

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

Date of Decision: 09.08.2024

NAME OF THE BUILDER		SPAZE TOWERS PRIVATE LIMITED	
PROJECT NAME		"SPAZE SCO PLOTS"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2145/2022	Om Prakash Gupta and Manish Prakash V/S Spaze Towers Private Limited	Shri Gaurav Rawat Shri Harshit Batra Advocate
2.	CR/2144/2022	Maya Gupta and Saurabh Prakash V/S Spaze Towers Private Limited	Shri Gaurav Rawat Shri Harshit Batra Advocate

CORAM:

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of two complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Spaze Sco Plots" being developed by the same respondent/promoter i.e., M/s Spaze Towers Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	Spaze Towers Private Limited at " Spaze Sco Plots" situated in Sector- 114, Gurugram.	
Possession Clause: - NA		
Occupation certificate:- Not Obtained		
Complaint No. & Case Title	CR/2145/2022 Om Prakash Gupta and Manish Prakash V/S Spaze Towers Private Limited	CR/2144/2022 Maya Gupta and Saurabh Prakash V/S Spaze Towers Private Limited
Reply status	19.04.2024	05.01.2024
Unit no.	NA	NA
Area admeasuring	750 sq. ft. (As per the MoU at page 29 of the complaint)	750 sq. ft. (As per the MoU at page 28 of the complaint)
Date of apartment buyer's agreement	NA	NA
Due date of handing over of possession	NA	NA



Offer of possession	Not Offered	Not Offered
MOU	04.01.2013	04.01.2013
Assured return clause	The first party shall give an investment return @ 60 per sq. ft. per month w.e.f 19 th day of dec, 2012, of the super area till such time the office soace is leased out (but subject to clause 7 and 9) on behalf of second party by the first party or maximum of three years from the date of offer of possession of the office space whichever is earlier.	The first party shall give an investment return @ 60 per sq. ft. per month w.e.f 19 th day of dec, 2012, of the super area till such time the office soace is leased out (but subject to clause 7 and 9) on behalf of second party by the first party or maximum of three years from the date of offer of possession of the office space whichever is earlier.
Assured return paid	₹ 39,19,354/- till march 2020	₹ 39,12,096/- till march 2020
Total Consideration / Total Amount paid by the complainant (s)	TSC: Rs.24,00,000/- (Page 30 of the complaint) AP: Rs.24,00,000/- (Page 30 of the complaint)	TSC: Rs.24,00,000/- (Page 29 of the complaint) AP: Rs.24,00,000/- (Page 29 of the complaint)
<p>The complainants in the above complaint(s) have sought the following reliefs:</p> <ol style="list-style-type: none"> 1. Direct the respondent to confer the right to possession of equivalent space of 750 sq. ft. 2. Direct the respondent to not to make any other demands as the complainant has already paid the full consideration. <p>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)</p>		

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/2145/2022 titled as Om Prakash Gupta and Manish Prakash V/S Spaze Towers Private Limited* are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	Not known
2.	Unit no.	Not allotted
3.	Builder Buyer Agreement	NA
4.	Possession clause	NA
5.	MOU	04.01.2013 (Page 28 of complaint)
6.	Assured return clause	The first party shall give an investment return @ 60 per sq. ft. per month w.e.f 19 th day of Dec, 2012, of the super area till such time the office space is leased out (but subject to clause 7 and 9) on behalf of second party by the first party or maximum of three years from

		the date of offer of possession of the office space whichever is earlier.
7.	Total sale consideration	₹ 24,00,000/- [pg. 30 of complaint]
8.	Paid up amount	₹ 24,00,000/- [pg. 30 of complaint]
9.	Occupation certificate	Not obtained
10.	Offer of possession	Not offered
11.	Assured return paid	₹ 39,19,354/- [pg. 35 of reply]

B. Facts of the complainant:

8. The complainant has made the following submissions in the complaint:
- That the respondent, M/s Spaze Tower Private Limited advertised about its new proposed project in the sector 114 of Gurugram. In 2012, the respondent issued an advertisement announcing office spaces and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority
 - That a Memorandum of Understanding was executed between the parties on 04.01.2013 between the parties and as per the terms of the said Memorandum of Understanding, the respondent were to give an investment return @Rs.60/sq. ft. per month w.e.f 19th Day of December, 2012 of the super area till such time the office space to be leased out (subject to clause 7&9) or maximum of three years from the date of offer of possession of the office space whichever is earlier but the respondent have failed to adhere and even stopped making investment.

- c. That the assurances were given by the respondent company and on belief of such assurances, the complainants purchased a unit in the project @Rs. 3200/sq. ft. for the total consideration of Rs. 24,00,000.00 towards a super area of 750sq.ft. exclusive of service tax payable by the complainants and the same was acknowledged by the respondent.
- d. That the respondent despite having made multiple tall representations to the complainants, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottee
- e. That the respondents have completely failed to honour their promises and have not provided the services as promised. Further, such acts of the respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017. The respondent had further malafidely failed to implement the MoU executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- f. That the complainants came to know that there is a construction work of SCO going on in the same location which is Sector 114, Gurugram by the respondent. Consequently, the complainant seeks the respondent to confer the right of ownership/physical possession of equivalent space which is 750 sq. ft. as agreed in MoU dated 4th January, 2013 in the aforesaid SCO construction.

C. Relief sought by the complainants:

9. The complainant has sought following relief(s):

- a. Direct the respondent to confer the right to possession of equivalent space of 750 sq. ft.
 - b. Direct the respondent to not to make any other demands as the complainant has already paid the full consideration.
10. 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:

11. The respondent has contested the complaint on the following grounds:
- a. That on 04.12.2012, the respondent entered into an agreement of collaboration for the development of the land situated in the revenue estate of Bajghera, Tehsil Gurgaon with Candeo Projects Pvt. Ltd. Candeo was the owner of the Land and the respondent proposed development of a commercial complex on the said land.
 - b. That as stated above, the complainants had submitted an application form dated 17.12.2012 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 and no particular unit was ever allotted to the complainants.
 - c. That irrespective of the allotment of any unit, the parties agreed to payment of commitment charges on the payment made by the complainants. Thereafter, on 04.01.2013, a memorandum of understanding was executed between the respondent and the complainants only to record the understanding of payment of

investment return and did not allot any unit to the complainants and hence, the said MOU cannot be termed as an allotment.

- d. That vide the MOU, it was agreed that the payment of investment return @60/- per sq. ft. per month w.e.f. 19.12.2012 till office is leased out (subject to Clause 7 and 9) or maximum of three years from the date of offer of possession of the office space whichever is earlier. That accordingly, due and timely payment of assured returns was made by the respondent to the complainant from Dec 2012 till March 2020. A total sum of Rs. 39,19,354/- has been enjoyed by the complainant as investment return from respondent.
- e. 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.
- f. 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 Complainant 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.
- g. That however, in the 2020, the respondent and Candeo mutually cancelled the collaboration agreement and no development was carried out by respondent. 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.

- h. 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.
- i. That at the outset, it needs to be highlighted that the complainants have themselves not referred to any specific unit having been allotted to them.
- j. That it is most vehemently submitted and clarified that no unit whatsoever was ever allotted to the complainant and it was categorically agreed that in case the answering respondent fails to allot a unit, the amount paid by the complainant shall be refunded.
- k. That it is additionally submitted that for almost seven years, the complainants took advantage of the respondent and took the benefit of the monthly payments of investment return. A total sum of Rs. 39,19,354/- has been paid till date, which has to be duly adjusted in the amount to be refunded.
- l. That it is also additionally submitted that after the termination of the collaboration agreement between the respondent and candeo, the respondent 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 had also attempted to contact the complainant in this regard but to no avail.

12. Vide proceedings dated 28.07.2023 i.e., the 5th proceeding the respondent was given a chance to file reply within a week and if not filed within the time given the defence of the respondent shall be struck off. However till date the reply has not been filed by the respondent, therefore the defence is hereby struck off. Despite many opportunities the respondent has not filed the reply of the present complaint rather has filed an application on maintainability of the complaint.
13. 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.
14. 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:

15. 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

16. 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

17. 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.

18. 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 complainants:

F.I Direct the respondent to confer the right to possession of equivalent space of 750 sq. ft.

F.II Direct the respondent to not to make any other demands as the complainant has already paid the full consideration.

19. The above two reliefs are being dealt together for adjudication. The complainants in the present matter executed a MoU dated 04.01.2016 with respondent. As per the said MoU an office space admeasuring 750

sq. ft. in the commercial project being developed by respondent, situated in sector 114 was provisionally allotted for a total sale consideration of ₹24,00,000/-. The complainants paid an amount of ₹24,00,000/- at the time of execution of MoU itself. However the counsel for the respondent vide proceedings dated 02.08.2024 stated that the complaint is filed w.r.t. the project Spaze SCO plots located at sector 114 being developed by the respondent. Further the respondent in its reply states that respondent is not a promoter of that project as the respondent entered into a development agreement with M/s Candeo Projects Pvt. Ltd. but the said development agreement was then mutually terminated their development agreement in 2020 and hence it was never to be developed by the respondent therefore, it is clear that neither the respondent is promoter nor the complainant is an allottee.

20. The Authority observes that the complainants booked their unit in project situated in sector 114 and as on today the said project which was to be developed by respondent does not exist due to termination of the development agreement and the complainants have paid the full consideration to respondent therefore, the authority opines that since the project in question is not in existence accordingly, 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)

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or 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.

21. 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.
22. 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%.

23. 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;"


24. The authority hereby directs the promoter to return the amount received by it i.e., Rs.24,00,000/- 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 adjusting the assured return already paid.

G. Directions of the Authority

25. 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 is directed to refund the entire amount of Rs. 24,00,000/- 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 adjusting the assured return already paid.
 - 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.
26. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 27. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
 28. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2024