

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

Complaint no. : 1160 of  
2021  
Date of filing complaint: 10.03.2021  
First date of hearing : 20.04.2021  
Date of decision : 14.10.2021

Neeru Bhatia R/o: D-14 A/2, Flat no. 7, Model Town, New Delhi-110009	<b>Complainant</b>
Versus	
M/s Spaze Towers Private Limited R/o: Spazedge, Sector 47, Gurgaon Sohna Road, Gurgaon, Haryana	<b>Respondent</b>

<b>CORAM:</b>	
Shri Samir Kumar	<b>Member</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Sanjeev Sharma (Advocate)	Complainant
Sh. J.K Dang (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 provision of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. No	Heads	Information
1.	Project name and location	"Spaze corporate park" Sector-69-70, Gurugram
2.	Project area	3.956 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	134 of 2008 dated 28.06.2008 valid upto 27.06.2020
5.	Name of licensee	Wellworth Housing Pvt. Ltd. and Raj Realtech Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Registered</b> vide registration no. 393 of 2017 dated 22.12.2017 and valid up to 30.06.2020
7.	Unit no.	140, 1st Floor, Tower A
8.	Unit measuring (super area)	500 sq. ft.
9.	Date of allotment letter	N/A
10.	Date of execution of builder buyer agreement	25.11.2011 [Page 17 of the complaint]
11.	Total sales consideration	Rs.40,13,010/- (As per statement of accounts dated 14.09.2020 on page-30 of the complaint)

12.	Total amount paid by the complainant	Rs.42,74,950/- (As per statement of accounts dated 14.09.2020 at page 32 of the complaint)
13.	Due date of delivery of possession <i>Clause 14: That the possession of the said premises is proposed to be delivered by the developer to the allottee within three years from the date of this agreement.</i>	25.11.2014 Calculated from the date of agreement
14.	Possession letter	10.09.2020 [Page 37 of the complaint]
15.	Occupation certificate	28.01.2020
16.	Delay in delivery of possession till date of offer of possession + 2 months ie. 10.11.2020	5 years 11 months 17 days

**B. Facts of the complaint:**

3. That the respondent and the complainant entered into a builder buyer agreement on 25.11.2011 wherein the complainant was allotted unit no. 140, 1st floor admeasuring 500 sq. ft. later on increased to 524 sq. ft. for a total consideration of Rs. 40,13,010/- inclusive of possession charges along with all the statutory taxes. That as per clause 14 of the agreement, the possession of the unit in question was to be handed over within 3 (three) years from the date of the said agreement. That on the contrary, the vacant and peaceful possession of the commercial unit was to be handed over lastly by 25.11.2014.
4. That it is pertinent to note that as per the statement of account dated 14.09.2020 the complainant has made a total payment of Rs. 42,74,950/-

5. That as per the buyer agreement the possession of the unit in question was to be handed lastly by November 2014, however the vacant and peaceful possession of the unit was handed over to the complainant on 10.09.2020 after a delay of 8 year 9 months and 17 days to the complainant without adjusting any delay possession charges by the respondent.

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

6. The complainant has sought following relief(s):
- i. Direct the respondents to pay interest for delay possession charges at prevailing rate of interest.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. Notice to the promoter/respondent through speed post and through e-mail address ([info@spaze.in](mailto:info@spaze.in)) was sent; the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within stipulated time period. However, the respondent represented through Sh. Chander Shekhar DGM on behalf of the respondent company have marked attendance on 08.07.2021 and his advocate have marked attendance on 27.08.2021 and 14.10.2021. This is a clear evidence that the service was completed. Despite this the respondent has not chosen to file any reply.

**D. Jurisdiction of the authority:**

9. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

#### **D. 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 entire Gurugram District for all purpose 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.

#### **D. II Subject matter jurisdiction**

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

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

**E. Findings regarding relief sought by the complainant:**

**Relief sought by the complainant:** Direct the respondent to pay interest for delay possession charges at prevailing rate of interest.

**E.1 Admissibility of delay possession charges:**

10. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

***Section 18: - Return of amount and compensation***

*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*

11. 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 complainant 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 are not only vague and

uncertain but so heavily loaded in favour of the promoter and against the allottee that even formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

12. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

13. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his 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 allottee is left with no option but to sign on the dotted lines.
14. **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 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.*

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
16. 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., 14.10.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
17. 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;"*

Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

18. On consideration of the documents available on record and submissions made by both the parties, 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 14 of the unit buyer's agreement executed between the parties on 25.11.2011, possession of the booked unit was to be delivered on or before 25.11.2014. occupation certificate has been received by the respondent on 28.01.2020 and the possession of the subject unit was taken by the the complainant on 10.09.2020. Copies of the same have been placed on record. 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 25.11.2011 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement

dated 25.11.2011 to hand over the possession within the stipulated period.

19. 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 28.01.2020. The possession of the subject unit was taken by the the complainant on 10.09.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. 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. 25.11.2014 till the expiry of 2 months from the date of offer of possession (10.09.2020) which comes out to be 10.11.2020.
20. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 25.11.2014 till the expiry of 2 months from the date of offer of possession (10.09.2020) which comes out to be 10.11.2020 as

per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.


**F. Directions of the authority:**

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 25.11.2014 till 10.11.2020 i.e. expiry of 2 months from the date of offer of possession (10.09.2020). 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.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iv. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.

The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020


22. Complaint stands disposed of.
23. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 14.10.2021**

  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Judgement uploaded on 22.11.2021