BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**1454 of 2021**
Date of filing complaint:		**16.03.2021**
First date of hearing	:	**20.04.2021**
Date of decision	:	**15.03.2022**

	1.Rajni Mehta 2. Shubra Mehta 3. Nitin Mehta All R/o: H.no: 706, Sector 17, HUDA, Jagadhari, Yamuna Nagar, Haryana	**Complainants**
	Versus	
	M/s Spaze Towers Private Limited R/o: Spazedge, Sector 47, Gurgaon Sohna Road, Gurgaon, Haryana	**Respondent**

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Kamal Jeet Dahiya (Advocate)	Complainants
Sh. J.K Dang (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 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no	Heads	Information
1.	Project name and location	"Spaze privy at 4" Sector-84, village sihi, Gurugram, Haryana.
2.	Project area	10.812 acres (licensed area as per agreement 10.51 acres)
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	26 of 2011 dated 25.03.2011valid up to 24.03.2019
5.	Name of licensee	Smt. Mohinder Kaur and Ashwini Kumar
6.	RERA Registered/ not registered	**Registered vide registration no. 385 of 2017 dated 14.12.2017**
	RERA Registration valid up to	**31.06.2019**
	Extended vide extension no.	**06 of 2020 dated 11.06.2020**
	Extension no. valid up to	**30.12.2020**
7.	Allotment letter	19.03.2012 (page 30 of complaint)
8.	Subsequent allottee	08.11.2013 (page 67 of complaint)

9.	Unit no.	Unit no. 091, floor 9, tower B1 admeasuring 1745 sq.ft. (page 30 of complaint)
10.	New area	1918sq.ft. (annexure R16, page 187 of reply)
11.	Date of approval of building plan	06.06.2012 [page 88 of the reply]
12.	Date of execution of builder buyer agreement	26.09.2013 [Page 34 of the complaint]
13.	Total sale consideration	Rs. 84,98,136/- (as per statement of account dated 06.07.2021 at page 151 of reply)
14.	Total amount paid by the complainants	Rs. 75,51,805/- (as per statement of account dated 06.07.2021 at page 153 of reply)
15.	Payment plan	Construction linked payment plan (Page 31 of the complaint)
16.	Due date of delivery of possession *Clause 3(a): The developer proposes to hand over the possession of the apartment within a period forty-two (42) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this agreement whichever is later*	26.09.2017 Calculated from date of execution of agreement **(Grace period is allowed)**
17.	Offer of possession	01.12.2020 (page 187 of reply)
18.	Occupation Certificate	11.11.2020 [Page 184 of the reply]
19.	Delay in delivery of possession from the due date till the date of offer of possession plus two months i.e.,01.12.2020 + 2 months (01.02.2021)	3 years 4 months 6 days

20.	Amount already paid by the respondent in terms of the buyer's agreement as per offer of possession dated 01.12.2020	Rs. 2,69,089/- towards compensation for delay in possession. Rs. 43,625/- towards GST Input credit details.

B. Facts of the complaint:

3. The complainants have submitted that the original allottee had booked the said apartment in the said project and had paid the amount of Rs. 18, 68,691/-. The respondent had allotted the same apartment to the complainants on 19.03.2012. The detail of the apartment was no. 91 on 9th floor in tower B1 having area of 1745 sq.ft. @3480 per sq.ft. The original allottee had transferred the said apartment to the first allottee i.e., Mr. Rohit Wahie, through endorsement vide dated 18.10.2012. Moreover, the first allottee had complied the terms of the booking amount and had paid Rs. 42,17,562/- out of basic sale consideration of Rs. 60,72,600/- i.e., more than 65% and the respondent has acknowledged the same at page no. 6, clause 2(f) of the agreement, it was specifically mentioned that the project would be completed within 42 months along with 6 months of grace period from the date of execution of the said agreement. So, the stipulated date of handing over the possession was 26.03.2017 and the after-grace period was 26.09.2017. The respondent is in the business of real estate development business, thus the company, in their usual course of business, purchase the land, as joint venture, entered into a collaboration agreement, marketing and development agreement etc. with various stakeholders including but not limited to land

owners. The respondent is in the business of development, marketing and sale of the residential and commercial projects.

4. It mentioned in clause 3(a) page 8 of the said agreement that the respondent will hand over the possession of the allotted apartment within 42 months excluding 6 months of grace period. The total consideration of the said apartment was Rs. 75,71,980/- towards the sale price for purchase of the said apartment including EDC, IDC, PLC, club membership charges and one covered car parking charges etc.

5. That the first allottee i.e., Mr. Rohit Wahie had further transferred the flat to the instant complainants i.e, Shubra Mehta, Rajni Mehta and Nitin Mehta. Such transfer was acknowledged and endorsed by the respondent. The complainants had dream to have their own house and to meet the financial requirement, they jointly put huge amount of money into one apartment in the said project. But the respondent has crushed all their dreams by grabbing almost 100% money in year 2016, by wrongly demanding money on the pretext of internal plaster work but in actual there was no development work carried out by the respondent in year 2016, as they have offered the possession in December 2020, which is axiomatic to say that, respondent has cheated and wrongly grabbed money from complainants, which qualifies for unfair trade practice and fraud. The complainants had paid each and every demand as per the demand raised by the respondent till December 2016. The complainants have paid Rs. 75,51,805/- till Dec, 2016 acknowledged by the respondent himself in account statement dated 23.01.2021. The respondent has asked for another installment on the name of the completion of flooring within the

apartment in 2016 but till date unable to handover the possession as per the rules and regulation of RE (R& D) Act, 2016.

6. The complainants had dreamed to have their own house and to fulfil that dream, they availed loan from the HDFC Bank and paid a hefty amount of interest on the sanctioned load amount. The HDFC bank has sanctioned the loan amount of Rs. 40,00,000/-. The total consideration of the said apartment was Rs. 75,61,980/- towards the sale price for purchase of the said apartment including EDC, IDC, PLC, car parking, club membership, IFMS and other additional charges. The complainants have paid Rs. 75,51,805/- as per the demand of the respondent. The complainants have paid the PLC charges on the name of green facing/park facing but at the actual site of the allotted apartment there is nothing as per assurances made by the respondent. It is stated that as per the demand letters, charges on the name of PLC has been asked by the respondent but on the actual site, the apartment is facing the ordinary ground which was not disclosed by the respondent. The respondent arbitrarily demanded the club membership charges without completing the construction work of the said project. The complainants have already paid such demands wherein they lodged their objections against PLC, club membership charges as there is difference between the assures given by the respondent and at actual site of the project, so they are not liable to pay the said arbitrary charges.

7. That the respondents offered the possession of the said unit to the complainants on 01.12.2020 i.e., after the delay of more than 3 years which was received by them on 01.12.2020 through e-mail only. They approached the respondent by e-mail dated 06.12.2020

regarding the various issues of delay in offer of possession, no intimation of the changes in layout plan thereof, changes in super area affected the complainant's basic sale consideration and asked to show the copy of OC along with relevant approvals from the concerned department etc. It is pertinent to mention that no response has been given by the respondent till date which proves that it has violated the provisions of section 19(1) and 19(2) of the Act, 2016. However, they had waited for more than 5 years after the due date of possession but failed to get the allotted apartment in the said project till date, as per the terms and conditions of the agreement. The respondent was not serious in taking into consideration the concerns raised by them i.e., bonafide allottees, who paid each and every payment within the prescribed time period, rather much before the prescribed time.

8. The respondent also issued a notice for unilateral offer of possession and for payment of outstanding dues. It is pertinent to mention respondent has increased the super area from 1745 sq.ft. to 1918 sq.ft. unilaterally i.e., without consent of the complainants. It is pertinent to mention that payment plan issued by the respondent was construction linked payment plan and thus, the complainants were obligated to pay as per the construction raised by the respondent of the allotted apartment. However, till 2016, the respondent had received almost 100% of amount against the work and development carried out by it, which in actual was never carried out and offered possession only in Dec 2020. Hence, it seems very reasonable to arrive at the conclusion that respondent did not carry out the casting work of slab of floors, as shown through various demand letters. Thus, such demand letters were

wrong and false and those were created only to extract money from the complainants on wrong pretext. It is pertinent to mention since the agreement was construction linked payment plan so, strict time lines has to be observed by both the parties to fulfil their liabilities as per the terms and conditions as stipulated in the agreement.

9. The complainants had always fulfilled their liability in respect of the payment of amount for the said unit. They have always paid the demanded amount on respective time. They had paid more than 65% of amount on the demand of the respondent which was paid before entering into the said agreement. They paid Rs. 42,17,562/- till August 2014. It is pertinent to mention that as per section 13(1) of the Act, 206, a promoter is not entitled to accept a sum more than 10% of the cost of the plot as an advance payment from a person within entering into the agreement for sale.

10. That as per clause 2(f) of the agreement, it was specifically mentioned that the project would be completed within 42 months with 6 months of grace period from the date of execution of the said agreement. So, the stipulated date of handing over the possession was 24.09.2017. However, the respondent offered a unilateral possession letter to the complainants on 01.12.2020 i.e., after the delay of more than 3 years and 3 months from the date of commitment. It is relevant to mention here that the respondent again demanded for some more amount vide such possession letter. The respondent demanded for Rs. 12,54,862/- as due amount and unilaterally increased the total sale consideration of Rs. 75,96,780/- from Rs. 75,61,980/- due to area increase of the said allotted apartment. The respondent failed to explain the basis of charges levied in the said letter of offer of possession. The

complainants were shocked to know about such huge outstanding amount which was illegally demanded by the respondent and asked the same queries by mail dated 06.12.2020. The respondent has neither reverted nor has given any satisfactory reply for raising such unilateral demands.

11. It is pertinent to mention that the complainants had booked the said apartment in 2012 and the project was not in the stage of any progress within the period of 8 years from the date of the booking. Instead of taking quick action over the construction, the officials of the respondent's company were forcing them to make the entire payment. They had requested various time to the respondent, to provide update, regarding the status of construction as well as handing over the possession of the said project within assured time period but all in vain. They also shocked to know the increased area of the allotted apartment after completion of the said project due to which increase in total sale consideration amount for which they had no prior intimation and also raised the issue for delay compensation which the respondent is liable to pay them. Furthermore, they also requested to provide the information regarding GST, VAT, onetime additional charges which was charged by the respondent. But the respondent has never gave any response over such requests of the complainants. It is pertinent to mention that the respondent had charged Rs. 3,00,000/- for allotment of car parking space exclusive of the basic consideration which is against the settled principles of law and natural justice.

C. Relief sought by the complainants:

12. The complainants have sought following relief(s):

i. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the actual handing over the possession on amount paid by complainants and handover the possession.

ii. To set aside or waive off the arbitrary charges levied in the demand letter dated 01.12.2020.

iii. To set aside or waive of the charges levied for PLC as allotted unit is facing the ordinary ground.

iv. To return or adjust the amount levied for car parking i.e., Rs. 3,00,000/- in the final demand letter.

D. Reply by respondent

i. That the complaints have not maintainable in law or on facts. It is submitted that no violation of provisions of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, has been committed by the respondent. The institution of the present complaint constitutes gross misuse of process of law.

ii. That the project of the respondent is an "ongoing project" under RERA and the same has been registered under the Act, 2016 and rules, 2017. Registration certificate bearing no. 385 of 2017 granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-179/2017/2320 dated 14.12.2017 has been appended with this reply as annexure R1. It is submitted that the registration was valid till 31.06.2019. An application for extension for registration of the said project submitted by the respondent has been appended as annexure R2. The present

complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 11th of September 2014 as is evident from the submissions made in the following paras of the present reply.

iii. That apartment bearing no. B1-091, situated on the 9th floor, admeasuring 1745 sq.ft. of super area approx.., in the residential group housing society known as Privy AT4, situated in Sector 84, Gurugram, Haryana was provisionally allotted in favour of Rajender Kumar Yadav and Veena Yadav. The original allottees transferred the apartment in favour of Rohit Wahli. The buyer's agreement was executed between the second allottee and the respondent on 26.09.2013. The complainants purchased the apartment in resale from the second allottee. It is pertinent to mention herein that at the time of purchase in resale by the complainants, the buyer's agreement had already been executed by the second allottee and hence the complainants had the full opportunity to study the terms and conditions of the buyer's agreement in detail and understand the implications of its terms and conditions. It was only after the complainants duly accepted the terms and conditions of the buyer's agreement that the complainants proceeded to purchase the apartment in question, in resale from the second allottee. It is respectfully submitted that the contractual relationship between the complainants and respondent is governed by the terms and conditions of the said agreement. The said agreement was voluntarily and consciously executed by the complainants. Hence, the complainants are bound by the

terms and conditions incorporated in the said agreement in respect of the said unit. Once a contract is executed between the parties, the rights and obligations of the parties are determined entirely by the covenants incorporated in the said contract. No party to a contract can be permitted to assert any right of any nature at variance with the terms and conditions incorporated in the contract.

iv. That the complainants have completely misinterpreted and misconstrued the terms and conditions of said agreement. So far as alleged non-delivery of physical possession of the apartment is concerned, it is submitted that in terms of clause 3(a) of the aforesaid contract, the time period for delivery of possession was 42 months excluding a grace period of 6 months from the date of approval of building plans or date of execution of the buyer's agreement, whichever is later. It is pertinent to mention that the application for approval of building plans was submitted on 26.08.2011 and the approval for the same was granted on 06.06.2012. Therefore, the time period of 42 months and grace period of 6 months as stipulated in the contract has to be calculated from 06.06.2012 subject to the provisions of the buyer's agreement. It was further provided in clause 3 (b) of said agreement that in case any delay occurred on account of delay in sanction of the building/zoning plans by the concerned statutory authority or due to any reason beyond the control of the developer, the period taken by the concerned statutory authority would also be excluded from the time period stipulated in the contract for delivery of physical possession and consequently, the period for delivery of physical possession

would be extended accordingly. It was further expressed therein that the allottee would not be entitled to claim compensation of any nature whatsoever for the said period extended in the manner stated above.

v. That for the purpose of promotion, construction and development of the project referred to above, a number of sanctions/ permissions were required to be obtained from the concerned statutory authorities. It is submitted that once an application for grant of any permission/sanction or for that matter building plans/zoning plans etc. is submitted for approval in the office of any statutory authority, the developer ceases to have any control over the same. The grant of sanction/approval to any such application/plan is the prerogative of the concerned statutory authority over which the developer cannot exercise any influence. As far as respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authorities for obtaining of various permissions/sanctions.

vi. In accordance with contractual covenants incorporated in said agreement, the span of time, which was consumed in obtaining the following approvals/sanctions deserves to be excluded from the period agreed between the parties for delivery of physical possession: –

S. no.	Nature of Permission/ Approval	Date of submission of application for grant of Approval/sanction	Date of Sanction of permission/grant of approval	Period of time consumed in obtaining permission/approval
1	Environment Clearance	30.05.2012	Re-submitted under ToR (Terms of reference) on 06.05.17	4 years 11 months

2	Environment Clearance re-submitted under ToR	06.05.2017	04.02.2020	2 Years 9 months
3	Zoning Plans submitted with DGTCP	27-04-11	03.10.2011	5 months
4	Building Plans submitted with DTCP	26.08.2011	06.06.2012	9 months
5	Revised Building Plans submitted with DTCP	05.02.2019	25.02.2020	12 months
6	PWD Clearance	08.07.2013	16.08.2013	1 month
7	Approval from Deptt. of Mines & Geology	17.04.2012	22.05.2012	1 month
8	Approval granted by Assistant Divisional Fire Officer acting on behalf of commissioner	18.03.2016	01.07.2016	4 months
9	Clearance from Deputy Conservator of Forest	05.09.2011	15.05.2013	19 months
10	Aravali NOC from DC Gurgaon	05.09.2011	20.06.2013	20 months

vii. That from the facts and circumstances mentioned above, it is comprehensively established that the time period mentioned hereinabove, was consumed in obtaining of requisite permissions/sanctions from the concerned statutory authorities. It is respectfully submitted that the said project could not have been constructed, developed and implemented by respondent without obtaining the sanctions referred to above. Thus,

respondent was prevented by circumstances beyond its power and control from undertaking the implementation of the said project during the time period indicated above and therefore the same is liable to be excluded and ought not to be taken into reckoning while computing the period of 42 months and grace period of 6 months as has been explicitly provided in said agreement. Since, the complainants has defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner alleged by the complainants. In fact, the total outstanding amount including interest due to be paid by the complainants to the respondent on the date of dispatch of letter of offer of possession dated 01.12.2020 was Rs.15,06,047/-. Although, there was no lapse on the part of the respondent, yet the amount of Rs.2,07,560/- was credited to the account of the complainants. Further, the complainants have also been provided GST credit amounting t to Rs. 43,625/-.

viii. It is submitted that there is no default on part of respondent in delivery of possession in the facts and circumstances of the case. The interest ledger depicting periods of delay in remittance of outstanding payments by the complainants as per schedule of payment incorporated in the buyer's agreement has been annexed as annexure R16. Thus, it is comprehensively established that the complainants have defaulted in payment of amounts demanded by respondent under the buyer's agreement and therefore, the time for delivery of possession deserves to be extended as provided in the buyer's agreement. It is submitted that the complainants consciously and maliciously chose to

ignore the payment request letters and reminders issued by respondent. It needs to be appreciated that the respondent was under no obligation to keep reminding the complainants of their contractual and financial obligations. The complainants had defaulted in making timely payments of instalments which was an essential, crucial and indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees defaulted in making timely payments as per schedule of payments agreed upon, the failure has a cascading effect on the operations and the cost of execution of the project increased exponentially. The same also resulted in causing of substantial losses to the developer. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that respondent despite defaults committed by several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case.

ix. That without admitting or acknowledging in any manner the truth or legality of the allegations put forth by the complainants and without prejudice to any of the contentions of the respondent, it is submitted that only such allottees, who have complied with all the terms and conditions of the buyer's agreement including making timely payment of instalments are entitled to receive compensation under the buyer's agreement. In the case of the complainants, he had delayed payment of instalments and consequently, are not eligible to receive any compensation from the respondent as alleged. It is pertinent to mention that respondent had submitted an application for grant

of environment clearance to the concerned statutory authority in the year 2012. However, for one reason or the other arising out of circumstances beyond the power and control of respondent, the aforesaid clearance was granted by Ministry of Environment, forest & climate change only on 04.02.2020 despite due diligence having been exercised by the respondent in this regard. No lapse whatsoever can be attributed to respondent insofar the delay in issuance of environment clearance is concerned. The issuance of an environment clearance referred to above was a precondition for submission of application for grant of occupation certificate.

x. It is further submitted that the respondent left no stone unturned to complete the construction activity at the project site but unfortunately due to the outbreak of COVID-19 pandemic and the various restrictions imposed by the governmental authorities, the construction activity and business of the company was significantly and adversely impacted and the functioning of almost all the government functionaries were also brought to a standstill. Since the 3rd week of February 2020, the respondent has also suffered devastatingly because of outbreak, spread and resurgence of COVID-19 in the year 2021. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, in the interregnum, large scale migration of labour had occurred, and availability of raw material started becoming a major cause of concern. Despite all the odds, the respondent was able to resume remaining

construction/ development at the project site and obtain necessary approvals and sanctions for submitting the application for grant of occupation certificate.

xi. The hon'ble authority was also considerate enough to acknowledge the devastating effect of the pandemic on the real estate industry and resultantly issued order/direction to extend the registration and completion date or the revised completion date or extended completion date by 6 months & also extended the timelines concurrently for all statutory compliances vide order dated 27th of March 2020. It has further been reported that Haryana government has decided to grant moratorium to the realty industry on compliances and interest payments for seven months to September 30 for all existing projects. It has also been mentioned extensively in press coverage that moratorium period would imply that such intervening period from March 1, 2020, to September 30, 2020, would be considered as "zero period".

xii. That the building in question had been completed in all respects and was very much eligible for grant of OC. However, for reasons already stated above, application for issuance of OC could not be submitted with the concerned statutory authority by the respondent. it is submitted that the respondent amidst all the hurdles and difficulties striving hard has completed the construction at the project site and submitted the application for obtaining the OC with the concerned statutory authority on 16.06.2020 and since then the matter was persistently pursued.

xiii. The allegation of delay against the respondent is not based on correct and true facts. The photographs comprehensively

establish the completion of construction/development activity at the spot and have been appended with this reply as annexure R10 to annexure R14. It is further submitted that occupation certificate dated 11.11.2020 has been issued by Directorate of Town and Country Planning, Haryana, Chandigarh. The respondent has already delivered physical possession to a large number of apartment owners.

xiv. That the complainants were offered possession of the unit in question through letter of offer of possession dated 01.12.2020. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities necessary for handover of the unit in question to them. However, they intentionally refrained from completion of their duties and obligations as enumerated in the buyer's agreement as well as Act.

xv. It needs to be highlighted that as per statement of account an amount of Rs. 15,84,909/- is due and payable by the complainants. The complainants have intentionally refrained from remitting the aforesaid amount to the respondent. It is submitted that the complainants have consciously defaulted in the complainant's obligations as enumerated in the buyer's agreement. The complainants cannot be permitted to take advantage of their own wrongs. The instant complaint constitutes a gross misuse of process of law. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the

complainants was to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement. It needs to be highlighted that the respondent has credited an amount of Rs. 43,625/- as GST input credit to the account of the complainants apart from delay compensation. Furthermore, an amount of Rs. 2, 07,560/- has been credited by the respondent to the account of the complainants as a gesture of goodwill. The aforesaid amounts have been accepted by the complainants in full and final satisfaction of their alleged grievances. The instant complaint is nothing but a gross misuse of process of law. Without prejudice to the rights of the respondent, delayed interest if any has to calculate only on the amounts deposited by the allottees towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees towards delayed payment charges or any taxes/statutory payments etc.

xvi. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect

of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and negation of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest of compensation beyond the terms and conditions incorporated in the buyer's agreement.t the buyer's agreement further provides that compensations for any delay in delivery of possession shall only be given to such allottees who are not in default of the agreement and who have not defaulted in payment as per the payment plan incorporated on the agreement. The complainant, having defaulted in payment of instalments, is not entitled to any compensations under the buyer's agreement. Furthermore, in case of delay caused due to non-receipt of occupation certificate or any other permissions/sanction from the competent authorities, no compensation shall be payable being part of circumstance beyond the power and control of the developer. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project, earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, cumulatively considering the facts and circumstances if the present case, no

delay whatsoever can be attributed to the respondent by the complainants. However, all these crucial and important facts have been deliberately concealed by the complainants from this hon'ble authority.

13. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

14. 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.

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 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.

E. II Subject matter jurisdiction

15. 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 complainants at a later stage.

F. Findings on the objection raised by the respondent:

F.I Objection regarding maintainability of the complaint.

16. The respondent contended that the present complaint is not maintainable as it has not violated any provision of the Act.

The authority, in the succeeding paras of the order, has observed that the respondent is in contravention of the section 11(4)(a) read with proviso to section 18(1) of the Act by not handing over possession by the due date as per the agreement. Therefore, the complaint is maintainable.

G. Findings on the relief sought by the complainants

G.I Preferential location charges

17. The complainants have sought to set aside or waiver of the charges levied for PLC as allotted unit is facing the ordinary ground. They made the payment of Rs, 2,61,750/- for green facing PLC and also made payment of Rs. 2,61,750/- for corner PLC towards the

commitment given in the buyer's agreement that the PLC shall be payable for apartment which are park/landscape facing, corner apartment, apartments on ground floor and on first to fifth floor, terrace facing and 2BHK apartments etc. The grievance of the allottees is that the unit allotted to them is not located at preferential location as stated in clause relating to preferential location charges. It is pleaded that they are not liable to pay that amount to the respondent charged illegally. However, the amount taken under the head of preferential location charges to the tune of Rs. 2,61,750/- & 2,61,750/- on account of green facing PLC, Corner PLC respectively have been charges as per terms & conditions of BBA and payment plan signed by the complainants. A reference may be made to clause 1.2 of buyer's agreement dated 26.09.2013 providing as under:

> ***"1.2 Consideration***
> ***a) Sale Price***
> *The Sale Price of the APARTMENT* ***("Sale Price")*** *payable by the APARTMENT ALLOTTEES) to the DEVELOPER inclusive of External Development Charges, infrastructure development Charges, Preferential Location Charges (wherever applicable) is* ***Rs. 7,561,980.00 (Rupees Seventy Five Lakhs Sixty On Thousand Nine Hundred Eighty Only)*** *payable by the Apartment Allottee(s) as per the Payment Plan annexed herewith as Annexure -I. In addition the Apartment Allottee agrees and undertakes to pay Service Tax or any other tax as, may be demanded by the Developer in terms of applicable laws/guidelines.*
> ***b) Preferential Location Charges (PLC) (wherever applicable)***
> *That apart from basic price the Apartment Allottee(s) shall be liable to pay fixed* ***Preferential Location Charges (PLC)*** *for certain Apartments in the Complex in case the Apartment Allottee(s) opts for any such Apartment. The PLC shall be payable for Apartment which are Park/landscape facing, Corner Apartment. Apartment on ground floor and/or on First to Fifth Floor, Terrace facing and 2BHK Apartment etc. It is further understood by the Apartment Allotte(s) that if due to change in layout plan or otherwise the Preferentially Located Apartment ceases to be preferentially located, the DEVELOPER shall be liable to refund only the amount of preferential location charges paid by the APARTMENT ALLOTTEES(S) without any*

interest and such refund shall be adjusted in the following installment or at the time of offer of possession of the Apartment as deem fit by the Developer. Conversely, if the non-preferentially located Apartment becomes Preferentially Located, the Apartment Allottee(s) shall be liable to pay such charges towards Preferential Location as decided by ***DEVELOPER at that time.***

18. It is not the case of complainants that they did not agree to pay PLC or the terms and conditions as agreed upon were not adhered to by the respondent. Even while signing payment plan dated 19.03.2012, the complainants were informed about the liability to pay these charges. So, now they cannot wriggle out from that commitment and take a plea that they are not liable to any amount on account of PLC.

G. II Car Parking (covered)

19. As far as issue regarding parking in concerned, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act. However, as far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.

20. The complainants have submitted that the respondent has illegally charged an amount of Rs. 3,00,000/- + taxes for basement covered parking which is a part of common area and has already charged for super area. It is pleaded by respondent that it is not liable to refund any amount to the complainants under the head of car parking charges. In the complaint, the respondent has charged Rs. 3,00,000/- towards covered car park as per payment plan annexed with BBA. In the instant matter, the subject unit was allotted to the

complainants vide allotment letter dated 19.03.2012 and as per the payment plan, the respondent has charged a sum of Rs. 3,00,000/- on account of car parking charges over and above the basic sale price. The cost of parking of Rs. 3,00,000/- has been charged exclusive to the basic price of the unit as per the terms of the agreement. The cost of parking of Rs. 3,00,000/- has already been included in the total sale consideration and the same has been charged as per the buyer's agreement. Accordingly, the promoter is justified in charging the same.

G.III Advance maintenance charges

14. The respondent has a right in demanding maintenance charges at the rates prescribed in the BBA at the time of offer of possession. However, the respondent shall not demand advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

G.IV Indemnity cum Undertaking

22. The authority has observed that no document has been placed on record by the respondent on the name of indemnity bond. Even if any such document has been executed by the parties, the respondent has not clarified as to why a need arose for the complainants to sign any such affidavit or indemnity cum undertaking and as to why the complainants have agreed to surrender their legal rights which were available or had accrued in favour of the original allottee. It is not the case of the respondent

that the complainants had executed that affidavit out of free will and concern. Such an undertaking/indemnity bond given by a person thereby giving up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to a suspicion. If even a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicious, the same would be deemed to be against public policy and would also amount to unfair trade practices. Therefore, this authority does not place reliance on the said affidavit/ indemnity cum undertaking in view of order dated 03.01.2020 in case titled as ***Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015***, it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion is reproduced below:

> *"**Indemnity-cum-undertaking***
>
> *30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee. Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever.*
>
> *It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The*

opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."

G. V Irrelevant demands at the time of offer of possession dated 01.12.2020.

- **Labour cess**

23. The complainants pleaded that the respondent/builder has demanded a charge of Rs 22,460/- on pretext of labour cess vide notice of possession dated 01.12.2020 which is illegal and unjustifiable and is not tenable in the eyes of law. It further stated that they approached the office of the respondent for rectification of the alleged illegal and unjustifiable demand it outrightly refused to do the same. But the respondent submitted that all the final demands raised by it are justifiable and complainants choose to ignore and not to pay the same. It is pertinent to mention here that the respondent vide offer of possession raised labour cess charge @11.71 sq.ft. totalling to the amount of Rs 22,460/-. On perusal of the BBA signed between both the parties it can be inferred that the agreement contains no such clause as to payment of labour cess charges and whereas other charges/demands raised by the respondent /builder are clearly outlined in the BBA. Therefore, the complainants are not liable to pay the labour cess charges as raised

by the respondent. Moreover, this issue has already been dealt with by the authority in complaint titled as ***Mr. Sumit Kumar Gupta and Anr. Vs. Supset Properties Private Limited (962 of 2019)*** decided on 12.03.2020, where it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charges by the respondent. The respondent is directed to withdraw the unjustified demand of the pretext of labour cess. The builder is supposed to pay a cess from the welfare of the labour employed at the site of construction and which goes to welfare boards to undertake social security schemes and welfare measures for building and other construction workers. So, the respondent is not liable to charge the labour cess.

- **External electrification charges**

24. While issuing offer of possession of the allotted unit vide letter dated 01.12.2020, besides asking for payment of amount due, the respondent/builder also raised a demand of Rs. 2,74,127/- for external electrification (including 33KV) water, sewer and meter charges with GST. It is pleaded by the respondent that as per buyer's agreement the allottee is liable to pay that amount.

25. Clause 1.2 of the buyer's agreement is reproduced below:

> ***"1.2. Consideration***
> ***a) Sale Price***
> *The Sale Price of the APARTMENT ("Sale Price") payable by the APARTMENT ALLOTTEE(s) to the DEVELOPER inclusive of External Development Charges, infrastructure development Charges Preferential Location Charges (whenever applicable) is Rs. 73,78,755 /- (Rupees Rupees Seventy Three Lakhs Seventy Eight Thousand Seven Hundred Fifty Five Only) payable by the Apartment Allottee(s) as per the Payment Plan annexed herewith as Annexure-1. In addition the Apartment Allottee agrees and undertakes to pay Service Tax or any other tax as, may be demanded by the Developer in terms of applicable laws/guidelines."*

26. A perusal of clause 1.2 of the above-mentioned agreement shows the total sale price of the allotted unit as Rs. 73,78,755/- in addition to service tax or any other tax as per the demand raised in terms of applicable laws/guidelines. The payment plan does not mention separately the charges as being demanded by the respondent/builder in the heading detailed above. However, there is sub clause (vii) to clause 5 of that agreement providing the liability of the allottee to pay the extra charges on account of external electrification **as demanded by HUDA**. The relevant clause reproduced hereunder:

> *"5. Electricity*
> *vii. That the Apartment Allottee(s) undertakes to pay extra charges on account of external electrification as demanded by HUDA."*

27. There is nothing no record that any demand in this regard has been raised by HUDA against the developer. So, the demand raised with regard to external electrification by the respondent/builder cannot said to be justified in any manner. Similarly, it is not evident from a perusal of builder agreement that the allottee is liable to pay separately for water, sewer and meter charges with GST. No doubt for availing and using those services, the allottee is liable to pay but not for setting up sewage treatment plant. However, for getting power connection through power meter, the allottee is liable to pay as per the norm's setup by the electricity department.

- **Miscellaneous charges**

28. The complainants pleaded in the complaint that the respondent/builder has demand a charge of Rs. 17,700/- on pretext of miscellaneous charges vide notice of possession dated 01.12.2020 which is illegal and unjustifiable and not tenable in the

eyes of law. In reply to this the respondent submitted that all the final demand raised by him are justifiable. The respondent has charged an amount of Rs 17,700/- on pretext of miscellaneous charges but neither the respondent has provided any bifurcation of these expenses nor has provided any clause under which such expenses are being charged, therefore, the same cannot be allowed.

G.VI Delayed possession charges

29. In the present complaint, the complainants intend to continue with the project and are 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*

30. The clause 3(a) of the apartment buyer agreement (in short, agreement) provides the time period of handing over of possession and is reproduced below:

> ***3. Possession***
>
> ***a) Offer of possession.***
>
> *That subject to terms of this clause and subject to the APARTMENT 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 and payable to the DEVELOPER by the APARTMENT ALLOTTEES) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the APARTMENT within a period forty two months (excluding a grace period of six months) from the date of approval*

of building plans or date of signing of this Agreement whichever is later. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the allottees of different Block/Towers as and when completed and in a phased manner.

31. 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 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.

32. 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.

33. 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 complainants 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.

34. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within a period of 42 months (excluding a grace period of 6 months) from the date of approval and of building plans or date of signing of this agreement whichever is later. In the present case, the promoter is seeking 6 months' time as grace period. But the grace period is unqualified one and does not prescribe any precondition for the grant of grace period of 6 months. The said period of 6 months is allowed for the exigencies beyond the control of the promoter. Therefore, the due date of possession comes out to be 26.09.2017.

35. **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 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.*

36. 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.

37. 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., 15.03.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

38. 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 complainants 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 complainants in case of delayed possession charges.

39. 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 3(a) of the unit buyer's agreement executed between the parties on 26.09.2013, the developer proposed to hand over the possession of the apartment within a period of forty-two (42) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this agreement whichever is later. The date of execution of buyer's agreement being later, the due date of handing over of possession is reckoned from the date of buyers' agreement and the grace period of 6 months is also allowed being unqualified/ unconditional. Therefore, the due date of handing over of possession comes out to be 26.09.2017.

40. It is pleaded on behalf of the respondent that in complaint bearing no. ***1464 of 2019*** titled as ***Deepak Trikha Vs. Spaze Towers Pvt. Ltd.*** pertaining to the project "Spaze Privy at4" also subject matter of the complaint disposed on 29.01.2020, the hon'ble authority allowed 139 days to be treated as zero period while calculating delayed possession charges. So, in this case also though the respondent has explained that the delay in completing the project was due to reasons such as the time taken for environment clearance, zoning plans, building plans approval from department of mines, zoology fire NOC, clearance from forest department and Aravli NOC from which comes to be considerable period but in view of earlier decision of the authority, it be allowed grace of 139 days while calculating delay possession charges.

41. Though the respondent took a plea w.r.t giving 139 days of grace period for handing over possession of the allotted unit, the authority is of the view that the grace period of 6 months has already been allowed to the respondent being unqualified and the period of 139 days declared as zero period in the aforesaid complaint is already included in the grace period of 6 months. The respondent cannot be allowed grace period for two time. Therefore, the due date of handing over of possession 26.09.2017.

42. The respondent applied for the occupation certificate on 17.06.2020 and the same was granted by the competent authority on 11.11.2020. 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 complainants as per the terms and conditions of the buyer's agreement dated 26.09.2013 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 26.09.2013 to hand over the possession within the stipulated period.

43. 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 11.11.2020, 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 + six months of grace period is allowed i.e. 26.09.2017 till the expiry of 2 months from the date of offer of possession (01.12.2020) which comes out to be 01.02.2021.

44. 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 complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 26.09.2017 till the expiry of 2 months from the date of offer of possession (01.12.2020) which comes out to be 01.02.2021 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.

45. Also, the amount of Rs.2,69,089/-towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

G. Directions of the authority:

45. 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 complainants from due date of

possession + six months of grace period is allowed i.e. 26.09.2017 till the expiry of 2 months from the date of offer of possession (01.12.2020) which comes out to be 01.02.2021 The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

ii. Also, the amount of Rs. 2,69,089/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

iii. The rate of interest chargeable from the complainants/ allottees 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 is directed to provide the calculations of super area of the project as well as of the allotted unit within a period of 30 days.

v. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainants/allottees 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

46. Complaint stands disposed of.

47. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2022