

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

Complaint no. :	2079 of 2023
Date of filing complaint:	18.05.2023
Date of decision :	05.07.2024

Dhirendra Kharkwal Mamta Kharkwal Residents of : House no. 1142 Sector - 46, Gurugram, Haryana	Complainants
Versus	
M/s Spaze Towers Pvt Ltd Regd. office: Spazedge sector 47, Sohna Road, Gurugram-122002	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Aditi Mishra Advocate	Complainants
Shri Harshit Batra Advocate	Respondent

ORDER

1. The present complaint 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 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:

S.N.	Particulars	Details
1.	Name of the project	"Privvy the address", Sector-93, Gurugram
2.	Nature of project	Group Housing Complex
3.	DTPC License no.	07 of 2011 dated 15.01.2011 Valid up to 14.01.2021.
4.	RERA Registered/ Not Registered	Not registered
5.	Date of execution of agreement	17.12.2012 (Page 21 of complaint) <i>Inadvertently it has been recorded vide proceeding dated 05.04.2024 that the date of agreement is 17.12.2014 but now the same has been rectified</i>
6.	Unit no.	A-041, 4 TH floor [page no. 24 of complaint]

7.	Unit measuring	1697 sq. ft. (page no. 24 of complaint) 1805 sq. ft. (page 88 of complaint)
9.	Possession clause	<p>Clause 28(a)</p> <p>Time of handing over of possession</p> <p>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 forty two (42) 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.</p>
10.	Due date of possession	17.06.2016 (Calculated from the date of signing of the agreement) <i>Inadvertently it has been recorded vide proceeding</i>



		<i>dated 05.04.2024 that the due date of possession is 17.06.2018 but now the same has been rectified</i>
11.	Sale consideration	Rs. 76,02,435/- (As per agreement on page no. 25 of complaint)
12.	Total amount paid by the complainant	Rs. 78,64,823/- (As per statement of account dated 01.03.2023 on page 77 of complaint)
13.	Notice for offer of permissive possession	03.11.2017 (page 84 of complaint)
14.	Occupation certificate dated	20.07.2018 (As per page 100 of reply)
15.	Offer of Possession	21.07.2018 (As per page 88 of complaint through which it demanded Rs. 11,12,174/- as total dues in which compensation for delay in possession was also deducted.) <i>Inadvertently it has been recorded vide proceeding dated 05.04.2024 that the due amount is Rs. 9,16,674 but now the same has been rectified</i>

B. Facts of the complaint:

3. The complainants submitted application form dated 26.04.2012 for allotment of a residential unit in the project. Subsequently, vide

allotment letter dated 14.05.2012, he was allotted unit no. A-041, on 4TH floor in Tower A of the said project, admeasuring super area of 1697 sq.ft. for a total consideration of Rs. 76,02,435/- inclusive of EDC, IDC, PLC , car parking and club membership charges.

4. Even after collecting huge amount of money from them, respondent delayed the execution of buyer agreement for a year thereafter buyers' agreement was executed between the parties on 17.12.2012.
5. As per clause 28 the respondent promised to deliver the possession of the apartment within 42 months of execution of builder buyer agreement i.e 17.06.2016.
6. That after long delay of more than a year, the respondent vide letter dated 03.11.2017 informed them that permissive possession may be delivered once complete payment of outstanding dues is realized. The said letter was sent without obtaining occupation certificate from competent authorities. In that letter, the respondent raised several illegal demands which was disputed by them. That the complainants raised their grievance in detail regarding the additional charges being demanded by the Respondent in letter dated 09.05.2019 and raised query whether the permissive possession letter has been issued after obtaining occupation certificate from the competent authority. The respondent failed to address the grievances of complainants which were raised time and again and hence committed deficiency in services.
7. He after losing all the hope, approached the authority for justice and filed a complaint (along with other allottees) Privvy A93

Association versus M/S Spaze Towers Pvt. Ltd., bearing no.279 of 2018 in May 2018 as the respondent was demanding the charges which were not part of agreements executed between the parties and also demanded charges on the basis of increased super area (2105 sq.ft), and even failed to provide delayed possession charges to them.

8. While offering possession by the respondent on payment of charges which the buyer is not contractually bound to pay and are unreasonable as per the law laid down, cannot be considered to be a valid offer of possession. That all the issues pertaining to additional charges and demand against the increased super area has been raised in complaint number 279 of 2018 and are not repeated herein for the sake of brevity.
9. He was offered possession vide offer of possession intimation dated 21.07.2018 but same accompanied with additional demands, hence amounts to invalid offer of possession.
10. That further the order dated 11.04.2019 of this Authority was challenged before the Haryana Real Estate Appellate Tribunal in the matter of Privvy A93 Owners Association Vs. Spaze Towers Pvt. Ltd. & Anr.(Appeal No. 458 of 2019).
11. That Hon'ble Appellate Tribunal remanded back the matter of Privvy A93 Owners Association Vs. Spaze Towers Pvt. Ltd. & Anr.(Appeal No. 458 of 2019) to this Authority vide order dated 15.11.2019.
12. That the complaint number 279 of 2018 has been pending before this Hon'ble Authority since then and order is awaited. That this

Authority passed an order dated 31.01.2023 in the above-said complaint case, excerpts of which has been stipulated below:

The complainant association has filed the complaint for a number of reliefs including DPC. So far as DPC is concerned, the individual allottees are advised to file separate complaints for each unit.

C. Relief sought by the complainants:

13. The complainants have sought the following relief(s):
- i. Direct the respondent to handover possession of the aforesaid unit.
 - ii. Direct the respondent to pay interest on delayed possession at the rate determined by this Hon'ble Authority for every month of delay from due date of possession till actual possession.

D. Reply by the respondent.

14. The complainants being interested in the real estate project of the respondent, group housing colony known under the name and style "PRIVY THE ADDRESS", Sector 93, Gurugram, Haryana tentatively applied for allotment via application form dated 26.04.2012 and were consequently allotted unit no. E-011, 1ST-floor, Tower E having a tentative super area of 1998 sq. ft. vide allotment letter dated 14.05.2012.
15. Thereafter, the buyer's agreement dated 17.12.2012 was mutually executed between the original allottees and the respondent.
16. The complainants have defaulted in making payments. As per clause 26 of the agreement, the complainants were under an obligation to make the timely payment of instalments however, the complainants have failed to fulfil their obligation. That details qua demands, reminders and receipts are as below:

Sr. No.	Particulars	Dated
1	Reminder letter	16.06.2012
2	Reminder letter	07.08.2012
3	Reminder letter	08.08.2012
4	Reminder letter	08.05.2013
5	Reminder letter	03.08.2013
6	Reminder letter	13.11.2013
7	Reminder letter	12.12.2013
8	Reminder letter	03.01.2014
9	Reminder letter	06.01.2014
10	Reminder letter	07.05.2014
11	Reminder letter	23.07.2014
12	Reminder letter	24.12.2014

17. That from the above it is evident that the complainants have themselves defaulted in fulfilling the obligations under the agreement and thus he cannot benefit from their own wrongs.
18. Despite the continuous delay in payment by the complainant, the construction of the unit was completed, and the complainants were offered possession of their unit along with a compensation of Rs. 1,87,809.
19. 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).

20. 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 complainants 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: -

S. 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	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



		order that all the registration authorities in the State of Haryana, UP and NCT Delhi 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.			are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19 th 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.	8 th 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	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.

		the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.			
			Total days	67 days	

21. That a period of 67 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.
22. 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. 1,87,809/- via notice of offer of possession of the unit dated 21.07.2018. The respondent earnestly requested the complainants to take possession of the unit in question and further requested the them to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding the delivery of possession.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be 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

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.

24. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objections regarding force Majeure.

25. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants 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 labor 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 17.06.2016. 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 their own wrong.

G. Findings on relief sought by the complainant.

G.1 Direct the respondent to hand over possession of the aforesaid unit along with delayed possession charges.

26. In the present complaint, the complainants intend 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. In the instant case, the flat buyer agreement was executed between the complainants and the respondent on 17.12.2012, and 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 forty two (42) 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 17.06.2016.

28. The complainant-allottee has paid Rs. 78,64,823/- against the sale consideration of Rs. 76,02,435/- for the unit in question to the respondent.
29. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this

agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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. 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.

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

31. 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., 05.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
32. The definition of term 'interest' as defined under section 2(z a) 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;"*
33. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act,

the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 28(a) of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within 42 months from the date of the signing of agreement. As such the due date of handing over of possession comes out to be 17.06.2016.

34. As per complainants the offer of possession was accompanied with demands those were alleged to be additional and illegal on the contrary respondent contends that all the charges are to be paid as per order dated 25.07.2023 of the authority in CR/279/2018.
35. Subsequently those charges were challenged by the allottee association(present complainants were also a part of that association) by filing a case in the Authority bearing complaint no. 279/2018 which was disposed off on 11.04.2019 while exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent: -

- (i) *The respondent-builder is directed to handover the possession of the allotted units to the respective buyers. Since the occupation certificate has been received by the respondent, as such, the respondent is directed to offer the possession to the allottees urgently within a week's time. All the affected home buyers are directed to take possession from the respondent within a period of 30 days after the receipt of offer of possession.*

(ii) *As per section 19(6) of the Real Estate (Regulation and Development) Act, 2016 those allottees who want to contest on the point of additional charges being sought by the respondent may agitate their grievances before the adjudicating officer.*

36. Vide order dated 15.11.2019 of the Hon'ble Appellate Tribunal, it has remanded the complaint for dilation over the issues mentioned in para 3 of the said order. The relevant para is here as under:-

3. The learned Authority vide impugned order dated 11.04.2019 has directed the appellant/allottees to agitate their grievances before the Adjudicating Officer. Learned counsel for the appellant has stated that the disputed charges were for the super area, club, facade charges, maintenance charges, external electrification/water/sewer and meter charges, PLC, EDC/IDC, labour cess and VAT and unilateral increase in transfer fee. Appellants have also raised to the disputes with respect to the permissive possession and offer of possession without completion, sale of open spaces, no approach road, non-adherence to subvention agreements, green cover, swimming pool/amenities etc.

37. The complaint was remanded back and fixed for hearing. The Authority after hearing both the parties held that: -

"Both the parties are directed to submit their versions on the points raised in the remand order in a tabular form for early disposal of the disputes arisen between the parties.

Respondent shall also submit a detailed report w.r.t amount towards EDC/IDC charged from the allottees and the amount deposited with the DTCP.

Respondent is at liberty to file response to the written submissions submitted by the complainant before the next date of hearing.

Case is adjourned to 17.1.2020"

38. Vide order dated 05.03.2020, the Authority was of the considered view that large numbers of issues has been involved in the

complaint. Hence, the Authority decided to appoint Dr. Suprabha Dahiya, IAS (retired) as Investigating Commissioner to investigate into the issues and submit the requisite report.

39. A report was submitted by Investigating Commissioner on 18.12.2020, wherein authority has accepted the recommendations given under the report and dealt with the charges/demand as given below.

Demand	Finding in order dated 25.07.2023 titled as Privy Owners Association Vs. Spaze Towers Pvt. Ltd
Increase in Super Area	Para 30 (viii):The allottees were informed about the details of common areas taken into consideration to calculate super area and allottee was aware about increase/decrease of super area upon completion of the project and buyer consent was to be taken only if increase in super area was more than 10 % of the tentative super area whereas as per deed of declaration a flat having tentative super area was intimated as 1697 sq. ft. which has now been increased to 1839.32 sq. ft. an increase of about 8% in the super area."
Club Development Charges	Para 30 (ii): "The developer has not charged anything from the flat allottees for the construction of the club



	<p>building rather it is a mere conjecture of them that club has been constructed by the developer out of payments made by them to the developer as they could not submit any document to prove it.”</p>
<p>Façade Repair Charges and Common Maintenance Charges</p>	<p>Para 30 (iii): “As per finding of report, as per clause 38(c) of the agreement, the allottees have consented to pay maintenance charges, IFMS to the developer or his nominated agency and charges for facade repair of the buildings but at a reasonable cost.”</p>
<p>Excess Charges of EDC/IDC</p>	<p>Para 30 (v): “The developer has not taken excess amount from the allottees w.r.t. excess charges of EDC/IDC as alleged by the complainant allottees.”</p>
<p>Preferential Location Charges</p>	<p>Para 30 (vi): “The authority observes that even if the respondent has charged PLC from the complainant-allottees, they should have submitted the proper details within the prescribed time. The same has not been complied with accordingly. The respondent-builder to charge strictly as per agreement only in respect of units situated with PLC and not for non-PLC units.”</p>



VAT and Labour cess	Para 30 (i): "The developer could not factor both labour cess and VAT in the basic price of the flat as the actual demand for both the taxes was raised at a later stage by the State Government. Thus, the demand is valid, legal and legitimate."
External Electrification Charges	Para 30 (vii): "As per the findings of the report, there is also an issue that came across before the Commissioner that whether the respondent has taken more amount from the allottees, compared to what has been demanded/deposited with the power utilities department for providing external electrification. It is observed that it is an amount charged by the developer only to setup the infrastructure for bringing electricity to the apartment."

40. In view of the above findings, the offer of possession doesn't contain illegal demands and hence the offer of possession dated 21.07.2018 is said to be valid.
41. 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 complainants after obtaining occupation certificate from competent authority on 21.07.2018. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants 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., 17.06.2016 till the expiry of 2 months from the date of offer of possession (21.07.2018) plus two months (i.e., 21.09.2018) and further allottee shall be liable to pay outstanding dues along with interest at equitable rate which were finally settled by the committee appointed by this Authority in CR/279/2018

42. 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., 17.06.2016 till offer of possession plus two months (i.e., 21.09.2018), at the prescribed rate i.e., 10.95 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority

43. 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., 10.95% p.a. for every month of delay on the amount paid by the complainants to the respondent after adjustment of DPC already paid, if any as per possession notice from the due date of possession 17.06.2016 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.
- ii. The complainants are directed to pay outstanding dues along with interest at equitable rate which were finally settled by the committee, if any, after adjustment of interest for the delayed period.
- iii. The respondent is directed to handover the allotted unit within 30 days of this order.
- iv. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 15% 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.

44. Complaint stands disposed of.
45. File be consigned to the Registry.


Sanjeev Kumar Arora

(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2024

HARERA
GURUGRAM