

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

Complaint no.	2069 of 2023
Date of filing complaint	05.05.2023
Date of first hearing	20.07.2023
Date of decision	28.08.2024

Vineet Goyal

Resident of: Plot no. 75A, Block A1, Flat no. 101,
Ashok Vihar, Phase II, Near Sector 5, Gurugram

Complainant

Versus

M/s Spaze Towers Pvt Ltd

Regd. office: Spazedge Sector 47, Gurugram-Sohna
Road, Gurugram-122002

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Gaurav Rawat Advocate

Complainant

Ms. Tanya Advocate

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made 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 complainant, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"PRIVY The Address", Sector 93, Gurugram, Haryana.
2.	Nature of the project	Residential Group Housing Complex
3.	RERA Registered/not registered	Not Registered
4.	DTCP License no.	07 of 2011 dated 15.01.2011 valid upto 14.01.2021
5.	Name of licensee	M/s Spaze Towers Pvt. Ltd.
6.	Application Form	17.11.2010 (Page no. 24 of reply)
7.	Allotment letter (Construction linked payment plan)	15.02.2011 (Page no. 16 of complaint and page no. 33 of reply)
8.	BBA	20.09.2011 (Page no. 22 of complaint and page no. 36 of reply)
9.	Original Allottee	Mr. Kapil Kumar
10.	Subsequent Allottee	Endorsed in favour of the complainant on 30.05.2012 (Page no. 77 of reply)
11.	Unit no.	I-013, Tower I, 1 st floor (Page no. 50 of complaint and page no. 38 of reply)
12.	Unit Area	1297 sq. ft. Super Area (Initially) Increased to 1386 sq. ft. (Page no. 25 of complaint and page no. 39 of reply)
13.	Possession clause	28. Possession "(a) Subject to the terms of this clause and subject to FLAT ALLOTTEE(S) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions,

		<p><i>formalities registration of sale deed documentation payment of all amount due payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement as prescribed by the DEVELOPER, the DEVELOPER proposes to handover the possession of the FLAT within a period of 36 months from the date of signing of this agreement."</i></p> <p>(Page no. 35 of complaint and page no. 49 of reply)</p> <p>(Inadvertently mentioned to be 42 months in POD dated 03.07.2024)</p>
14.	Due date of possession	20.09.2014 (Calculated to be 36 months from the date of signing of the agreement i.e., from 20.09.2011) (Inadvertently mentioned to be 20.03.2015 in POD dated 03.07.2024)
15.	Total sale consideration	Rs. 48,44,128/- (As per SOA dated 05.06.2021 at page no. 156 of reply)
16.	Total amount paid by the complainant	Rs. 46,85,125/- (As per SOA dated 05.06.2021 at page no. 156 of reply)
17.	Occupation certificate	20.07.2018 (Page no. 78 of reply)
18.	Offer of possession	21.07.2018 (As alleged by respondent and annexed at page no. 80 of reply)
19.	Compensation for delay in possession paid by respondent to complainant	Rs. 2,79,247/- (Page no. 86 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- a) That on 15.02.2011, the respondent issued an allotment letter in the name of the original allottee confirming the allotment of the unit.
- b) That in April 2012, the original allottee, Mr. Kapil Kumar, who was allotted unit No. I-013 in tower I in the residential project of the respondent namely "Privy the Address" situated in Sector 93, duly endorsed the same in the name of Mr. Vineet Goyal, the present complainant with the consent and authorization of the respondent.

- c) That at the time of the said endorsement, the complainant visited the office of the respondent at Gurugram with his family members and met the marketing staff of the respondent who gave a brochure along with pricelist and further assured the complainant of a number of luxury amenities which shall become part of the said project.
- d) That further, during the endorsement, it was also assured to the complainant that the unit shall be handed over to him within a period of 36 months from the date of original booking.
- e) That believing in the representations and the assurances made by the respondent, the complainant Vineet Goyal, executed the said endorsement of unit from Kapil Kumar, the original Allottee, in his name for unit no. I-013, 1st floor, tower I, tentatively measuring 1297 sq. ft. on 10.04.2012 for a sale consideration of Rs.41,66,799/- which was inclusive of EDC/IDC.
- f) That a pre-printed and unilateral builder buyer agreement was executed inter-se the respondent and the original allottee on 20.09.2011. According to clause 28(a) of the said agreement, the respondent was obligated to give possession of the said flat within 36 months from the date of the signing of the said agreement, therefore the due date of possession was 20.09.2014.
- g) That the complainant was never given a choice to negotiate on the terms and conditions of the said agreement and was made to sign on the dotted lines. There are number of judgments which states that the party cannot be forced to sign on the dotted lines of the contract/undertaking and party must be given a chance to negotiate on the terms and conditions of the contract, otherwise it will be termed as an invalid contract. The complainant has already made a payment of Rs.43,83,203/- against all the demands raised by the respondent.
- h) That on 26.04.2019, the respondent issued a letter dated for offer of possession and demanded Rs.4,22,105/- under different heads in the favor of "Spaze Towers Pvt. Ltd. The Address Escrow" and Rs.1,53,600/- in

favour of "Preserve Faciliteez Pvt. Ltd. A/c The Address". The respondent further increased the super area of the flat by 89 sq. ft. without any justification, and demanded Rs.15,939/- under Labour Cess, Rs.1,33,766 under external electrification charges, Rs.13,985/- under security deposit for electrical water and sewer as well as Rs.40,888/- under facade repaid charges and Rs.32,139/- under Club Development Charges.

- i) That the respondent had acknowledged its own delay in handing over the possession of the flat and has given a compensation of Rs.2,79,247/-. After the receipt of the offer of possession the complainant lodged his protest to the arbitrary and unjustified demands and unlawful increase in the area.
- j) That the complainant visited the office of the respondent for getting the additional illegal and arbitrary charges imposed by the respondent rectified as the same are not part of the buyer's agreement which was signed by both the parties. The list of illegal charges is as under:

Particulars	Amount (in Rs.)
Labour Cess	15,939
External Electrification Charges	133766
Security Deposit	13985
Facade Repair Charges	40888
Club Development Charges	32139
Interest	46,162
VAT I and VAT II	63,252
Total amount of Illegal charges imposed on complainant by the respondent	3,46,131

- k) The facade charges have been stricken off in the BBA of the complainant itself and the same has been countersigned by the respondent. Despite the same, the respondent has charged the same in the offer of possession. Further it is submitted that the size of the flat has also been arbitrarily increased from 1297 sq. ft. to 1386 sq. ft. without any justification whatsoever, which is illegal and arbitrary. An e-mail in this regard was sent by the complainant to the respondent on 12.05.2019, however, the respondent never replied to the same. The complainant further sent

another e-mail dated 17.05.2019 requesting the respondent for justification of all the arbitrary charges levied by the respondent.

- l) That the complainant cannot be expected to endlessly wait for the possession, this principle has been settled by the Hon'ble Apex Court in the case of the "Fortune Infrastructure & Ors. v/s Trevor D'Lima and Ors." and in the present case it is essential that the Hon'ble Authority may be pleased to direct the respondent to immediately offer the valid possession of the said unit along with the necessary and just penalty for delay at prescribed rate of interest.
- m) That the cause of action in favour of the complainants first arose on 20.09.2014 when the respondent failed to deliver the possession of the said unit even after expiry of 36 months from the date of start of construction. The cause of action further arose when on 26.04.2019, when the respondent made illegal demands from the complainant. The cause of action is still continuing as the respondent has still not handed over the possession of the said unit to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
- I. Direct the respondent to pay delay possession charges to the complainant at the prevailing rate of interest on the amount paid by the complainant at prevailing rate of interest on the amount paid by the complainant till the actual handing over of possession of the unit.
 - II. Direct the respondent not to charge for increase in area.
 - III. Direct the respondent not to charge labour cess, external electrification charges, security deposit for electrical water and sewer as well as facade repair charges and club development charges.
 - IV. Direct the respondent to waive the interest of Rs. 46,162/- unilaterally charged by the respondent.
 - V. Direct the respondent to get the conveyance deed executed.
 - VI. Give liberty to complainant to file a complaint under section 71, 72 and 31 of the RERA Act for non-compliance of agreement, laws and for causing mental agony and harassment.
 - VII. Direct the respondent to give possession of the unit as per the PLC paid by the complainant, i.e., 2BHK PLC along with corner facing as well as park facing on 1st floor.

- VIII. Direct the respondent to refrain from charging any VAT from the complainant as the same is illegal and arbitrary and whatever VAT the complainant has been forced to pay, be refunded.
5. On the date of hearing, the authority explained to the respondent-promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent is contesting the complaint on the following grounds:
- a) That the present complaint relates to unit no. I-013, tower 1, admeasuring 1386 sq. ft. in the project known under the name and style of "Privy The Address."
 - b) That one Mr. Kapil Kumar, the original allottee being interested in the project booked a unit through a booking/application form dated 17.11.2010. A unit was allotted to the original allottee vide allotment letter dated 15.02.2011.
 - c) That a builder buyer agreement was executed between Kapil Kumar and the complainant on 20.09.2011 and thereafter, Kapil Kumar nominated the complainant and requested the respondent to endorse the complainant in place of Kapil Kumar. The complainant undertook on 10.04.2012 to pay the government charges and all the other outstanding dues.
 - d) That subsequently the unit was endorsed in favour of the complainant on 30.05.2012 and the complainant became obligated to all the terms and conditions under the agreement.
 - e) That the occupancy certificate of the project was received on 20.07.2018 and the respondent offered the possession of the unit to the complainant on 21.07.2018. The unit was ready since 2018 and the respondent had been holding and maintaining the unit of the complainant for over 5 years now.

- f) That the complaint is barred by the principle of res sub-judice and is liable to be dismissed outrightly. The complainant had originally filed two complaints under Section 31 of the RERA Act, 2016 read with Rule 28 of the RERA Rules, 2017 in the complaint case no. 279 of 2018 titled as "Privy 93 owners' association versus Spaze Towers" and complaint case no. 6059 of 2019 titled as "Privy 93 owners associations versus Spaze Towers."
- g) That the complainant along with other allottees in his former complaints contested the alleged additional charges. In complaint no. 279 of 2018, he sought reliefs, inter alia against demand for super area, VAT, labour cess, security deposits, PLC, EDC/IDC, etc. In complaint no. 6059 of 2019, more reliefs were sought but vide order dated 12.12.2022, only the reliefs seeking compensation for mental agony, harassment and litigation expenses was retained.
- h) That under complaint no. 279 of 2018, the order was passed on 11.04.2019 but the same was assailed by the Association before the Appellate Tribunal under Appeal no. 458 of 2019. The Appellate Tribunal remanded the matter back to the Authority.
- i) That an Inquiry Officer Ms. Suprabha Dahiya, IAS (Retd.) was appointed to deal with all the issues raised by the complainant. A report was submitted by the said Inquiry officer, however, vide order dated 31.01.2023, the Authority noted that the individual complainants can contest the relief of delay possession charges by filing separate complaints.
- j) That the complainant in the present complaint seeks for additional reliefs along with the DPC and hence comes under the ambit of res judicata as the same issues had already been decided upon complaint no. 279 of 2018 and 6059 of 2019.
- k) That the complainant seeks leave to file the case for compensation before the Adjudicating officer, however, the same has already been filed by the complainant.

- l) That no relief was ever sought in respect of execution of the conveyance deed. However, Order II Rule II of the CPC categorically notes that the suit once filed shall include the whole claim. Omission of any of the relief in the complaint will bar the filing of such omitted claims at later stage.
- m) That the complainant has defaulted in making payments, upon which reminders were also served upon the complainant. That details qua demands, reminders and receipts are as below:

Sr. No.	Particulars	Dated
1.	Reminder	22.04.2011
2.	Reminder letter	04.05.2011
3.	Reminder letter	16.05.2011
4.	Reminder letter	10.04.2012
5.	Reminder	23.05.2013
6.	Demand letter	27.05.2013
7.	Reminder	19.09.2013
8.	Reminder letter	24.10.2013
9.	Demand letter	13.11.2013
10.	Demand letter	06.12.2013
11.	Reminder	12.12.2013
12.	Reminder	19.12.2013
13.	Reminder	15.02.2014
14.	Demand letter	02.12.2014
15.	Reminder	11.12.2014
16.	Demand letter	06.12.2017
17.	Demand letter	20.08.2018

- n) As per clause 28 of the Buyer's Agreement, the delivery of possession of the unit was proposed to be subject with compliance of the allottee with all provisions of the BBA. The delivery of possession of the unit was extendable in case of delay in payment by the allottees as per clause 28(b)(iii).

- o) Furthermore, the delivery of the possession was also subject to *force majeure* conditions as spelled out in clause 28(b) of the BBA. The respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of groundwater by the High Court of Punjab & Haryana, demonetization, etc., and other *force majeure* circumstances which in turn affected the mobilisation and demobilisation of the labourers at the site, yet, the Respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done. The several orders/directions passed by various forums/authorities/courts, as have been delineated hereinbelow: -

Sr. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped the movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.

		would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.			
2.	19th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.

		week from the date of order.			
			Total days	67 days	

- p) That a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 Pandemic, as noted above. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. However, despite all odds, the respondent was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions, and has ensured compliance under the agreement, laws, rules, and regulations.
- q) Even after the delay in making the payments of the outstanding dues on the part of the complainant, the respondent provided a compensation of Rs. 2,79,247/- via notice of offer of possession of the unit dated 21.07.2018. The respondent earnestly requested the complainant to make the outstanding payments and take possession of the unit in question.
18. All other averments made in the complaint were denied in toto.
19. Copies of all the relevant documents have been filed and placed on the 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.

E. Jurisdiction of the authority:

20. 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

21. 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 the entire Gurugram District for all purposes 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 complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

22. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.”

23. So, given 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 objections raised by the respondent:

F.I Objections regarding force Majeure.

24. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by the district administration Gurugram, Hon'ble Punjab & Haryana HC, NGT, shortage of labour and construction material, etc. The pleas of the respondent advanced in this regard are devoid of merit. First of all, the possession of the unit was to be offered by 20.03.2015. Hence, the events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, the orders passed were for a very

short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

G. Findings on relief sought by the complainant.

- G.I Direct the respondent to pay delay possession charges to the complainant at the prevailing rate of interest on the amount paid by the complainant at prevailing rate of interest on the amount paid by the complainant till the actual handing over of possession of the unit.**
- G.II Direct the respondent not to charge for increase in area.**
- G.III Direct the respondent not to charge labour cess, external electrification charges, security deposit for electrical water and sewer as well as facade repair charges and club development charges.**
- G.IV Direct the respondent to waive the interest of Rs. 46,162/- unilaterally charged by the respondent.**
- G.V Direct the respondent to get the conveyance deed executed.**
- G.VI Give liberty to complainant to file a complaint under section 71, 72 and 31 of the RERA Act for non-compliance of agreement, laws and for causing mental agony and harassment.**
- G.VII Direct the respondent to give possession of the unit as per the PLC paid by the complainant, i.e., 2BHK PLC along with corner facing as well as park facing on 1st floor.**
- G.VIII Direct the respondent to refrain from charging any VAT from the complainant as the same is illegal and arbitrary and whatever VAT the complainant has been forced to pay, be refunded.**

25. The complainant sought various reliefs as mentioned above vide his complaint dated 05.05.2023, however, during the course of proceeding dated 03.07.2024, the counsel for the complainant stated that the complainant is seeking delay possession charges on account of delay in handing over the unit in terms of buyer's agreement dated 20.09.2011 along with physical possession and does not wish to press the other reliefs as same have already been adjudicated upon by this Authority and are pending in Appeal before the Hon'ble Appellate Tribunal. Therefore, the

complainant is only seeking the relief as to delay possession charges and handing over of physical possession of the unit.

26. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of Section 18(1) of the Act which 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."

27. Further, the buyer's agreement was executed between the original allottee Mr. Kapil Kumar and the respondent on 20.09.2011 and the same was endorsed in favour of the complainant on 30.05.2012. As per clause 28(a) of the said agreement, the possession was to be handed over within 42 months from the date of the signing of agreement. The said clause is reproduced below:

"That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. If, however understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block / Towers as and when completed."

Therefore, the due date of possession comes out to be 20.09.2014.

28. The respondent has obtained the occupation certificate on 20.07.2018. Copy of the same has been placed on record. In furtherance of the same, the possession was offered to the complainant vide offer of possession letter dated 21.07.2018 annexed as annexure R7 at page no. 80 of reply. ✓

However, the complainant stated that possession was offered to him vide offer of possession letter dated 26.04.2019 annexed as annexure 4 at page no. 85 of the complaint. The Authority has gone through the letters placed on record by both the parties and is of the view that offer of possession dated 21.07.2018 is a valid offer of possession made by the respondent to the complainant as the same was made after obtaining the occupation certificate from the competent authority and there is no logical reasoning as to why will the respondent wait for over a period of one year and then offer the possession to the complainant on 26.04.2019 after the receipt of occupation certification way back on 20.07.2018.

29. Further, the language of offer of possession dated 26.04.2019 annexed by the complainant reads as under:

"This letter is being sent in compliance of the order passed by the Hon'ble Real Estate Regulatory Authority in the matter Privy 93 Owners Association Vs, Spaze Towers Pvt. Ltd. Dated 11.04.2019."

This explains the scenario that the respondent gave another opportunity to the complainant to take the possession of the unit within a period of one month after clearing all his outstanding dues post decision of the Authority in complaint case no. 279 of 2018 and complaint case no. 6059 of 2019. Therefore, the offer of possession letter dated 21.07.2018 is considered to be the date of valid offer of possession.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

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

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

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

31. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest.

32. 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., 28.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

33. 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 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 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;"*

34. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent which is the same as is being granted to them in case of delayed possession charges.

35. 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 20.09.2011 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 20.09.2011 to hand over the possession within the stipulated period.
36. 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 20.07.2018. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority on 21.07.2018. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' 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., 20.09.2014 till the expiry of 2 months from the date of offer of possession (21.07.2018) plus two months (i.e., 21.09.2018). The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties and 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.

37. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter after adjustment of DPC already paid, if any as per possession notice, interest for every month of delay from due date of possession i.e., 20.03.2015 till offer of possession plus two months (i.e., 21.09.2018), at the prescribed rate i.e., 11.10 % p.a. as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

H. Directions of the Authority

38. Hence, the authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainant to the respondent after adjustment of DPC already paid, if any as per possession notice from the due date of possession i.e., 20.09.2014 till offer of possession i.e., 21.07.2018 plus two months i.e., up to 21.09.2018 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same rate of interest which the


promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- III. The respondent is directed to issue a revised account statement after adjustment of delay possession charges and other charges as per above and final order passed by the Authority in complaint case no. 279 of 2018 titled as "Privy 93 owners' association versus Spaze Towers" and complaint case no. 6059 of 2019 titled as "Privy 93 owners associations versus Spaze Towers." within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days.
- IV. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

39. Complaint stands disposed of.

40. File be consigned to the Registry.

Dated: 28.08.2024



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram