

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

Complaint no.	:	6506 of 2022
Date of filing complaint :		03.10.2022
Date of decision :		09.08.2024

**1. Sudeep Singh**

**2. Komal Singh**

**Both RR/O:** C-1581, 2nd Floor, Sushant Lok-1, Gurugram, India

**Complainants**

Versus

**1. M/s Spaze Towers Private Limited**

**2. M/s Candeo Projects Private Limited**

**Office:** A-307, Ansal, Chambers-I, 3, Bikaji Cama Place, New Delhi-110066

Also, at: 281, Udyog Vihar, Phase II, Gurugram-122015

**Respondents**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. Gaurav Rawat

**Counsel for Complainants**

Sh. Harshit Batra

**Counsel for Respondent No. 1**

None

**Counsel for Respondent No. 2**

**ORDER**

1. The present complaint dated 03.10.2022 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



is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the 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.	Particulars	Details
1.	Name of the project	Grand Central 114 at Sector 114, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	RERA Registered/ not registered	Registered vide no. 15 of 2022 dated 21.02.2022 valid up to 18.01.2027
4.	Date of builder buyer agreement	Not executed
5.	Date of MoU	12.12.2016 [pg. 32 of complaint]
6.	Unit no.	DEL-PRO-317, measuring 500 sq. ft. [pg. 33 of complaint]
7.	Possession clause	NA
8.	Due date of possession	Cannot be ascertained
9.	Assured return clause	4 <i>The developer agrees and undertakes to pay to the allottee commitment amount of ₹ 65/- per sq. ft. per month w.e.f. 01.12.2016 for a period up to 3 years from date of offer of possession or till such time the office space is leased out, whichever is earlier.</i>
10.	Total Sale Consideration as per MoU dated 12.12.2016	₹ 20,00,000/- [pg. 35 of complaint]



11.	Paid up amount as per MoU dated 12.12.2016	₹ 20,00,000/- [pg. 36 of complaint]
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered
14.	Assured return paid till March 2020	₹ 12,89,516/- [pg. 55 of reply]

**B. Facts of the complaint**

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

- a. That the complainants are law abiding citizen and consumer who have been cheated by the malpractices adopted by the Respondent is stated to be a builder and is allegedly carrying out real estate development since many years. The complainants being interested in the project, as it was a Commercial project, wanted to own a commercial space for themselves, hence booked the said Unit.
- b. That one-sided development MOU and inordinate delay in possession has been one of the core concerns of home buyers. The terms of the MOU are non-negotiable and buyers even if they do not agree to a term, there are no option of modifying it or even deliberating it with the Builder. This aspect has often been unfairly exploited by the Builder, whereby the Builder imposes unfair and discriminatory terms and conditions. That the complainants were subjected to unethical trade practice as well as subject of harassment, because of many hidden charges which was forcibly imposed on buyer at the time of possession as tactics and practice used by builder in guise of a biased, arbitrary and discriminatory clauses.
- c. That the respondent M/S Spaze Towers Private Limited, issued an advertisement announcing a commercial complex "Spaze Delhi" in

the year 2016, Sector 114, Gurugram, claiming that the project had got building plan approval from the authority.

- d. That the complainants relying on the reputation and assurances, approached to the respondent for booking of a unit admeasuring in Spaze Delhi, Sector 114, Gurugram in the year 2016, and paid booking amount Rs. 20,90,000/- through cheques dated 29.10.2016.
- e. That the complainant was allotted the unit no. DEL-PRO-317, admeasuring 500 Sq. Ft. in Project Spaze Delhi in the year 2016, at Sector 114, Gurugram, Haryana, as mentioned in the MOU pursuance to provisional allotment letter dated 12.12.2016.
- f. That the respondent to dupe the complainant in their nefarious net did not even offer a Buyer's Agreement which was supposed to be signed between complainants and M/s Spaze Towers Private Limited., but just to create a false belief, the Builder tried to allure the complainants by signing an MOU dated 12.12.2016 and to convincingly assure that the project shall be completed in time bound manner and in the garb of this agreement quoted an irrational payment plan, by which they were able to extract huge amount of money from the complainants, but it is pertinent to mention that, the agreement stands incomplete because, the complainants have neither received the physical copy nor any soft copy of the BBA till now.
- g. That the total cost of the said flat is Rs. 20,00,000.00/- including EDC and IDC, Car parking charges and other specifications of the allotted unit as per payment plan, out of which a sum of Rs.



- 20,90,000.00/- has been paid by the complainants (more than 100% against the Total Sale Consideration) in time bound manner.
- h. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs 20,90,000.00/- to the respondent till date and has cleared all the instalments as per the payment schedule and paid amount was demanded by the respondent without doing appropriate work on the said project even after extracting more than 100% amount which is illegal and arbitrary.
- i. That as per clause 4 of the MOU, the respondent was liable and had committed to hand over the possession of a said unit within 3 years from 01.12.2016, i.e., by 01.12.2019 *"The First Party (Respondent) shall make the payment of Commitment Amount (but subject to clause 7 & 9) of Rs. 65/- per Sq. Ft. w.e.f. 01<sup>st</sup> December, 2016 for a period of 3 years from the date of offer of possession or till such time the office space is leased out, whichever is earlier, and thereafter the First Party shall be completely discharged, absolved and relieved of all the responsibilities/obligations including payment of the Commitment Amount per month"* but builder has still not offered the possession of the said Unit and has neither registered the project with the authority.
- j. That the respondent on dated 17.07.2020 had sent individual letters to both the complainants regarding his failure in paying the monthly commitment amount due the outbreak of COVID Pandemic. But this is to into the notice of the authority that, the respondent in Para 7 vide the letter is clearly agreeing to the fact that the respondent is in obligation to pay a monthly commitment amount to the complainants commencing from 22<sup>nd</sup> March 2020 *"It*

*is specifically conveyed to you that in light of Force Majeure event we shall not be paying Commitment Amount commencing from 22<sup>nd</sup> March 2020 till 30<sup>th</sup> September 2020.* Therefore, it is evident that, the deemed offer of possession must have been served to the complainants before March 2020, but the complainants have still not received the possession of their office space.

- k. That as agreed by the respondent himself, the respondent was liable to pay committed return @ Rs. 65/- per Sq. Ft. per month from 01.12.2019 till 3 years from offer of possession or till such time the office space is leased out, whichever is earlier. But it is pertinent to mention here that the complainants have neither received an offer of possession, nor their unit has been leased out till now.
- l. That as per the Letter dated 17.07.2020 sent by the respondent regarding the commitment amount, where he clearly mentioned that due to the breakdown of COVID he was unable to pay the assured return but undertakes to clear the dues starting 01.10.2020. It's been almost 2 years since the respondent committed to do this, but the complainant has not received a single penny in form of assured return. As per construction status and absence of basic amenities respondents will take more time to give physical possession.
- m. That the builder in last 6 years made many false promises regarding the possession of the Unit but the current status of project still stands desolated and raw not even 60 % work is completed, and builder has breached the trust and agreement. That as per section 19 (6) the Real Estate (Regulation and Development)

Act, 2016 complainants have fulfilled their responsibility regarding making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.

- n. That complainants have paid all the instalments timely and deposited Rs. 20,90,000.00/-. That respondents in an endeavour to extract money from allottees devised a payment plan under which respondent linked, more than 20 % amount of total paid against as a an advance and linked 75% of the amount with the construction of super structure only, of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to any development rest 5 % lined with offer of possession.
- o. That respondent executed just an MOU which is also one sided, the builder used new trick for extracting extra money from complainants and forcibly imposed interest free maintenance security deposit, maintenance charges and several hidden charges without even furnishing a proper layout plan till now.
- p. That respondents have created the MOU between themselves and the complainants in such way that, they have charged interest on delayed instalment @ 18 % P.A. as per clause 3 of MOU and but have kept themselves free from any penalty with respect to delayed offer of possession which is totally illegal arbitrary and unilateral.

- q. That the respondent did not just stop misleading the complainants there, the respondent concealed the fact of including a third party namely M/S Candeo Projects Private Limited, into this project without taking prior consent from the complainants which are against the provisions of RERA Act, 2016. And surprisingly, soon the project was a registered project vide registration No. 15 of 2022 dated 21.02.2022 and the complainants got the information that the project was applied for registration on 30.01.2022, by the third party with the authority, Gurugram. It is pertinent to mention here that respondents in collusion with each other not only changed the nature of the project but even the name of project I.e. now known as grand central 114 without intimating the complainants.
- r. That the respondents did not just stop misleading the complainants there; they have also concealed the fact of amending the nature of the project from a Commercial Project to a Commercial Plotted Colony. And this amendment was done without seeking a prior consent from the complainants.
- s. That it is pertinent to mention here that the respondent is clear violation of various provisions of the RERA Act, 2016, including Section 13 of the Act, as the respondent is legally not entitled to take deposit or advance without first entering into agreement for Sale but even after having realized more than 100% amount against the total basic sale consideration of the unit, the respondents have not executed the Buyer's agreement till now. Moreover, the respondent had included a third party namely M/S Candeo Projects Private Limited, into this project without taking





prior consent from the complainant and in addition that the respondent had also changed the nature of the project neither by informing the complainants nor taking the complainants' consent into consideration and such huge amendments are definitely in violation of Section 14 of the Act.

- t. That respondents have violated section 12 and 14 of the RERA Act i.e. Adherence to sanctioned plans and project specifications by the promoter and Section 15 i.e. Obligations of promoter in case of transfer of a real estate project to a third party. That bare perusal of the above said sections clearly states that respondent was under obligation to obtain the prior consent of the complainants before change/ alternation/modification in the project/unit and the same was not taken by the respondents. Hence, respondents have violated the various provisions of the RERA, Act for which respondents are liable to be prosecuted under penal provisions of the RERA Act.
- u. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and signing the MOU with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and her family has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant are eminently justified in seeking possession of the Office Space along with delayed penalty and monthly commitment amount.
- v. That respondent charges IFMS (Interest free maintenance security), this is security deposit and builder will get interest on

amount paid but it is not passed to the complainant is illegal, arbitrary and unilateral.

- w. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, and trick of extract more and more money from complainants pocket seems and that the same is evident from the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent her entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the Project on time, has caused the complainant great financial and emotional loss.
- x. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered in dark as the planning with which the complainant invested her hard-earned monies have resulted in sub-zero results and borne thorns instead of bearing fare ruts.
- y. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the apartment which is the subject matter of this complaint is situated in Sector 37 D Gurugram which is within the jurisdiction of this Authority.

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

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



- a. Direct the respondent to handover the symbolic and constructive possession of said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same to lease out the unit in question of the complainants.
  - b. Direct the respondents to execute a builder buyer agreement in respect of the unit in question in favour of the complainants.
  - c. Direct the Respondents to pay the interest on the total amount paid by Complainant -at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.
  - d. Restrain the respondents from raising fresh demand(s) for payment under any head, as the Complainant had already made payment as per the payment plan.
  - e. Direct the respondent not to force the complainants to sign any indemnity bond as a pre-condition for signing conveyance deed.
  - f. Direct the respondents to pay the due and payable monthly assured return/commitment charges amount till the unit in question is so leased out in terms of the MOU and possession of the unit in question is handed over, as in accordance with the allotment letter.
  - g. Not to charge labour cess, electrification charges, maintenance charges etc.
  - h. Direct the respondent to provide exact lay out plan of the said unit.
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 no.1.**

6. The respondent no. 1 has contested the complaint on the following grounds.
- a. That on 04.12.2012, the respondent no.1 entered into an Agreement of Collaboration for the development of the land situated in the revenue estate of Bajghera, Tehsil Gurgaon with respondent no. 2 i.e. Candeo Projects Pvt. Ltd ("**Candeo**"). Candeo was the owner of the Land and the respondent no. 1 proposed development of a commercial complex on the said Land.
  - b. That the complainants had submitted an application form dated 29.10.2016 to express their interest in getting an allotment in the proposed development, however, it is a matter of fact and record that no allotment letter was issued in favour of the complainants.
  - c. That when the complainants got to know of the proposed development, they, after performing their own due diligence and being completely satisfied with the then status, expressed their interest in getting an allotment and submitted the application form.
  - d. That the complainant alleges that the payment was done on super area and not carpet area. In this regard, it is pertinent to note that the regulation of HRERA of basic price to be calculated on carpet area bearing number No. 22/RERA GGM Regulations 2021 was dated 07.05.2021 and came into effect upon its publication in the official gazette. Hence, such contentions/allegations and averments have no bearing whatsoever in the present matter.
  - e. That it is categorical to note that at the time of booking of the unit, the plans for the proposed development had not been sanctioned.



Irrespective of the allotment of any unit, the parties agreed to payment of commitment charges on the payment made by the complainants. Thereafter, on 12.12.2016, a memorandum of understanding was executed between the Respondent no.1 and the complainants only to record the understanding of payment of investment return.

- f. That vide the MOU Clause 4, it was agreed that the payment of investment return @65/- per sq. ft. per month w.e.f. 01.12.2016 till office is leased out (subject to Clause 7 and 9) or maximum of three years from the date of offer of possession, whichever is earlier. That accordingly, due and timely payment of assured returns was made by the respondent to the complainants from Dec 2016 till March 2020. A total sum of Rs. 12,89,516/- has been enjoyed by the complainants as investment return from respondent. That however, in the 2020, the respondent no.1 and respondent no. 2 mutually cancelled the collaboration agreement and no development mutually cancelled the collaboration agreement and no development was carried out by Respondent no.1.
- g. That there is no allotment or execution of a buyer's agreement and hence, the complainants are not an allottee. As noted above, the execution of the MOU was for the limited purpose of payment of investment return and did not amount to allotment of any unit. That in the absence of there being any allotment, there does not exist any builder buyer dispute in the present case, and hence, this Ld. Authority does not have the subject matter jurisdiction to deal with the present complaint.



- h. That the legislature in its utmost wisdom has implemented the Act with the intent to cover the disputes between the "allottees" and the promoter. While it is a matter of fact and record that the Respondent no.1 is one of the most prominent and renowned promoters of a number of real estate projects, in all of which, the respondent no.1 ensured and displayed its *bonafide* and fulfilled its obligations under the Act, however, the respondent no.1 had issued any allotment letter in favour of the complainant.
- i. That having complete knowledge of the same, the Complainant has *malafidely* filed the present baseless and false complaint against answering Respondent to misuse the provisions of the Real Estate (Regulation and Development) Act, 2016, and the Haryana RERA Rules, 2017.
- j. That in a similar case before the Uttar Pradesh RERA titled as Renu Jain v Uppal Chaddha Hi Tech Developers Pvt. Ltd. bearing complaint no. NCR145/03/91147/2022, it was noted by the Ld. Authority that the Complainants therein had expressed interest in booking and made some payments, however, there was no allotment letter issued by the developer. In such a circumstance, the Authority does not have the power to adjudicate the complaint and hence, dismissed the same. Hence, the present complaint is also out to be dismissed on similar grounds.
- k. That as noted above, the respondents had, in 2020 mutually terminated their collaboration agreement for the proposed development of the project and hence, the same was never developed.

- l. That at the time of booking being made by the complainants, it was duly communicated that the plans have not yet been sanctioned, i.e., the complainants were completely aware of the fact that the project has not been launched and no development of the same was started, as can be noted from clause 3 of the application form. After having complete knowledge in this regard, the complainants had expressed their intention to book a unit wilfully, voluntarily, and with open eyes.
- m. That without prejudice to the rights of the respondent, it is submitted that any alleged defect/the status of the proposed Project and the development status had to be verified by the complainants themselves and in case of failure to do so, any grievance in respect to the same cannot be noted. The Hon'ble Supreme Court in Commissioner of Customs (Preventive) versus Aafloat Textiles India Private Limited and Others, (2009) 11 SCC 18 made relevant observations, which aptly apply in the present case.
- n. That the investment made by the complainants was with open eyes and was with the intent of earning returns. The proposed development never took off and hence, no allotment was ever done. In the present circumstance, when the real estate project does not exist, no allotment of any space/any unit cannot be done, and consequently no builder-buyer agreement can be executed. That hence, due to the non-development of the proposed project, the relief sought by the Complainants are infructuous and cannot be given.

- o. That the effect of the circumstances rendering the suit infructuous are to be seen while balancing the equities. That the fact of completion of obligation of payment of assured returns needs to be categorically noted.
- p. That in light of the submissions made above, and the settled position of law, it is most respectfully submitted that the relief sought by the complainants have been rendered infructuous and cannot be given. Moreover, there remains no right or titled or claim in favour of the Complainants and hence, the present complaint should be dismissed.
- q. That it is additionally submitted that for almost four years, the complainant took advantage of the answering Respondent and took the benefit of the monthly payments of investment return. A total sum of Rs. 12,89,516/- has been paid till date, which has to be duly adjusted in the amount to be refunded.
- r. That it is also additionally submitted that after the termination of the collaboration agreement between the respondent no.1 and Candeo, the respondent no.1 had approached all the allottees with an intent to return their amount paid and has till date, settled almost 95% of the matters. The respondent no.1 had also attempted to contact the Complainant in this regard but to no avail.
- s. That the complainants, in the present case is seeking relief of investment return/assured returns as per the MOU. It is submitted that the complainants have failed to establish any violation of the RERA Act, 2016 and thus the present complaint needs to be dismissed at the very threshold.



- t. That the complainants are praying for the relief of Investment Return/Assured Returns which is beyond the jurisdiction of this Ld. Authority. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a Developer and Allottee with respect to the development of the project as per the agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the Act. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the Allottee. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "investment/assured returns".
- u. That the banning of Unregulated Deposit Scheme Act, 2019 was notified by the Government of India on 31.07.2019 effective from 21.02.2019. As a consequence of the above, the assured return linked to sale consideration under the said MOU falls under the ambit of deposit and the same falls under the ambit of Unregulated Deposit Scheme. In pursuant to the provisions of Section 3 of the BUDS Act, all unregulated deposit schemes have been barred and all such transactions which fall under the ambit of unregulated deposit schemes have to be stopped. The answering Respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme".

- v. That the issue pertaining to the relief of assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court. Wherein, the Hon'ble High Court in the matter of *'Vatika Limited vs Union of India and Anr.'* in CWP No. 26740 of 2022, had issued notice to the Respondent Parties and had also restrained the competent authorities from taking any coercive actions against the respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.
- w. That in issues with respect to the same, the Adjudication has to be done by the competent authority and not this Ld. Authority. That it is also apropos to bring into the knowledge of the Ld. Authority that an *Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav*, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Ld. Authority, granting the relief of assured return in favour of the allottee.
- x. That thereafter, recently, vide Order dated 18.05.2023 in a case titled as *Vatika Limited vs Vinod Agarwal Appeal No. 647 of 2021*, the Hon'ble Appellate Tribunal categorically noted that when the primary question of jurisdiction is pending before the Hon'ble High Court, any substantive decision in that regard cannot be given by the Tribunal.
- y. That the complainants cannot, under the garb of said the agreement, seek enforcement or specific performance of an Investment Return Scheme before this Hon'ble Tribunal, which is specifically barred and banned under Section 3 of The BUDS Act,

hence the present complaint deems dismissal. Reliance in this regard is placed on the order dated 19.04.2022 passed by the Ld. District Court Gurugram in the matter titled as Naresh Prasad vs. M/s. Vatika Ltd. and Anr. (CIS NO. 338 of 2022).

- z. That it is reiterated that the issues so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the respondent into succumbing to the pressure so created by the Complainant in filing this complaint before this Authority and seeking the reliefs which the complainants are not entitled to raise before this Ld. Authority.
7. Vide proceedings dated 02.08.2024 the defence of the respondent no. 2 was struck off despite many opportunities.
8. 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 those undisputed documents and submissions made by the parties.
9. Written submissions filed by the complainant on 06.08.2024 are also considered by the authority while adjudicating upon the relief sought by the complainant.
- E. Jurisdiction of the authority:**
10. 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**
11. 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**

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

13. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage

**F. Findings on the relief sought by the complainant.**

- F.I. Direct the respondent to handover the symbolic and constructive possession of said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same to lease out the unit in question of the complainants.**

**F.II. Direct the Respondents to pay the interest on the total amount paid by Complainant -at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.**

14. The above two reliefs are being dealt together for adjudication. The complainants in the present matter executed a MoU dated 12.12.2016 with respondent no. 1 only and respondent no. 2 neither received payment from allottee nor issued any document accordingly, respondent no. 2 is not the party to the contract. As per the said MoU a unit no. DEL-PRO-317 admeasuring 500 sq. ft. in the commercial project "Spaze Delhi" situated in sector 114 was provisionally allotted for a total sale consideration of 20,00,000 The complainants paid an amount of \$20,00,000/- at the time of execution of MoU itself. However the counsel for the respondent no. 1 vide proceedings dated 02.08.2024 stated that the complaint is filed w.r.t. the project Grand Central 114 being developed by respondent no. 2. Further stated that the respondent no. 1 is not a promoter of that project as is clear from the copy of registration obtained by the promoter from the RERA Authority and hence neither the respondent no. 1 is promoter nor the complainant is an allottee.

The Authority observes that the complainants booked their unit in project "Spaze Delhi" and as on today the said project does not exist and the complainant has paid the full consideration to respondent no. 1 therefore, the authority opines that since the project in question is not in existence therefore, the authority cannot adjudicate upon the relief of possession rather is of the view that the matter is covered under section 18(1) of the Act of 2016 for refund of full amount paid by the

complainant along with interest at prescribed rate. The same 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, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*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."*

**(Emphasis supplied)**

**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.*

16. 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.

17. 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., 09.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
18. 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—  
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.  
the 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;"*
19. The authority hereby directs the respondent no. 1 to refund the amount received by it i.e., ₹20,00,000/- with interest at the rate of 11% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid after deduction of the assured return already paid i.e., ₹12,89,516/-.

**F.III. Restrain the respondents from raising fresh demand(s) for payment under any head, as the Complainant had already made payment as per the payment plan.**

**F.IV. Direct the respondents to execute a builder buyer agreement in respect of the unit in question in favour of the complainants.**

**F.V. Direct the respondent not to force the complainants to sign any indemnity bond as a pre-condition for signing conveyance deed.**

**F.VI. Direct the respondents to pay the due and payable monthly assured return/commitment charges amount till the unit in question is so leased out in terms of the MOU and possession of the unit in question is handed over, as in accordance with the allotment letter.**

**F.VII. Not to charge labour cess, electrification charges, maintenance charges etc.**

**F.VIII. Direct the respondent to provide exact lay out plan of the said unit.**

20. In view of the findings w.r.t. relief no. 1 & 2 the above mentioned reliefs stand redundant.

**G. Directions of the Authority**

21. 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):

a. The respondent no. 1 is directed to refund the entire amount of ₹20,00,000/- paid by the complainant after adjusting the amount already credited in the account of the complainant, if any along with an interest @11% from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017 after deduction of the assured return already paid i.e., ₹12,89,516/-.

b. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

22. Complaint stands disposed of.



23. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2024



**HARERA**  
**GURUGRAM**