

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

**Complaint no.** 4141 of 2023  
**Date of filing complaint** 22.09.2023  
**Date of first hearing** 20.12.2023  
**Date of decision** 16.10.2024

1. Anuja Gupta  
2. Ratnesh Gupta  
**Both Resident of:** 5369 Eaglebrook Terrace,  
Dublin, CA 94568

**Complainants**

**Versus**

M/s Spaze Towers Pvt Ltd  
**Regd. office:** Spazedge Sector-47, Gurugram-Sohna  
Road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Ms. Aditi Mishra Advocate

Complainants

Mr. Harshit Batra 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.	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.	Allotment Letter	03.10.2013 (Page 25 of complaint)
7.	Date of execution of agreement	06.12.2017 (Page 38 of complaint)
8.	Unit no.	G-093, 9 <sup>th</sup> floor, tower G (page no. 42 of complaint)
9.	Unit measuring	2720 sq. ft. [page no. 34 of complaint]
10.	Possession clause	<b>Clause 28(a)</b> <i>"Time of handing over of possession</i> <i>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 &amp;</i>



		<i>complete in phases and will be handed over to the Allottee of different Block / Towers as and when completed."</i> <b>(Emphasis supplied)</b> [page no. 52 of complaint]
11.	Due date of possession	06.06.2021 (Calculated to be 42 months from the date of signing of the agreement) <i>*Inadvertently the grace period of 6 months was allowed and accordingly, due date was mentioned to be 06.12.2021 in POD dated 21.08.2024. The grace period is not pleaded by the respondent and therefore, disallowed.</i>
12.	Basic sale consideration	Rs. 88,12,693/- (As per payment plan on page no. 65 of complaint)
13.	Total amount paid by the complainant	Rs.81,04,202/- (As per statement of account dated 20.02.2024 on page 137 of reply)
14.	Notice of offer of permissive possession	08.11.2017 (page 118 of complaint)
15.	Occupation certificate dated	20.07.2018 (page 80 of reply)
16.	Offer of Possession	21.07.2018 (page 82 of reply)

**B. Facts of the complaint:**

3. The complainant has made the following submissions:

- a) That the real estate project "Privy the Address" was launched in the year 2011 and came to the knowledge of the complainants through the authorised representative of the respondent.
- b) That the complainants along with Mr. Awanish Kumar Dev (brother of complainant Mrs. Anuja Gupta) submitted application form dated 17.03.2011 for allotment of a residential unit in the project. At the time of booking, it was promised and assured by the respondent's representative that possession of the unit will be offered within 36 months.
- c) That some unforeseen circumstances took place, and the third allottee, namely Mr. Awanish Kumar Dev left for his heavenly abode and same was communicated via telephonic conversation. Subsequently, vide allotment



letter dated 03.10.2013, the complainants and late Awanish Kumar Dev were allotted unit no. G-093, on 9<sup>th</sup> floor in tower G of the said project, admeasuring super area of 2532 sq. ft. for a total consideration of Rs.79,23,626/- inclusive of EDC, IDC, PLC, car parking and club membership charges.

- d) That the respondent used to send all communications to the address of third owner Mr. Awanish Kumar Dev which was a rented flat and after his demise, same was unoccupied. Complainants requested the respondent to change the correspondence address but the same was not addressed. Complainants kept on sending reminders for change of address and to change name in allotment letter but could not get satisfactory reply for a long period of time. After much perusal, respondent sent the BBA to the complainants US address. The complainants signed the BBA and sent it back to respondent for their signature. Complainant again raised grievances on 27.04.2014 via email and requested to send signed BBA to their US address and also raised grievances regarding unjustified interest charged on them. It was informed by respondent that signature of third allottee is missing in copy of BBA via email dated 28.04.2014 to which the complainants replied that third allottee is no more. On 30.04.2014, complainants received email from respondent that they can only execute BBA if the death case formalities are complete. It took 3 years for the respondent to complete the necessary formalities, and they kept on asking for one or the other documents. The respondent also levied a heavy interest @18% p.a. of Rs.7,43,482/-. The respondent even sent an e-mail dated 13.03.2016 stating that file will be processed only after payment of outstanding dues which are in nature of interest. The complainants finally sent an email dated 20.06.2017 to complete the formalities at the earliest and deliver the signed BBA and correct ownership details.



- e) That even after collecting huge amount of money from the complainants, respondent delayed the execution of buyer agreement for more than a year. The buyer's agreement was executed between the parties on 06.12.2017.
- f) That as per clause 28 of the agreement, the respondent promised to deliver the possession of the unit within 42 months of execution of builder buyer agreement i.e., by 06.06.2021. The complainants waited for possession for a long period of time. However, the respondent delayed the delivery of possession. Despite several calls and other correspondences, the respondent failed to give a satisfactory response to the queries and concerns of the complainants.
- g) That after a delay of more than 3 years, the respondent vide letter dated 08.11.2017 informed the complainant that permissive possession may be delivered once complete payment of outstanding dues is realized. The said letter was sent without obtaining occupation certificate.
- h) That in the said letter dated 08.11.2017, the respondent raised several illegal demands which were disputed by the complainants. The complainants even raised their grievances regarding the additional charges in offer of permissive possession letter.
- i) That the complainants after losing all the hope approached the Authority and filed a complaint along with the other allottees, Privy 93 Owners Association versus M/s Spaze Towers Pvt. Ltd. Bearing no. 279 of 2018 in May 2018 as the respondent was demanding charges which were not part of agreements executed between the parties and also demanded charges on the basis of increased super area (2720 sq. ft.) and even failed to provide delay possession charges to the complainants.
- j) That offering possession by the respondent on payment of charges which the buyer is contractually not bound to pay and are unreasonable as per the law laid down, cannot be considered to be a valid offer of possession.



All the issues pertaining to additional charges and demand against the increased super area has been raised in complaint no. 279 of 218.

- k) That the complainant was offered possession vide offer of possession letter dated 21.07.2018 but same accompanied with additional demands, hence amounting to invalid offer of possession in light of orders passed by this authority in complaint case no. 1981 of 2018 titled as, "Gurpreet Singh Walia versus Emaar MGF Land Limited."
- l) That the respondent has violated Section 11 of the Act, 2016 and according to Sections 18(1) and 19(3) of the Act read with Rule 15 of the Haryana RERA Rules, 2017, the respondent is liable to pay the allottee interest for delaying the possession in violation of the terms of the agreement till the date of actual possession.
- m) That 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)and the Hon'ble Appellate Tribunal remanded back the matter to this Authority vide its order dated 15 11.2019. The 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."*

- n) That the complainants are thus filing the present complaint in compliance of orders dated 31.01.2023.

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

4. The complainant has sought the following relief(s):
- I. Direct the respondent to pay delay possession charges from the due date of possession till handing over of possession at prescribed rate of interest i.e., MCLR + 2%.
  - II. Direct the respondent to offer a valid possession and handover actual vacant and physical possession of the unit.



III. Direct the respondent to charge interest for delay payment only at prescribed rate of interest and refund the excess amount of interest charged by the respondent along with interest.

IV. Direct the respondent to pay litigation charges of Rs.1,00,000/-.

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 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 of a unit and were consequently allotted unit no. G-093, 9<sup>th</sup> floor, tower G having a tentative super area of 2532 sq. ft. vide allotment letter dated 03.10.2013.
- b) That after the allotment of the unit in favour of the complainants, a builder buyer agreement dated 06.12.2017 was executed between the parties. The complainants after being fully satisfied with the terms and conditions of the agreement, voluntarily and wilfully entered into the same.
- c) That after applying for a unit in the project vide application form dated 17.03.2011, the respondent without causing any delay has sent the agreement to the complainants which is evident from letter dated 24.10.2011.
- d) That the complainants sent back the signed copies of the agreement, however it contained the signatures of only 2 allottees whereas the execution of the agreement was to be done in favour of 3 allottees. Same was duly communicated to the complainants vide email dated 28.04.2014 to which the complainant informed that due to heavenly abode of the third allottee, the agreement was signed only by the two allottees. Further, vide email dated 30.04.2014, the respondent communicated the formalities



required to be done by the complainants to proceed further and execute the agreement. The execution of agreement cannot be done unless and until all the formalities w.r.t. death of the third allottee were completed. The complainants failed to coordinate with the respondent via e-mails dated 21.03.2014, 20.05.2013 and 22.07.2014 for proper execution of the agreement. There is no delay on part of the respondent, in any manner.

- e) That as per clause 28 of the Agreement, the due date of handing over the possession of the unit was 42 months from the date of execution of the agreement. As the agreement was executed on 06.12.2017, the due date comes out to be 06.06.2021.
- f) That the respondent obtained the occupation certificate of the project on 20.07.2018. A letter for the permissive possession dated 03.11.2017 was issued by the respondent in order to grant the permissive possession not for physically occupying the unit in question but for taking up the interior work and fit outs before actual possession. However, the possession of the unit was lawfully handed over to the complainants on 21.07.2018.
- g) That the complainants, in the present complaint has challenged the demands raised by the respondent. However, all the demands raised and charges imposed by the respondent upon the complainants are as per the agreement. The Authority, while disposing of the matter titled as "Privy Owner Association vs Spaze Towers Pvt Ltd." in complaint bearing no. 279 of 2018 of which complainant was also a part, upheld the charges demanded by the respondent.
- h) That as per the order dated 25.07.2023, the complainants are duty bound to pay all these charges however, the complainants till date miserably failed in remitting the outstanding dues in favour of the respondent. The complainants can't take the benefit of their own wrong and can't impose unreasonable allegation upon the respondent without paying the outstanding dues.



i) That the complainants are bound to pay the outstanding dues along with interest in accordance with Section 19(6) and Section 19(7) of the Act, 2016. Further, the respondent is nowhere liable to pay delay possession charges to the complainants as the unit is already offered to the complainants before the due date of handing over of possession of the unit and remitting the payment of outstanding dues has occurred on part of the complainants.

7. All other averments made in the complaint were denied in toto.

8. 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:**

9. 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**

10. 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**

11. 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."*

12. 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 relief sought by the complainant.**

**F.I Direct the respondent to pay delay possession charges from the due date of possession till handing over of possession at the prescribed rate of interest i.e., MCLR + 2%.**

13. In the present complaint, the grievance of the complainants is that the respondent has failed to handover the physical possession and are seeking interest for delay in handing over possession. However, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them 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, —***

***(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***

***.....***

***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."***

14. The counsel for the complainants during the proceedings dated 21.08.2024 pleaded that the due date of handing over of possession should



be calculated from the date of allotment letter, i.e., from 03.10.2013 read with the payment plan rather than from the date of execution of the builder buyer's agreement in terms of the orders of Appellate Tribunal in Mapsko Builder Pvt. Ltd. Versus Micro Traders Pvt. Ltd.

15. The Authority, after careful consideration, finds that the complainants reliance on the cited orders does not align with the factual matrix of the present case. Also, the allotment letter dated 03.10.2013 contained no specific date as to delivery of possession and was further superseded by a buyer's agreement dated 06.12.2017 duly executed by both the parties. Further, 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:

***"Time of handing over of possession***

*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."*

***(Emphasis supplied)***

16. Therefore, the due date of handing over the possession to the complainants has to be calculated to be 42 months from the date of execution of the agreement, which comes out to be 06.06.2021. However, it is pertinent to note that the occupation certificate with respect to the project in which unit of complainants is situated was obtained on 20.07.2018 and thereafter, the possession was offered to the complainants on 21.07.2018, i.e., much before the expiry of due date of possession being ✓



06.06.2021. Therefore, keeping in view the aforesaid factual and legal provisions, since there is no delay on part of the respondent in handing over the possession of the allotted unit to the complainants, therefore, no case of delay possession charges is made out. Thus, no direction to this effect can be given.

**F.II Direct the respondent to offer a valid possession and handover actual vacant and physical possession of the unit.**

17. The respondent has obtained the occupation certificate from the competent authority on 20.07.2018 and offered the possession of the allotted unit vide letter dated 21.07.2018.

18. As per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the allotted unit as per specification of the buyer's agreement entered into between the parties and the complainants are further directed to take possession of the allotted unit after clearing all dues within a period of 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority and failing which legal consequences as per provisions of the Act will follow.

**F.III Direct the respondent to charge interest for delay payment only at prescribed rate of interest and refund the excess amount of interest charged by the respondent along with interest.**

19. 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;"*

20. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. 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., 16.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges. The excess amount charged beyond the prescribed rate of interest i.e., 11.10 %, if any shall be refunded back to the complainants.

**F.IV Direct the respondent to pay litigation charges of Rs.1,00,000/-.**

22. The complainants are also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**G. Directions of the Authority**


23. 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 promoter as per the function entrusted to authority under Section 34(f):

- I. In view of the findings recorded by the authority above, no case of delay possession charges is made out. However, the respondent is directed to handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties and the complainants are further directed to take possession of the allotted unit after clearing all dues within a period of 30 days and failing which legal consequences as per provisions of the Act will follow.
  - 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., 11.10% 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(z a) of the Act. The excess amount charged beyond the prescribed rate of interest i.e., 11.10 %, if any shall be refunded back to the complainants after adjustment/refund, if any. The respondent is directed to issue a revised statement of account after adjustment of the same. The complainant are directed to pay outstanding dues if any remains within a period of next 30 days.
  - III. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
24. Complaint stands disposed of.
25. File be consigned to the Registry.

**Dated: 16.10.2024**

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