asked to deliver actual possession of the said unit but respondent has not answered to any issues raised by complainants and always preferred to be mum on all issues. Complainants paid several visits to the office of respondent, waited there for hours for





availability of respondent staff for discussion in their office, has written several emails and has made several phone calls for no avail and that is a harassment of complainants at the hands of respondent.

- VII. That despite the fact that the respondent has no occupation certificate and actual possession was not handed over to the complainants and other issues were not resolved by respondent, the respondent illegally started raising maintenance charges too for the said unit. That asking maintenance charges for an incomplete property and not handing over the possession to the complainants itself shows the level of cheating practised upon the innocent buyers.
- VIII. That when the complainants visited the said unit, the complainants was shocked to see that there was one open sewage pipeline in the said unit and the same was not there at the time of sale of the said unit and in future the same may cause unnecessary disturbance to the business operation in the said unit. Even there is no roof extension in front or on the side of said unit. This extension is important for advertising board, lighting, sunshade, rain protection etc. and is a general norm. There is a roof extension in all other surrounding units except said unit. That the complainants requested the respondent to provide the metal extension for said unit as given to the other units. But till today no steps have been taken to remove the sewage pipeline and to provide metal extension for the said unit.
- IX. That vide letter dated 21.11.2016, an illegal demand for VAT has been raised as despite repeated request no explanation has been provided



that VAT is the liability of owner or the developer and who will pay the VAT in case of delay of possession by the developer i.e. respondent.

- X. That respondent has also raised a demand letter dated 04.05.2018 demanding 2,68,658/- towards installments due and an interest due of Rs. 4,46,879/-. However, no detailed justification for this demand has been made. Further, as per the account statement issued by respondent dated 05.01.2015, the complete account was settled and there was no interest due on the part of complainants. Complainants does not understand the reason for these charges and unable to pay unless there is detailed justification from respondent.
- XI. That respondent has failed to produce occupation certificate, physical possession has not been handed over and other issues have not been resolved (as discussed above) despite repeated requests on the part of complainants. Therefore, interest levied on account of late payment and maintenance bill raised for the said unit are illegal and void.
- XII. That complainants had received the builder buyer agreement after multiple requests and reminders. However, the same is not as per the terms and conditions agreed between the parties at the time when application and allotment were made. The terms and conditions need to be amended and further these terms itself shows the cheating made with the complainants. That repeated requests have been made to the respondent to correct the terms of the builder buyer agreement but all in vain. That complainants will sign the agreement only when correction will be made by the respondent as per the terms agreed.



XIII. That below are a few terms in the agreement not in line with the terms of the booking, and are ambiguous or completely one-sided; and require revisions:

- a. *Basic Sale Price (BSP) of said unit as per booking form is Rs. 13,590 per sq. ft. As per annexure-II of buyer's agreement, sum of Basic Sale price is quoted as Rs. 7,015,850. This amounts to BSP of RS. 13,623 per sq. ft. for super area of 515 sq. ft. and is over-stated by RS. 33 per sq. ft. The same needs to be corrected in agreement. Accordingly, the PLC amount needs to be adjusted as it is based on BSP.*
- b. *The clause no. 14 of buyer's agreement mentions that the possession is proposed to be delivered by developer to the ALLOTTEE(S) within three years from the date of this agreement. However, respondent sales department promised complainant the possession of unit within one year from the date of booking. The same has been included in the booking form in the form of 12-months possession linked plan. Additionally, delayed possession penalty clause be added.*
- c. *The clause no. 33 of buyer's agreement says that all terraces of the building including the parapet walls of the terraces and parking areas in the basement have not been included in the super area allotted to the ALLOTTEE(S) and shall always be the property of the developer. In that regard, agreement doesn't cover the following:*
  - i) *Developer, as owner of retained areas, is liable to pay EDC and other govt. charges in equivalent proportion. Accordingly, the liability of ALLOTTEE(S) will reduce. OP should confirm the same and include the same in agreement.*
  - ii) *Developer, as owner of retained areas, is liable to pay and share with ALLOTTEE(S) the Total Maintenance Charges described in clause no. 35. This includes common area maintenance charges, exterior maintenance charges, open area maintenance charges, electricity charges, insurance charges, security charges and any other charges that other ALLOTTEE(S) are liable for. Total cost of maintenance of basement, cost for all the security guards and other staff positioned in basement areas and terraces will not be payable by ALLOTTEE(S). respondent should confirm the same and include it in buyer's agreement.*
- d. *The clause no. 33 also says that the developer shall be entitled to display signboards, advertisements on the exterior of building including common areas and to generate revenue there from and the same shall belong exclusively to the developer. Please note the following in this regard:*
  - i) *The developer must not have above right to the common areas. As stated in clause no. 3.3, common area has been included in the super area paid for by the ALLOTTEE(S).*
  - ii) *Since developer has exclusive right to exterior of building, developer should be liable to pay exclusively for the maintenance and insurance of exterior as well as pay for the cost of electricity to illuminate these advertisements. Respondent should include the same clarification in buyer's agreement.*

- e. *The clause no. 34 (b) says developer will maintain Spaze Palazo retaining ownership over the common areas and amenities and will make available the same for the usage to the ALLOTTEE(S) at a reasonable cost and equitable manner. As stated in clause no. 33, common area has been included in the super area paid for by the ALLOTTEE(S) and hence, developer has no right to retain ownership of common area and further charge ALLOTTEE(S) for the usage of the same. The cost for using common areas may be charged by the association of the ALLOTTEE(S) and used towards maintenance charges for common areas so that the benefit is passed on to all ALLOTTEE(S) by the way of reducing common area maintenance cost.*
- f. *The clause no. 34 (c) says developer shall have the unqualified and unfettered right to allot or lease or use the space in the atrium to anyone of their choice on any terms and conditions as they deem fit and the ALLOTTEE(S) shall not be entitled to raise any objection or claim or compensation. Respondent should confirm the following in this regard:*
- i) *Please confirm that these spaces in Atrium have not been included in the super area calculations sold to ALLOTTEE(S). If ownership for the same has been retained by developer.*
  - ii) *Developer, as owner of these retained areas, is liable to pay EDC and other govt. charges in equivalent proportion. Accordingly, the liability of ALLOTTEE(S) will reduce. Respondent should confirm the same and include it in the buyer's agreement.*
  - iii) *Developer, as owner of these retained areas, is liable to pay and share with ALLOTTEE(S) the Total Maintenance Charges described in clause no. 35. This includes common area maintenance charges, exterior maintenance charges, open area maintenance charges, electricity charges, insurance charges, security charges and any other charges that other ALLOTTEE(S) are liable for. Respondent should confirm the same and include it in buyer's agreement.*

XIV. That till today no steps have been taken by respondent to resolve the other issues rather intention of the respondent is just to earn money from the innocent buyer by practicing all illegal means. That conduct on the part of respondent makes it very clear that the motive of the respondent was/is to cheat the innocent buyer and kept on doing the same. Hence, the present complaint.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s).

- I. Direct the respondent to supply occupation certificate and valid offer of possession for the subject unit. That if the respondent delivers occupation

certificate and offer of possession, then the respondent is liable to pay interest on the amount i.e. Rs. 41,66,532/- calculated at the rate of 18% from the date of payment till today, interest till realisation and the delay possession penalty of Rs. 14,10,056 calculated at Rs.60/- per sq. ft. till today.

- II. That if the respondent fails to deliver occupation certificate and offer of possession, the respondent is liable to pay back the 70% payment made by the complainants i.e., Rs.64,73,449/- along with interest on the said amount i.e. Rs. 41,66,532/- calculated at the rate of 18% from the date of payment till today, interest till realisation and the delay penalty of Rs.14,10,056/- calculated at Rs.60/- per sq. ft. till today.
  - III. Direct the respondent to revoke the illegal demand raised by letter dated 04.05.2018.
  - IV. Direct the respondent to remove sewerage pipeline and to provide metal extension for the said unit.
  - V. Restrain the respondent from claiming illegal interest and maintenance charges from the complainants till the valid issuance of offer of possession.
  - VI. Direct the respondent to make alteration in the builder buyer agreement as per clause 14 of complaint.
  - VII. Direct the respondent to levy VAT as per rules.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
- a. That the present complaint is not maintainable in law or on facts. The provisions of the Act are not applicable to the project in question. The application for issuance of occupation certificate in respect of the unit in question was made on 08.01.2014, i.e., well before the notification of the Rules, 2017. The occupation certificate has thereafter been issued on 03.05.2018. Thus, the project in question is not an 'on-going project' under rule 2(1)(o) of the Rules. The project has not been registered



under the provisions of the Act. This Hon'ble Authority does not have jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

- b. That the complainants have further filed the present complaint seeking possession, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. That the complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this Hon'ble Authority. Thus, the present complaint is liable to be dismissed on this ground alone.
- c. That the complainants have booked the unit bearing no. G-31A, situated in the said project. Buyer's agreement had been sent to the complainants on 06.02.2015 but had not been executed till date. The complainants were offered permissive possession of the above-mentioned unit through letter dated 04.08.2014. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/ documentation necessary for handover of the office space to the complainant. However, the complainants did not take any steps to complete the necessary formalities or to pay the balance amount payable by them.
- d. That the construction of the said unit was almost complete by the time the complainants decided to book the unit and therefore he was well apprised of the area, specifications, elevation and design of the unit. The complainants after exploring all options decided to invest in the project



of the respondent after being acquainted with all permissions and sanctions obtained by the company.

- e. That the respondents after completing the construction of the said project had applied for the sanction of occupation certificate for the said project vide application dated 08.01.2014. It is submitted that the respondents anticipating the timely receipt of the occupation certificate from Director General Town & Country Planning issued the letter dated 04.08.2014 to facilitate the allottees to carry out the interior adaptations, internal works, fitouts in their respective units/apartments. It is pertinent to mention here that the complainants without any objection or demur accepted the offer of permissive possession and gave an undertaking dated 30.12.2014 duly notarised on 29.01.2015 to this effect. The respondent had never mentioned to the complainants that it has received the occupation certificate for the said project and the offer for permissive possession was entirely made for the benefit of the complainants so that they could carry out interior work in the subject unit.
- f. That as stated hereinabove, the respondent has applied for the occupation certificate before the concerned authority on 08.01.2014. The officials of the respondent had diligently and sincerely pursued the matter consistently with the Directorate of Town & Country Planning, Haryana Chandigarh but all the efforts in this direction made by them proved futile. No correspondence of any nature was addressed by the DTCP, Haryana to the respondent communicating any objection to the





issuance of occupation certificate for the project. The respondent does not have any control over the functioning of DTCP, Haryana. Moreover, the offer of possession by the respondent to the complainants cannot be held to be not in conformity with law. In fact, notification dated 30.07.2001 had been issued by DTCP, Haryana in terms of which only a one-time penalty of Rs.50/- per sq. ft. could have been imposed for delivery of physical possession without obtaining occupation certificate. Therefore, no lapse can be attributed to the answering respondent.

- g. That the complainants since the outset did not make timely payments as per the payment plan opted by them i.e. possession linked plan. It is submitted that as per the possession linked payment plan opted by them, the complainants were bound to pay 10% of the BSP at the time of booking followed by 2 instalments of 10% of BSP within 60 days from the date of booking and 10% + 100% EDC & IDC within a period of 90 days from booking. It is submitted that the complainants deliberately delayed the payment of Rs. 6,90,602/- i.e. 10% of BSP payable within 60 days from the booking due on 11.10.2013. It is pertinent to mention here that the complainants further deliberately due to the reasons best known to them failed to clear the outstanding due towards the demand raised for payment of 10% + 100% EDC & IDC within a period of 90 days from booking. That an amount of Rs. 8,75,185/- was due on 10.11.2013 towards instalment of "10% + 100% EDC & IDC within a period of 90 days from booking" but the complainants failed to clear the





outstanding dues on pretext of one issue or other. The complainants made the payment towards the said instalment only when the final demand "on offer of possession" was raised.

- h. That only such allottees, who have complied with all the terms and conditions of the payment plan including making timely payment of instalments, are entitled to receive compensation. In the case of the complainants, the complainants had delayed payment of instalments and were consequently not eligible to receive any compensation from the respondent.
- i. That the complainants were well aware of the building plans and designs of the unit booked as the complainants had booked the subject unit when the construction of the unit was almost complete and the electrical and plumbing works were being carried out. Further, the alleged sewage pipeline which the complainants are referring to is just a rain water pipe which exists attached to the wall to stop water logging on the roof of the shop. Moreover, the complainants were never assured of any roof extension and the complainants have not specified any document pertaining to the said unit will have a roof extension over it.
- j. That the amount of VAT to be charged under the Amnesty Scheme introduced by the Government of Haryana is recovered from the allottees by the developer. Moreover, the respondent opted for the said amnesty scheme for the benefit of the allottees as a reduced rate of tax themselves to be to p[aid by the allottees to the Government in this case.



- k. That as per statement of account dated 10.10.2018, the outstanding amount due to be paid by the complainants is Rs. 7,29,753/- which includes the pending interest amount of Rs.4,60,932/-. However, instead of seeing reason and instead of clearing their outstanding dues and taking possession of the unit in question, the complainants have proceeded to file the present false and frivolous complaint.
- l. That the construction of the project/allotted unit in question stands completed and the respondent is in receipt of the occupation certificate in respect of the same. That as soon as the balance payment is remitted by the complainants and the necessary formalities have been completed, the respondent shall handover possession of the unit to the complainants.
- m. That all the demands that have been raised by the respondent are strictly in accordance with the terms of the payment plan executed between the parties. There is no default or lapse on the part of the respondent. It is the complainants who have consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be



decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

10. 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) The promoter shall-*

*(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.*

11. 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 complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the present complaint in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*



13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain the present complaint.

**F. Objections raised by the respondent**

**F.I Objections regarding that the respondent has made an application for grant of occupation certificate before coming into force of the Act**

14. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already applied for obtaining occupation certificate from the competent authority on 08.01.2014 i.e., before the coming into force of the Act and the rules made thereunder.

15. The authority is of the view that as per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

16. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since, the completion certificate has been obtained by the promoter-





builder on 30.04.2019 with regards to the concerned project i.e., after coming into force of the Act, the plea advanced by it is hereby rejected.

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

**G. I Direct the respondent to supply occupation certificate and valid offer of possession for the subject unit. That if the respondent delivers occupation certificate and offer of possession, then the respondent is liable to pay interest on the amount i.e. Rs. 41,66,532/- calculated at the rate of 18% from the date of payment till today, interest till realisation and the delay possession penalty of Rs. 14,10,056 calculated at Rs.60/- per sq. ft. till today.**

17. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

***"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, —*

.....

*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."*

18. **Due date of handing over possession:** In the present matter, no BBA has been executed till date between the parties. Therefore, the due date is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as *Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)* wherein the Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the*





*agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*" In view of the above-mentioned reasoning, the date of signing of allotment letter dated 10.09.2013, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 10.09.2016.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. 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.

21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.02.2024 is @ 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

22. **Rate of interest to be paid by the complainants-allottees on the outstanding dues:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. 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 the complainants in case of delayed possession charges.



24. Now the question for consideration before the authority is whether the complainants-allottees are entitled to delay possession charges till the permissive offer of possession only?
25. The authority observes that it is necessary to clarify the concept of valid offer of possession because after valid and lawful offer of possession, the liability of promoter for delay possession charge comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive delay possession charge till valid offer of possession. The authority is of considered view that a valid offer of possession must have following components:
- Possession must be offered after obtaining occupation certificate;
  - The possession should not be accompanied by unreasonable additional demands.
26. In the present matter, the respondent had offer the permissive possession to the complainants vide letter dated 04.08.2014 for carrying out the interiors and finishing works. It is matter of record that the occupation certificate in respect of the said project was granted by the concerned authority on 03.05.2018. It is pertinent to note here that the permissive possession was offered to the complainants without obtaining the occupation certificate from the competent authority. Hence, at the outset the said offer of possession vide letter dated 04.08.2014 failed to fulfil the first and foremost criteria of the valid offer



of possession. Hence, the same cannot be regarded as a valid offer of possession.

27. Moreover, the fact cannot be ignored that occupation certificate is public document as well as section 19(10) of Act also conferred obligation over complainants-allottees to take the possession of the subject unit within two months from grant of occupation certificate. The relevant provision is reproduced as below:

*19(10). Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*

28. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 03.05.2018. The respondent offered the possession of the unit in question to the complainants only on 04.08.2014 for doing interiors, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainant-allottees shall be paid, by the respondent-promoter, interest for every month of delay from due date of possession i.e., 10.09.2016 till the receipt of occupation certificate (03.05.2018) plus 2 months i.e., 03.07.2018 at 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.

30. Further, the respondent is directed to handover the possession of the allotted unit to the complainants complete in all aspects as per specifications of buyer's agreement on payment of outstanding dues if any, after adjustment of delay possession charges as per aforesaid directions.

**G.II Direct the respondent to revoke the illegal demand raised by letter dated 04.05.2018.**

31. The complainants took a plea that the respondent has also raised a demand letter dated 04.05.2018 demanding Rs. 2,68,658/- towards installments due and an interest due of Rs. 4,46,879/-. However, no detailed justification for this demand has been made.

32. The counsel for the respondent contended that the complainants have failed to pay the outstanding dues as per the payment plan opted by them. It is further submitted that an amount of Rs.2,68,658/- was due towards the non-payment of VAT by the complainants under Amnesty Scheme launched by the State Government. Further, the interest due on delayed payments amounting to Rs.4,46,879/- was majorly towards the





delay in paying the instalments due to be made within 60 days, payment to be made within 90 days, non-payment of VAT and payments to be realised on offer of possession.

33. After consideration of the facts and circumstances, the authority is of view that as per section 19(6) and 19(7) of the Act every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act. In view of the same, complainant/allottees shall make the requisite payments within a period of 2 months of the fresh demand raised by the respondent as per the provisions of sections 19(6) and (7) of the Act.

**G. III Direct the respondent to remove the sewerage pipeline and to provide metal extension for the said unit.**

34. The complainants state that there was one open sewage pipeline in the said unit and the same was not there at the time of sale of the said unit and in future the same may cause unnecessary disturbance to the business operation in the said unit and prayed for removal of the same. On the contrary respondent-builder states that the alleged sewage pipeline which the complainants is referring to is just a rain water pipeline which exists attached to the wall to stop water logging on the roof of the shop.
35. The authority is of the view that as far as providing metal extension is concerned, the complainants have failed to specify particular documents whereby the respondent was obligated to provide metal





extension to the complainants. Thus, in absence of the sufficient documents on record with respect to the same, the authority cannot deliberate upon the said issue.

36. Further, as far as deviation from the lay-out plan is concerned, since the occupation certificate of the tower in which the subject unit is located has been received by the competent authority which clearly means that the building is constructed as per the approved plans. Accordingly no such direction to remove the pipelines can be given by the authority. Although if any disturbance is caused to the complainants because of the same, the complainants are at liberty to approach adjudicating officer for compensation.

**G.IV Restrain the respondent from claiming illegal maintenance charges from the complainants till the valid issuance of offer of possession.**

37. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
38. In the present matter, the respondent had obtained the occupation certificate from the competent authority on 03.05.2018. Thus, the

respondent is entitled to demand maintenance charges after 03.07.2018 from the complainants.

**G.V VAT**

39. The promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the respondent only. But if composition scheme is not availed, VAT may be charged on proportionate basis subject to furnishing of proof of having its actual payment to the concerned taxation Authority.

**H. Directions of the authority**

40. 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 function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay delay possession charges on the paid up amount by the complainants from the due date of possession i.e. 10.09.2016 till the receipt of occupation certificate (03.05.2018) plus 2 months i.e., 03.07.2018 at prescribed rate i.e., 10.85 % p.a. as per proviso to sections 18(1) and 19(10) of the Act read with rule 15 of the rules.
  - ii. The arrears of such interest accrued from due date of possession till its admissibility shall be paid by the respondent to the complainants within a period of 90 days from the date of this order.



- iii. The respondent is directed to handover the possession of the allotted unit to the complainants complete in all aspects as per specifications of buyer's agreement on payment of outstanding dues if any, after adjustment of delay possession charges as per aforesaid directions.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default in making payment shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
- v. The respondent is not entitled to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
41. Complaint stands disposed of.
42. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.02.2024