

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

Complaint no. : 8081 of 2022
Date of complaint : 18.01.2023
Date of decision : 10.07.2024

Spaze Towers Private Limited
Registered Office at: Tower C, Spazedge, Sector 47,
Gurugram- Sohna Road, Haryana-122002

Complainant

Versus

1. Chhavi Gaur
2. Prince Gaur
R/o: M-164, DLF New Town Heights, Sector-90,
Gurugram, Haryana-122505

Respondents

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE
Shri Harshit Batra (Advocate)
None

Complainant
Respondent

ORDER

1. The present complaint dated 18.01.2023 has been filed by the complainant/promoter 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 19(10) of the Act wherein it is inter alia prescribed that the 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 unit. Also, the obligation of allottee to make necessary payments in the manner and



within time as specified in the agreement for sale under Section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per Section 19(7) of the Act.

A. Project and unit related details:

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

Sr. No.	Particulars	Details
1.	Name of the project	Spaze Tristaar, Sector 92, Gurugram, Haryana.
2.	Project area	2.718 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	72 of 2013 dated 27.07.2013 valid upto 26.07.2017
5.	Name of licensee	Spaze Towers Pvt Ltd
6.	RERA Registered/ not registered	Registered vide no. 247 of 2017 dated 26.09.2017 valid upto 30.06.2020
7.	Unit no.	Shop no. 27, 3 rd floor
8.	Unit area admeasuring	283 sq. ft. (super area)
9.	Application Form	Undated
10.	Allotment Letter	16.03.2020 (Page 34 of complaint)
11.	BBA	Not executed
12.	Due date of possession	16.03.2023 (Calculated to be 3 years from date of allotment letter in terms of Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018)
13.	Possession clause	None
14.	Total sale consideration	Rs. 18,79,640/- (SOA dated 21.12.2022 at page 48 of complaint)
15.	Amount paid by the complainants	Rs. 7,92,400/- (SOA dated 21.12.2022 at page 48 of

		complaint)
16.	Reminder letters	28.05.2021, 09.06.2021, 16.07.2021, 24.08.2021, 16.09.2021, 05.10.2021
17.	Occupation certificate	03.05.2021 (Page no. 51 of complaint)
18.	Offer of Possession	05.05.2021 (Page no. 54 of complaint)

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:

- I. That the respondent booked a unit in the project "Spaze Tristaar", Sector 92, Gurugram being developed by the complainant. The project has been duly completed after having obtained all the necessary approvals and fulfilling all the requirements as per the existing byelaws.
- II. That subsequent to the application of the respondents, Shop no. 27, 3rd floor was allotted to the respondents vide allotment letter dated 16.03.2020. That however no agreement was executed by the respondents even when the copies of the agreement were handed over to the respondents by the complainant vide handover of buyer's agreement letter dated 19.03.2020.
- III. That in absence of the agreement executed between the parties, the application form signed by the respondents encapsulate the reciprocal obligations of the parties that formed the essence of the relationship between the parties. The respondents shall be liable to make the due payments against the unit and take possession of the unit. The aspect of timely payment against the unit was of essence, as was willingly, and voluntarily agreed between the parties and taking the possession of the unit was the purpose of the allotment. The

obligations of the respondent-allottees are derived from Section 19(6), 19(7), 19(8), 19(9), 19(10), 19(11) of the Act and clause 19 and 31 of the agreement.

- IV. That the respondents have been in continuous default in making timely payments against the unit, causing irreparable harm to the complainant, and causing delay in completion of the project. The total sale consideration of the unit was Rs.18,79,640/- and only a sum of Rs.7,92,400/- has been paid by the respondent. Various reminders dated 28.05.2021, 09.06.2021, 16.07.2021, 24.08.2021, 16.09.2021 and 05.10.2021 were being sent to the respondents to clear the outstanding dues.
- V. That the delay in completion of the project was also affected by other force majeure circumstances and other circumstances beyond the control of the complainant, upon the happening of which, the due date of delivery of possession was bound to be extended as per the terms and conditions of clause 34 of the application form.
- VI. That the development and implementation of the said project has been hindered on account of several orders/directions passed by various authorities/forums/courts before the due date of possession expired.
- VII. That the complainant despite all the odds, was able to carry out construction/development at the project site, after which it duly applied for occupation certificate on 13.10.2020, which was consequently granted on 03.05.2021. Thereafter, offer of possession was made to the respondents on 05.05.2021.
- VIII. That for the delay in making the payments, interest is bound to be paid. The said interest on delayed payments has not been given by the

respondents since the very beginning. Therefore, the respondents are bound to pay outstanding principal amount of Rs.11,86,290/- and interest (calculated till 31.12.2022) of Rs.2,02,832/-. Hence, a total sum of Rs.13,89,122/-(calculated till 31.12.2022) is bound to be paid by the respondents and the interest is bound to accrue till the actual realization of the pending principal amount.

- IX. That the RERA Act, 2016 is not retrospective rather, retroactive in nature and hence, the interest on delayed payments caused by the respondents and interest on delay caused by the complainant, if any, shall be subject to retroactive effect. The equitable rate of interest payable by the parties shall be affected from 01.05.2017, i.e., the coming into force of the Act. Therefore, before 01.05.2017, the payment of interest by either party shall be as per the terms and conditions of the agreement and only after coming into force of the Act, the provisions of the Act would prevail.
- X. That the respondents be directed to make the outstanding payment, take possession and execute the conveyance deed and without prejudice to the above mentioned, delayed interest if directed to be paid by the complainant, the same should be on the statutory dues.

C. Relief sought by the complainant-promoter:

4. The complainant has filed the present complaint for seeking following reliefs:
- i. Direct the respondents to pay the outstanding dues of Rs.13,89,122/- (calculated till 31.12.2022) and direct that the payment of interest shall keep accruing till the actual payment of the outstanding amount.
 - ii. Direct the respondents to execute the buyer's agreement.



- iii. Direct the respondent to take possession of the unit and get the conveyance deed registered, after paying the outstanding dues.
 - iv. Grant any other relief as the Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.
5. The present complaint was filed on 18.01.2023 in the Authority. On 25.07.2023, the respondent was directed to file the reply within two weeks in the registry of the Authority. Further, vide hearing dated 08.11.2023, the respondent was again directed to file the reply in the registry. However, despite specific multiple directions and providing an opportunity of being heard, no written reply has been filed by the respondent. Therefore, in view of the order dated 07.02.2024, the defense of the respondent was struck off.
6. 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 those undisputed documents and submissions oral as well as written made by the parties.

D. Jurisdiction of the authority:

7. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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.

D.II Subject matter jurisdiction

9. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of Section 11(4)(a) of the Act and duties of the allottee as per Section 19(6), (7) and (10) of the Act leaving aside compensation, which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

E. Findings on the relief sought by the complainant-promoter:

- E.I Direct the respondents to pay the outstanding dues of Rs.13,89,122/- (calculated till 31.12.2022) and direct that the payment of interest shall keep accruing till the actual payment of the outstanding amount.
- E.II Direct the respondents to execute the buyer's agreement.
- E.III Direct the respondent to take possession of the unit and get the conveyance deed registered, after paying the outstanding dues.
- E.IV Grant any other relief as the Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.
10. In the present complaint, the complainant-promoter intends to give possession of the plot to the respondent-allottees. Therefore, the complainant-promoter has prayed that respondent-allottees be directed to make payment of outstanding dues as per the payment schedule within time as specified in the agreement for sale under Section 19(6) and to pay interest, at such rate as may be described, for any delay payments as per Section 19(7) of the Act.
11. **Due date of possession:** The subject unit was allotted to the respondents vide allotment letter dated 16.03.2020. However, builder buyer agreement was not executed between the parties. The due date of possession had to be calculated from the date of allotment in view of "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018.*" Accordingly, the due date of possession comes out to be 16.03.2023.



12. The unit in question was allotted to the respondent-allottees vide allotment letter dated 16.03.2020. The respondent/allottee has made a payment of Rs.7,92,400/- against the total sale consideration of Rs.18,79,640/-. The due date for handing over of possession comes out to be 16.03.2023 as computed above. On perusal of documents on record, it is observed that the occupation certificate of the said project was granted by the competent authority on 03.05.2021 and the complainant has offered the possession of the subject plot to the respondent-allottees on 05.05.2021. As per section 19(10) of the Act, the allottees shall take physical possession of the apartment, plot, 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. Section 19(10) reads as under:

"19. Right and duties of allottees. -

.....
(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."

13. The respondent-allottees have failed to abide by the terms of the buyer's agreement by not making the payments in a timely manner as per the payment plan opted by the respondent/allottee. Also, not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further, despite repeated follow-ups by the complainant and the complainant having performed their contractual obligations, the respondent-allottee refrained from carrying out their contractual obligations. The respondent-allottee shall make the requisite payment as per the provision of Section 19(6) of the Act and as per Section 19(7) to pay the interest at such rate as may be prescribed for any delay in

payments towards any amount or charges to be paid under sub-section (6). Proviso to Section 19(6) and 19(7) reads as under:

"19. Right and duties of allottees. -

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

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

14. Rate of interest to be paid by respondent for delay in making payments: The complainant contended that the respondent has defaulted in making timely payments of the instalments as per the payment plan, therefore, he is liable to pay interest on the outstanding payments.

15. The authority observes that the definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoters, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest 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;"***

16. 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., 10.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%. Therefore, interest on the delay payments from the respondent-allottees shall be charged at the prescribed rate i.e. 10.95% by promoter.

17. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent-allottees are in contravention of the Section 19(6), 19(7) and 19(10) of the Act by not taking the possession as per the agreement. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the allottee whereas, as per Section 19(11) of the Act of 2016, the respondent-allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.
18. Keeping in view the aforesaid factual and legal position, the respondent-allottees are directed to make the requisite payments and take possession of the subject unit as per the provisions of Sections 19(6), 19(7) and 19(10) of the Act, within a period of 60 days from the date of this order, failing which the complainant-promoter shall be free to proceed with the cancellation of the subject unit allotted to the respondent-allottees as per the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

F. Directions of the authority:

19. 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) of the Act:

- I. The respondent-allottees are directed to pay the outstanding dues to the complainant-promoter with equitable rate of interest, i.e., @10.95% and take the possession of the subject plot as per the provisions of Section 19(6), (7) and (10) of the Act within a period of 60 days of this order, failing which the complainant-promoter shall be free to proceed with the cancellation of the subject unit allotted to the respondent-allottees as per the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.
- II. The complainant-promoter shall not charge anything from the respondent-allottees which is not part of the buyer's agreement.
20. Complaint stands disposed of.
21. File be consigned to registry.

Dated:10.07.2024

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram

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