

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

Complaint no.	4866 of 2022
Date of filing complaint	04.05.2022
Date of decision	23.04.2024

1.Satbir Singh 2.Ramphal Both R/o: H.No. 65/2, Preet Nagar, Ladowali Road, Jalandhar, Punjab-144633	Complainants
Versus	
1. M/s BPTP Ltd. 2. M/s Countrywide Promoters Ltd, (through its Managing Director) Both R/o: OT-14, 3 rd floor, Next Door Parklands, Sector-76, Faridabad-121004	Respondents

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Sukhbir Yadav	Complainants
Sh. Harshit Batra	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the

promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Description
1.	Name of the project	"Spacio", Sector 37D, Gurugram, Haryana
2.	Project area	43.588 acres
3.	DTCP license no.	83 of 2008 issued on 05.04.2008
	Validity of license	04.04.2025
	Name of the license holder of 83 of 2008	M/s Super Belts and 4 others
	Licensed area	23.814 acres
4.	RERA registration number	300 of 2017 dated 13.10.2017
	Validity of registration certificate	w.e.f. 13.10.2017 till 12.10.2020
5.	Date of execution of flat buyer's agreement	29.03.2011 (on page no. 35 of complaint)
7	Date of Booking	27.07.2010 (as per page no. 32 of reply)
8.	Unit no.	P-1004, 10 th floor, Tower-P (page no. 44 of complaint)

9.	Unit area admeasuring	1225 sq. ft. (on page no. 44 of complaint)
10.	Revised unit area	Revised Area- 1303 sq ft (as per offer of possession)
11.	Total consideration	Rs 55,82,658/- on page no. 169 of reply)
12.	Total amount paid by the complainant	Rs. 40,53,435/- (page no. 169 of reply)
13.	Nomination letter in favour of the complainant	06.06.2013
14.	Due date of delivery of possession	3.1 as per clause 3.1 of the flat buyer's agreement i.e. within a period of 36 months from the date of booking/registration of flat and the promoter has claimed grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the authority. 27.01.2014 Note: Grace period is allowed.
15.	Occupation certificate date	15.01.2021
16.	Offer of possession	02.03.2021 (page no. 167 of reply)

B. Facts of the complaint:

3. That in July 2010, relying upon the advertisement, brochure,

representations, and assurance of the office bearers as well as the marketing staff of the respondent(s), the original allottees (Mr. Amit Jangid & Jyoti Sharma) booked a residential flat in the project "SPACIO" at Sector 37D, Gurugram, having an area of 1225 sq. ft. and issued a cheque of Rs. 3,00,000/- along with the application form. The respondents issued a receipt of the above-said amount on 27.07.2010. The flat was purchased for a total sale consideration of Rs. 55,82,658/-.

4. That on 09.11.2010, the respondents issued an allotment-cum demand letter for flat no. P-1004 admeasuring 1225 Sq. Ft. in the said project SPACIO in sector 37D.
5. That a pre-printed, arbitrary, one-sided, and ex-facie flat/apartment buyer agreement was executed inter-see the Original Allottees (Amit Jangid & Jyothi Sharma) and respondents on 29.03.2011, the contents of this agreement may kindly be treated as part and parcel of this complaint and the same are not been repeated for the sake of brevity. As per clause No.3 of the apartment buyer agreement, the respondents have to give possession of the flat within a period of 36 months from the date of booking of the unit. The plot/ flat was booked on 25.07.2010 therefore, the due date of possession was 25.07.2013.
6. That with the permission of the respondent(s) the original allottees sold the said flat to the complainants on 29.05.2013 and the respondent also endorsed the name of the complainants as an allottee in its record and on buyer agreement.
7. That on request of the original allottees, the respondent(s) issued a nomination letter on 06.06.2013 and endorsement form in favour of the complainants (Satbir Singh & Ramphal), thereafter, the complainants become subsequent allottees. It is pertinent to mention here that as per

the nomination letter dated 06.06.2013 issued by the respondents that the original allottees has paid Rs. 31,27,424/- towards the sale consideration of the flat. Thereafter the respondent(s) issued permission to mortgage in favour of ICICI Bank Ltd. at the request of the complainants.

8. That on 25.02.2016 the respondent raised a demand of Rs. 1,52,670.43/- and the same was paid by the complainants on 09.03.2016. It is pertinent to mention here that the complainants kept on depositing the payment well on time and the respondent(s) gave a timely payment rebate to the complainants. It is further pertinent to mention here that the payments were never delayed by the complainants.
9. Thereafter, the respondent(s) kept raising the demands and the complainants kept on depositing the payment well on time and the respondent(s) gave a rebate to the complainants. It is pertinent to mention here that the payments were never delayed by the complainants.
10. That complainants had been regularly visiting/calling the office of respondents as well as the construction site and making efforts to get the possession of the allotted flat, but all in vain, despite several visits by the complainants, the complainants have never been able to understand/know the actual status of construction. The towers seem to be built up, but there was no progress observed on finishing and landscaping work.
11. That after a delay of more than 7 years, on 02.03.2021, respondents issued an offer of possession letter to the complainants for apartment no. P- 1004, said letter includes various unjust and unreasonable demands under various heads i.e., cost escalation of Rs.7,66,164/-, electrification, and STP Charges of Rs.1,04,240/-. Moreover, the respondent increased

the super area of the unit by 78 Sq. Ft. without any justification (original super area 1225 Sq. Ft. and revised super area 1303 sq. Ft.). That the said offer of possession letter also includes an undertaking cum indemnity format for taking possession, the said undertaking cum indemnity formats have a plethora of clauses, which include various unjust and unreasonable terms.

12. That on receipt of an offer of possession, the complainants went to the office of the respondent and asked for the delayed possession interest from the due date of possession till the offer of possession and asked for the removal of the demand on the increase in area, cost escalation, GST, etc., but the respondent failed to adhere with the request/demand of the complainants. Thereafter, on 15.06.2021, the respondent offered a special discount of Rs. 4,08,217/- and asked for the payment of Rs. 6,72,000/- for possession of the flat. It is pertinent to mention here that without signing the full & final discount letter and execution of indemnity cum undertaking, the respondent refused to give the possession of the flat. Therefore, under the compelling circumstances, the complainants signed the discount letter and execution of indemnity cum undertaking and paid Rs. 6,72,000/- on 06.07,2021 to take physical possession of the flat.
13. It is pertinent to mention here that the respondent(s) did not give GST credit input to the complainant, moreover, the complainants visited the project site and found that the project site was still under construction all the debris was scattered here, and there, clubhouse was not yet ready, the approach road was still under construction, and lifts were still not operational, the basement was not usable, etc. The main grievance of the complainants is that project is the incorrect calculation of area and

unreasonable/illegal charges for the flat after passing 08 years from the due date of possession and non-payment of the delayed possession interest as RERA.. It is evident that the physical possession of the flat was handed over after 6 months of making the final payment i.e. after 12 months from the date of the offer of possession.

14. That the main grievance of the complainants in the present complaint is that despite the complainants having paid more than 100% of the actual amounts of flat but the respondent(s) party has failed to deliver the possession of flat as per schedule, specifications and amenities are shown in brochure and builder buyer agreement. Moreover, the respondent(s) charged extra amount under different heads i.e. increase in area, cost escalation, electrification and STP charges, GST and advance maintenance, etc.
15. That the complainants being aggrieved against the respondents for not completing the project and for not delivering the possession of apartments, made number of visits to the site and requested them to hand over the possession but all in vain.
16. That the complainants have at all times made payments against the demands of the respondents and as per payment schedule of the agreement pertaining to the flat, but the fraudulent act and conduct of the respondent needs to be penalized in accordance with the provisions of the Real Estate (Regulation and Development) Act 2016.

C. Relief sought by the complainants:

17. The complainants have sought following relief(s):
 - i. Direct the respondent to pay delay possession charge along with prescribed rate of interest.

- ii. To get an order in their favour by directing the respondents to refund the extra charged amount by the respondents on account of the increase in area (as per the report and as per actual area measurement of flat) (with interest from the date of payment).
- iii. To get an order in their favour by directing the respondents to refund the extra charged amount (under different heads i.e. BPS, EDC/IDC, PLC, IFMS, Cost Escalation and STP, FF & PBC, etc) by the respondents on account of the giving less area (36 sq. ft.) (With interest from the date of payment).
- iv. To get an order in their favour by directing the respondents to refund the extra charged amount by the respondents on account of the cost escalation (as per the report and new area) (with interest from the date of payment).
- v. To get an order in their favour by directing the respondents to refund the extra charged amount by the respondents on account of Electrification & STP charges (as per report) (with interest from the date of payment).
- vi. To get an order in their favour by directing the respondents to refund the extra charged amount by the respondents on account of GST (Justification due date of possession was much before the 01.07.2017, the new tax liability came on delay by the respondents).
- vii. To get an order in their favour by directing the Respondents to recalculate the stamp duty for registration.
- viii. To get an order in their favour by directing the respondents to refund the extra charged amount on account of advance maintenance charges on the high area (maintenance must be as per actual area).

D. Reply by respondent:

The respondent by way of written reply dated 30.09.2022 made the following submissions:

18. It is submitted that the complainants have approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects and hence the complaint is liable to be dismissed at the threshold without any further adjudication.
19. That agreements that were executed prior to implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. Thus, both the parties being a signatory to a duly documented flat buyer agreement (hereinafter referred to as the "FBA") dated 29.03.2011 executed by the complainants out of his own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.
20. It is submitted that all representations were made to the complainants in terms of the application for allotment and the terms and conditions contained. The complainants only after having understood the same, the complainants accepted the terms and conditions and proceeded for booking on his own volition and in favor of the respondents with respect to waiver of claims for delay compensation charges.
21. The complainants have also concealed in its complaint that the respondents offered additional benefits in the form of timely payment discount ("TPD") to the customers including the complainant, thereby reducing the cost of the flat. The total amount of TPD provided to the complainants is Rs. 108,823/-.
22. It has been suppressed by the complainants that the respondents regularly issued construction updates to the complainant. That the bona fides of the complainants are established from the fact that the

respondents from time to time has been updating its customers including the complainants with respect to the progress being made in the project, same is evident from emails wherein, the respondents explicitly elaborated to the complainants about the works that are already complete with recent snaps.

23. It is submitted that the charges qua VAT/GST or any fresh incidence of tax was duly agreed by the complainants vide clause 4 of the booking application, wherein the complainants agreed to pay vat, service tax and all other charges as may be communicated from time to time. Vide said clause the complainants further agreed to pay any tax/charges including any fresh incidence of tax as may be levied by the Government of Haryana/Competent Authority/Central Government, even if it is retrospective in effect as and when demanded by the respondents on the super area of the flat without any demur and protest.
24. It is submitted that as per the agreement titled as "sale consideration and other conditions" specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including EDC, IDC and EEDC), preferential location charges (PLC), club membership charges (CMC), car parking charges, power back-up installation charges (PBIC), VAT, service tax and any fresh incidence of tax (i.e., GST), electrification charges (EC), charges for installing sewerage treatment plant (STP), administrative charges, interest free maintenance security (IFMS), etc. shall also be payable by the complainants.
25. All other averments made in the complaint were denied in toto.
26. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

27. The plea of the respondents 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 completed 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.

28. 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.

F. Findings on the objections raised by the respondents.

F. I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

29. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation 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. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers.
30. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed as under-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

31. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the buyer agreements have been executed in the manner that there is no scope left to the allottees to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants.

Relief sought by the complainants: The complainants have sought following relief:

- 1) Direct the respondents to pay the delay possession charge along with prescribed rate of interest.
32. The respondent took a plea that it had already offered a special discount of Rs. 6,65,280/- to the complainants at the time of offer of possession. On the contrary, the complainants state that the said letter

was entered upon under duress and cannot be treated as settlement agreement. Furthermore, the subject of the said letter is "Discount Letter" not "Settlement Letter". After consideration of all the facts and circumstances, the authority is of view that possession was offered to complainants on 02.03.2021 alongwith a demand of Rs. 10,80,216/- against which respondent had provided them discount of Rs. 6,65,280/- (Rs. 4,08,217/- + Rs. 4,49,006/- (loyalty bonus) vide discount letter dated 15.06.2021 which has been refereed as settlement by respondent although it is not settlement of dispute. The respondent pleaded that the discount offered by it is a substitute for the statutory right of delayed possession charge enumerated in section 18 of the Act. After examination of all the documents it is concluded that the said contention is not valid as the delayed possession charge is a statutory right provided under the sec-18 of the Act and the discount provided being in nature of damages for breach of contract, it cannot be equated with delayed possession charge. Delayed possession charge is a separate remedy that supersedes and is not a substitute for any other form of compensation or relief for breach of contract. So, discount letter cannot be treated as settlement agreement w.r.t. delay possession charges and the complainants are hereby entitled for delay possession charge under section 18 of the Act of 2016.

G.I Delay Possession Charge

33. The present complainant is a 1st subsequent allottee who has purchased the subject unit from the original allottee on 06.06.2013 and has stepped into the shoes of an original allottee on this date.
34. 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. Sec. 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."

35. Clause 3 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 3- 3.1.....the seller/confirming party proposes to handover the physical possession of the said unit to the purchaser(s) within a period of 36 months from the date of booking/registration of flat. The purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days after the expiry of said commitment period....."

36. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within a period of 36 months from the date of booking/registration of the flat. The booking of the flat was made vide allotment letter dated 27.07.2010. Therefore, the due date of handing over possession comes out to be 27.07.2013. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three

months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

37. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 27.01.2014 including a grace period of 180 days.
38. 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.
39. 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., 23.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
40. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the

respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

41. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of booking/registration of flat. For the reasons quoted above, the due date of possession is to be calculated from the date of booking i.e., 27.07.2010. So, the due date of possession comes out to be 27.01.2014 including grace period. Grace period is allowed for the reasons quoted above.
42. The respondents have obtained the occupation certificate on 15.01.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 29.03.2011 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 29.03.2011 to hand over the possession within the stipulated period.
43. Section 19(10) of the Act obligates the allottee 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 15.01.201. The respondent offered the possession of the unit in question to the complainant only on 02.03.2021. So, it can be said that the complainant came to know about

the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 27.01.2014 (calculated from the date of booking/registration of flat) till the date of offer of possession (02.03.2021) plus two months i.e., 02.05.2021. The complainant is further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

44. 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 complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 27.01.2014 till the date of offer of possession (02.03.2021) plus two months i.e., 02.05.2021; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Other Reliefs:

45. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST & VAT, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility

connection charges, EDC/IDC charges, firefighting/power backup charges were involved in all similar cases and others pending against the respondent in this project as well as in other projects developed by them, vide orders dated 06.07.2021 and 17.08.2021 a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above-mentioned issues.

G.II(a) Increase in super area

46. It is contended that the respondent has increased the super area of the subject unit vide letter of offer of possession dated 02.03.2021 without giving any formal intimation to, or by taking any written consent from the allottees. The said fact has not been denied by the respondent in its reply. The authority observes that the said increase in the area has been as per clause 5 of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

"5 ALTERATIONS IN PLANS, DESIGN AND SPECIFICATION AND RESULTANT CHANGES IN AMOUNTS PAYABLE

The seller/confirming party is in the process of developing residential blocks in the SPACIO in accordance with the approved layout plan for the Colony. However, if any changes, alterations, modifications in the tentative building plans and/or tentative drawings are necessitated during the construction of the units or as may be required by any statutory authority(s), or otherwise, the same will be effected suitably, to which the purchaser(s) shall raise no objection and hereby gives his unconditional consent.

47. On perusal of record, the super area of unit was 1225 sq. ft. as per the buyer's agreement and it was increased by 78 sq. ft. vide letter of offer of

possession, resulting in total super area of 1303 sq. ft. The said committee in this regard has made recommendations while submitting report and said report stands published on website of the Authority.

48. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduce from 1.30 to 1.2905. Accordingly, the super area of the unit be revised and reduced by the respondents and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

G.II(b) Cost escalation

49. The complainants have pleaded that the respondents also imposed escalation cost Rs. 7,66,164/- after an increase in super area from 1225 to 1301 sq. Ft. without increasing the carpet area. The respondents in this regard took a plea that cost escalation was duly agreed by the complainant at the time of booking and the same was incorporated in the buyer agreement. The undertaking to pay the above-mentioned charges was comprehensively set out in the FBA.
50. The authority has gone through the report of the committee and observes that as per the calculation of the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure of the years 2010 to 2014, the escalation cost comes down to 374.76 per sq. ft. from the demanded cost of Rs. 588 per sq. Ft. No objections to the report have been raised by either of the party. Even the committee while recommending decrease in escalation charge has gone through booking form, buyer agreement and the issues raised by the promoters to justify increase in cost. The authority concurs with the findings of the committee and allows passing of benefit of decrease in escalation cost of the allotted units from

Rs. 588 per sq. ft to 374.76 per sq.ft. to the allottees of the project. The relevant recommendation of the committee is reproduced below:

Conclusion:

In view of the above discussion, the committee is of the view that escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer."

51. The authority concurs with the recommendations of the committee and holds that the escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.

G.II(c) GST

52. The allottees have also challenged the authority of the respondents builders to raised demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the respondents had raised a demand of Rs.2,13,874/- under the head GST which is illegal and is not liable to repeat to be paid by him.
53. Though the version of respondents is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottees the applicable combined rate of VAT and service tax.
54. The due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority is of the view that the respondents/promoters were not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority concurs with the findings of the committee on this issue and holds that

the difference between post GST and pre-GST shall be borne by the promoter.

G.II(d) VAT charges

55. It is contended on behalf of complainant that the respondents raised an illegal and unjustified demand towards VAT to the tune of Rs. 31,752/-. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.
56. The committee took up this issue while preparing report and after considering the submissions made on behalf of the allottees as well as the promoter, observed that the developer is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme. The same is concluded in the table given below:

Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
Up to 31.03.2014	Haryana Alternative Tax Compliance Scheme	1.05 %	Yes

From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes
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57. The authority concurs with the recommendations of the committee and holds that promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.

G.II (d) Advance maintenance charges

58. The issue with respect to the advance maintenance charges was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

"D. Annual Maintenance Charges: After deliberation, it was agreed upon that the respondent will recover maintenance charges quarterly, instead of annually."

59. The authority is of the view that the respondents are right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondents before the said committee, the respondents shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondents is ordered to be modified accordingly.

G.II(e) STP charges, electrification, firefighting and power backup charges

60. It was contended by the complainants, on 02.03.2021, the respondent issued an offer of possession letter to the complainants along with various unjust and unreasonable demands under various heads i.e. cost escalation of Rs.7,66,164/-, electrification and STP charges of Rs.1,04,240/-. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of the flat buyer's agreement.
61. The said issue was also referred to the committee and it was observed as under by the committee:

Recommendations:

- i. The Committee examined the contents of the FBAs executed with the allottees of Spacio and Park Generation and found that various charges to be paid by the allottees find mention at clause 2.1 (a to h). Neither, the electrification charges figures anywhere in this clause, nor it has been defined anywhere else in the FBAs. Rather, ECC+FCC+PBIC charges have been mentioned at clause 2.1 (f), which are to be paid at INR 100 per sq. ft.*
- ii. The term electric connection charges (ECC) has been defined at clause 1.16 (Spacio) and Clause 1.19 (Park Generation), which is reproduced below:
"ECC" or electricity connection charge shall mean the charges for the installation of the electricity meter, arranging electricity connection (s) from Dakshin Haryana Bijli Vidyut Nigam, Haryana and other related charges and expenses."*
- iii. From the definition of ECC, it is clear that electrification charges are comprised in the electric connection charges and the same have been clubbed with FCC+PBIC and are to be charged @INR 100 per sq. ft. Therefore, the Committee concluded that the respondent has conveyed the electrification charges to the allottees of Spacio in an arbitrary manner and in violation of terms and conditions of the agreement. Accordingly, the Committee recommends:
A. The term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted and only STP charges be demanded from the allottees of Spacio@ INR 8.85 sq. ft. similar to that of the allottees of Park Generation.*

B. The term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ INR 100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-Invoice shall be amended to that extent accordingly."

62. The authority concurs with the recommendation made by the committee and holds that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

G.II (f) preferential location charges:

G.II (g) EDC/IDC

63. The issue with respect to the preferential location charges was also referred to the committee and observes that the contention of the complainant was limited to the extent that it may be ensured that the PpLCs have been levied by the respondent as prescribed in the FBAs. They did not point out any specific case where the respondent has demanded PLCs beyond the scope of the FBAs. In view of this, the committee recommends that the respondent may be directed to submit an affidavit declaring that PLCs have been levied strictly as prescribed in the FBAs executed with all the complainants in the projects Spacio and Park Generation.

64. The issue with respect to the preferential location charges was also referred to the committee and observes that the contention of the complainant was limited to the extent that they have already paid full and final amount of EDC/IDC as part of development charges prescribed in the FBAS. They requested the respondent may be restrained from making any further demand on this account in future. The Committee observes that the concern of the complainants is genuine and recommends that the respondent be directed not to raise any undue and inappropriate demand in future.

H. Directions of the authority

65. 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):

- The respondents are directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e. 27.01.2014 till offer of possession i.e. 02.03.2021 plus two months i.e. 02.05.2021 to the complainant(s) as per section 19(10) of the Act.
- The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
- The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against

their unit to be paid by the respondents. An amount of Rs. 6,65,280/- already provided by the respondent towards discount/compensation will be deducted from the liability of interest.

- The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- **Increase in area:** The super area of the unit be revised from factor of 1.30 to 1.2905 and reduced by the respondents and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.
- **Cost escalation:** The authority directs that escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.
- **VAT Charges:** The GST and VAT shall be charged as per findings of the Authority in para 52 to 57.
- **Advance maintenance charges:** The respondents are entitled to demand advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondents before the said committee, the respondents shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondents is ordered to be modified accordingly.


- **STP charges, electrification, firefighting and power backup charges:** The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.
- **Club membership charges:** The authority in concurrence with the recommendations of committee decides that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottees. Provided that if the allottees opt out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.
- **Preferential location charges:** The PLC shall be charged only in terms of the builder buyer agreement.
- **Holding charges:** The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's

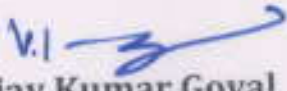
agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

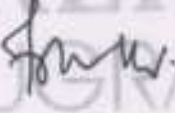
- The respondents shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

66. Complaint stands disposed of.

67. File be consigned to registry.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.04.2024