BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 307 of 2021
Date of filing complaint: 19.01.2021
First date of hearing : 03.03.2021
Date of decision : 22.02.2022

	Sanjay Sehgal R/o: C-502, Suncity Heights, Suncity, Sector-54, Gurugram, Haryana.	**Complainant**
	Versus	
	M/s Spaze Towers Private Limited R/o: 18, Community Centre, Mayapuri, Phase-I, New Delhi C/o: Spazedge, Sector 47, Gurgaon Sohna Road, Gurgaon, Haryana	**Respondent**

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Arsh Mehta (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 and 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, Gurgaon.
2.	Project area	3.956 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	134 of 2008 dated 28.06.2008 valid up to 27.06.2020 (COD from Well worth Housing Pvt. Ltd.)
5.	Name of licensee	Spaze Towers Pvt. Ltd.
6.	RERA Registered/ not registered	**Registered vide no. 393 of 2017 dated 22.12.2017**
	RERA Registration valid up to	**30.06.2019**
7.	Date of booking	13.09.2010
8.	Allotment letter	08.12.2010 (page no. 80 of complaint)
9.	Unit no.	139, 1st floor, tower A [Page 80 of the complaint]
10.	Unit measuring (super area)	500 sq. ft.
11.	Date of execution of builder buyer agreement	15.12.2012 [Page 83 of the complaint]
12.	Total sale consideration	Rs 36,47,890/-

		(Page no 182 of reply the SOA dated 21.06.2021)
13.	Total amount paid by the complainant	Rs. 31,70,821/- (Page no 183 of reply the SOA dated 21.06.2021)
14.	Payment plan	Construction linked payment plan (Page 102 of the complaint)
15.	Due date of delivery of possession *Clause 14: The possession of the said premises is proposed to be delivered by the developer to the allottee(s) within three years from the date of this agreement.*	15.12.2015
16.	Offer of possession	29.01.2020 (annexure R 40, page 178 of reply)
17.	Occupation Certificate	28.01.2020 (annexure R 39, page 175 of reply)
18.	Delay in delivery of possession till the date of offer of possession (29.01.2020) plus two months i.e., 29.03.2020	04 years 03 months 14 days

B. Facts of the complaint:

3. In 2010, the respondent company issued an advertisement announcing a commercial colony project called "Spaze Corporate Park" situated at Sector 69 & 70, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority. The respondent told him about the moonshine reputation of the company and the representative of it made huge presentations about the project mentioned above and also assured that they

have delivered several such projects in the National Capital Region. The respondent handed over one brochure to him which showed the project like heaven and in every possible way tried to hold him and incited him for payments. Relying on various representations and assurances given by the respondent company and on belief of such assurances, he booked a unit in the project by paying an amount of Rs. 3,07,725/- towards the booking of the said unit bearing no. 139, 1st floor, tower no. A, in Sector 69 & 70, having super area measuring 500 sq. ft. to the respondent dated 12.09.2010 and the same was acknowledged by the respondent vide receipt dated 13.09.2010. The respondent sent an allotment letter dated 08.12.2010 to the complainant providing the details of the project, confirming the booking of the unit dated 12.09.2010, allotting a above said unit in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs. 33,98,750/-, which includes basic price of Rs. 30,00,000/- plus EDC and IDC of Rs. 1,48,750/- car parking charges of Rs. 2,50,000/- and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. As per the payment plan and demand raised by the respondent in provisional allotment letter. The complainant paid sum of Rs.3,07,725/- dated 16.11.2010. A buyer's agreement was executed between the complainant along with his parents and respondent on 15.12.2012.

4. Further, the complainant having dreams of his own commercial unit in NCR signed the agreement in the hope that the unit will be delivered within three years from the date of execution of agreement. He was also handed over one detailed payment plan which was construction linked plan. As per clause 14 of the buyer's agreement the respondent had to deliver the possession within a period of 3 years from the date of from the date of agreement. The date of agreement is 15.12.2012. Therefore, the due date of possession comes out to be 15.12.2015. The payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. He approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work. During the period he went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once

he visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them. He contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to him regarding the status of the construction and were never definite about the delivery of the possession. He kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. In terms of clause 14 of the said buyer's agreement, respondent was under dutiful obligation to complete the construction and to offer the possession within three years from the date of execution of the agreement. He approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to him that the construction will get completed soon.

5. The respondent vide letter dated 15.11.2017, after a delay of two years, from the delivery period committed as per buyer's agreement, raised a demand of Rs. 2,25,000/- plus Rs.10,125/- total amounting to Rs. 2,35,125/- on account of installation of

electrical and Rs. 72,462/- on account of HVAT, after receiving the above said demand, he raised objection to this demand as the same was not payable as per the buyer's agreement. As is evident from the buyer's agreement no payment was to made by him towards installation of electrical.

6. As per the buyer's agreement, the respondent was liable to handover the possession of the said unit on or before 15.12.2015 and as on the date of the demand, which was not payable by the complainant as per the buyer's agreement, the respondent was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 & HRERA Rules, 2017 for the delay in the delivery. The respondent not only raised demand for an amount which was not payable as per the buyer's agreement but also did not include the amount due to the respondent for the delayed possession charges in the statement of account dated 14.02.2020.

7. The complainant sent email dated 19.11.2017 to respondent asking the respondent company about the status of the project, time by which the project is expected to be completed and the penalty amount that respondent is liable to pay. The respondent sent email dated 25.11.2017 to him that possession of the said unit is expected to be completed on or before June-July-2018 and for the penalty amount respondent owes in wake of delay of the project. Therefore, requesting him, to refer the penalty clause on the buyer's agreement. He sent email dated 03.09.2019 to

respondent stating that as the email dated 25.11.2017 respondent company promise him to handover the possession on or before June-July-2018 but now it is already September 2019, haven't received the possession. After many requests and emails he received the offer of possession on 29.01.2020.

8. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of labour cess @ Rs.10 sq. ft. amounting to Rs.5,240/-, external electrification charges of Rs. 1,46,134/-, additional firefighting charges of Rs.32,866/-, wet point charges of Rs.54,880/-, the miscellaneous charges of Rs. 41,300/-, interest charges 3,20,898/- and maintenance charges of Rs. 56,268/-, which was never the part of the payment plan provided along the buyers agreement and the same was not payable as per the buyer's agreement as well.

9. It is evident from the buyer's agreement no payment was to made by the complainant towards labour cess @ Rs.10 sq.ft. amounting to Rs.5,240/-, external electrification charges of Rs. 1,46,134/-, additional firefighting charges of Rs.32,866/-, wet point charges of Rs.54,880/-, the miscellaneous charges of Rs. 41,300/-, interest charges of 3,20, 898/- and maintenance charges of Rs. 56,268/-. It is pertinent to note here he raised objection to the above said illegal demand and asked for the delay possession charges on account of delay in handing over the possession for more than 7

years but instead of quashing the above said illegal demands the respondent kept on sent a reminder letter dated 31.08.2020, 15.09.2020, 10.11.2020, 15.09.2020 and 05.12.2020 for payment of dues. He vide email dated 01.12.2020 reply to the above said reminders letters dated 31.08.2020, 15.09.2020, 10.11.2020, 15.09.2020, that he is very keen in taking the possession of the said unit. Furthermore, stating that respondent has changed for late payment charges and there is no mention of delay penalty on the part of respondent as there is delay of more than 7 years despite of taking more than 80% payment long years back.

10. That the complainant vide email dated 01.12.2020 reply to the above said reminders letters dated 31.08.2020, 15.09.2020, 10.11.2020, 15.09.2020, the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. He has suffered on account of deficiency in service by the it and as such it is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the provisions of Rules, 2017.

11. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully

liable to cure the deficiency as per the provisions of the Act, 2016 and the provisions of Rules, 2017. The present complaint sets out the various deficiencies in services, unfair and restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

12. The complainant is the one who has invested their life savings in the said project and are dreaming of a unit of their own and the respondent has not only cheated and betrayed them but also used their hard-earned money for their enjoyment.

C. Relief sought by the complainant:

The complainant has 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 complainant and handover the physical possession of the said unit.

ii. Direct the respondent, not to cancel the allotment of the unit.

iii. Direct the respondent not to charge labour cess @Rs. 10 sq.ft. amount to Rs. 5,240/-, external electrification charges of Rs. 1,46,134/-, additional firefighting charges of Rs. 32,866/-, wet point charges of Rs. 54,880/-, miscellaneous charges of Rs. 41,300/- and interest charges of Rs. 3,20,898/-.

iv. Direct the respondent to rectify the wrong holding charges imposed upon the complainant.

v. Direct the respondent not to cancel the allotted unit.

vi. Direct the respondent not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

D. Reply by respondent

i. That the present complaint raises several such issues which cannot be decided by way of the present complaint in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) and can only be adjudicated by a civil court. The present complaint deserves to be dismissed on this ground alone.

ii. That the present complaint is not maintainable before this hon'ble authority. The complainant has filed the present

complaint seeking possession, interest and compensation for alleged delay in delivering possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Act, 2016 read with rule 29 Rules, 2017, and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

iii. That the complainant has no locus standi or cause of action to file the present complaint. 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 15.12.2012, as shall be evident from the submissions made in the following paras of the present reply.

iv. That the complainant approached the respondent and expressed an interest in booking a commercial unit in the commercial complex known as "Spaze Corporate Parkk', situated in Sectors 69 & 70, Gurugram. It is respectfully submitted that the complainant had made detailed and elaborate enquiries with regard to capacity, competence and capability of the respondent to undertake the conceptualisation, promotion, construction, development and implementation of the said project. After being fully satisfied in all respects, a well

thought of and duly deliberated decision had been made by the complainant to book for purchase commercial unit bearing no. 139 on 1st floor located in tower A having tentative super area measuring 500 square feet located in "Spaze Corporate Park" situated in Sector 69 and 70, Gurgaon.

v. That it is respectfully submitted that with the objective of booking for purchase said unit, application form dated 13.09.2010 had been submitted by the complainant with the respondent. Thereafter, allotment letter dated 08.12.2010 had been issued by the respondent to him in respect of said unit. The buyer's agreement dated 15th of December 2012 had been voluntarily and consciously executed by him in respect of the said unit. It is pertinent to mention that buyer's agreement had been sent by the respondent to him twice for execution. Initially the buyer's agreement had been sent by the respondent of the complainant for execution when a covering letter dated 5th of January 2011. Subsequently the same was again sent for execution by the respondent to the complainant with a covering letter dated 29th of March 2012. The agreement remained with the complainant for a long span of time prior to its voluntary and conscious execution. The complainant was fully conscious and aware of the ramifications of the contractual covenants incorporated in buyer's agreement referred to above. After fully understanding the said contractual covenants to be valid and

binding on the parties did the complainant proceed to execute the buyer's agreement dated 15th of December 2012. The limitation for challenging the validity/legality of the aforesaid contract has expired long ago. The terms and conditions incorporated in the aforesaid contract are binding upon the parties with full force and effect. The rights and obligations of the parties shall be determined by contractual covenants incorporated in the aforesaid buyer's agreement.

vi. The complainant has alleged that physical possession of the said unit was to be delivered by the respondent to the complainant up to 15th of December 2012 as per clause 14 of the said agreement. The aforesaid clause of the said agreement has been completely misinterpreted and misconstrued by the complainant. The terms and conditions incorporated in the said agreement are to be cumulatively considered in their entirety. The complainant cannot be permitted to place reliance on selected clauses of the said agreement in isolation.

vii. That it is pertinent to mention that clause 14 of the buyer's agreement provides that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same would entitle the respondent for extension of time for delivery of physical possession. In fact, it was also provided that upon

occurrence of such eventuality, the respondent would have the right to alter or vary the terms and conditions of the agreement.

viii. That the complainant was a chronic defaulter in making payment of instalments in respect of the said unit. Although, the respondent was under no obligation to send repeated requests and reminders to the complainant to make payment of outstanding amounts, yet as a gesture of goodwill and to avoid unwarranted controversy, the same was done by the respondent. It needs to be appreciated that the default/delay in payment of instalments has a cascading effect on the entire project. Such default compels the respondent to generate funds from its own resources at considerable costs. Cumulatively considering the contractual covenants, this default/delayed period of payments is also liable to be excluded while reckoning the period of time available to the respondent to undertake the construction/development of the said project.

ix. That the complainant has completely misinterpreted and misconstrued the covenants incorporated in the buyer's agreement. No rigid or fixed timeline for execution of the project and delivery of physical possession of the unit was incorporated or provided in the aforesaid agreement. The indicative timelines contained in the agreement were subject to occurrence of various eventualities and also to other circumstances mentioned therein which have not been

reproduced for the sake of brevity. The respondent craves leave of this honourable authority to refer to and rely upon the relevant covenants of the agreement during the course of trial/proceedings.

x. That the construction and completion of a real estate project of such huge magnitude is also largely dependent upon grant of permission/sanctions by various statutory authorities. It is pertinent to mention that the respondent can only submit requisite applications, complete in all respects in the office of the concerned statutory authorities for grant of various permissions/sanctions. However, once the same is done, the respondent ceases to have any control over the same. The respondent cannot be penalised or blamed in case there occurs any delay in grant of permissions/sanctions required for the project especially when the same cannot be directly or impliedly attributed or imputed to the respondent.

xi. That it is pertinent to mention herein that at the time of booking of the unit and also at the time of execution of the buyer's agreement, it was clearly and transparently disclosed to the original allottee that the development of the project was dependent upon the issuance of various approvals and permissions by the competent authorities. The respondent had further admitted and disclosed to the complainants that the respondent had no power or control over functioning of

government authorities and that the respondent could not provide any time frame within which the approvals would be granted.

xii. That it is respectfully submitted that the respondent has shown diligence and sincerity all along in undertaking the implementation of the commercial project of which the property booked for purchase by the complainants are a part. In fact, no delay whatsoever, can be attributed to the respondent, as shall become evident from the submissions made in the subsequent paras of the present reply. It is respectfully submitted that a large number of permissions/ sanctions are required to be obtained from the concerned statutory authorities for the purpose of undertaking the implementation of commercial project of the huge magnitude as the instant one. The respondent can only proceed to submit the requisite application, complete in all respects, in the office of the concerned statutory authorities for obtaining required sanctions/permissions.

xiii. The respondent cannot exercise any control over the functioning of the said statutory authorities. In the present case, the application for obtaining sanction of building plans was submitted by the respondent in the office of Directorate of Town & Country Planning, Haryana, Chandigarh on 09.10.2011. The building plans were eventually sanctioned on 10.05.2012,

that is after a period of approximately 7 months from the date of submission of the application by the respondent.

xiv. The respondent has been needlessly vilified and condemned. That it is pertinent to mention that respondent had submitted an application for grant of environment clearance to the concerned statutory authority on 18.06.2012. However, for one reason or the other, which by no stretch of imagination can be construed directly or impliedly to be a lapse or default on the part of the respondent, the said environmental clearance has not been issued till date. The respondent/its officials have been diligently pursuing the matter. It would also not be out of place to mention that for an extremely long span of time the concerned authority was not holding office and functioning in the regular course of its duties. Therefore, the non-grant of environmental clearance has considerably delayed the execution of the project. The said circumstance is certainly beyond the power and control of the respondent.

xv. That it is submitted that after submitting the application for grant of environmental clearance before the hon'ble State Environment Impact Assessment Authority (SEIAA) the Respondent was then issued EDS due to shortcomings in application vide letter no. HR/SEAC/2012/222/180 dated 17.07.2012. The respondent immediately on receipt of EDS submitted its reply vide Letter dated 10.09.2012 and the

respondent was informed vide letter bearing no. HR/SEAC/2012/222/925 dated 31.12.2012 that the application of the respondent was decided to be listed before the 73rd meeting of State Expert Appraisal Committee (SEAC) which was scheduled on 16.01.2013. The respondent attended the 73rd meeting of SEAC and were asked to furnish clarification regarding the renewal of License no. 134/2008 vide letter dated 25.01.2013.

xvi. The respondent submitted its reply dated 25.01.2013 whereby clarification was given by the respondent regarding the renewal of license no. 134/2008. On 03.06.2013 final notice from SEACC bearing no. HR/SEAC/222/324 was received for submission of copy of renewed License. The said final notice was duly replied by the respondent vide letter dated 27.06.2013. The respondent received a notice dated 05.07.2013 whereby it was informed that the application of the respondent would be again listed for appraisal before the 88th meeting of State Environment Impact Committee to be held on 15.07.2013. However, the 88th meeting of State Environment Impact Committee was not held and the same was postponed to 05.08.2013 which was duly attended by the respondent.

xvii. That on 12.08.2013 the respondent received another notice bearing no. HR/SEAC/2012/222/582 wherein certain queries and clarifications were sought. The said notice was duly replied

by the respondent vide letter dated 15.11.2013. Thereafter the respondent received another notice bearing no. HR/SEACC/2014/222/960 dated 06.01.2014, whereby it was informed that the application of the respondent would be again listed for appraisal before the 99th meeting of State Environment Impact Committee to be held on 28.01.2014. Once again certain queries were raised and the same were duly replied vide respondent's reply dated 18.02.2014.

xviii. That the respondent again received yet another notice bearing no. HR/SEACC/2014/222/1182 dated 24.04.2014 whereby the respondent was informed that the application of the respondent would be again listed for appraisal before the 104th meeting of State Environment Impact Committee to be held on 12.05.2014. On 02.06.2014 the State Environment Assessment Committee vide Order bearing no. SECY/SEAC/2014/1323 passed an order constituting a sub-committee to assess the status of construction at the project site of the respondent. However, the sub-committee did not visit the site due to reasons best known to the committee/subcommittee despite the respondent's request letter dated 07.10.2014 and 12.01.2015 requesting to conduct the site visit as directed in the order dated 02.06.2014. The respondent sent another letter dated 27.08.2015 requesting the authorities to grant the environment clearance. However, thereafter in the month of June 2016 the respondent

received another order passed by SEAC for constituting a new sub-committee to verify the status of construction at the project site.

xix. Thereafter, show-cause notice was received vide letter no. HSPCB/GRS/2016/ dated 09.12.2016 for violation of EIA notification of 14.09.2006 and the construction at the project site was brought to a standstill. It is pertinent to mention herein that the total built-up area of the project is 46264.209 sq. m which is less than 1,50,000 sq.m and thus the said project falls under category 8(a) of EIA Notification, 2006. However, in the light of the Ministry of Environment, Forest and Climate Change notification no. S.O 804 (E) dated 14.03.2017, where it had been clearly notified that the violation cases/ non-compliance cases would be treated as 'A' category projects, hence the application for grant of terms of reference under violation category were submitted to Ministry of Environment, Forest and Climate Change on 02.06.2017.

xx. That thereafter, as per amendment in notification vide S.O. 1030(E) dated 8th March 2018 & OM no. Z-11013/22/2017- IA. II (M) dated 15.03.2018 & 16.03.2018, the project falls under category 'B', of schedule 8(a) & is exempted from public hearing and will be appraised by SEAC/SEIAA, Haryana. Subsequently, it was considered in 169th SEAC, Haryana meeting dated 18.05.2018 and thereafter, Terms of Reference (TOR) was

granted by SEIAA, Haryana vide letter no. SEIAA/HR/2018/681 dated 07th August 2018.

xxi. That the tenure of SEAC/SEIAA Haryana got completed and the respondent submitted the Environment Impact Assessment Report before Ministry of Environment, Forest and Climate Change on 06.11.2018. The case had been enlisted in the 17th Expert Appraisal Committee meeting for the proposal involving violation of EIA notification, 2006 scheduled on 29.01.2019 and certain queries were raised by Ministry of Environment, forest and climate change. In response to the said queries reply dated 28.02.2019 was duly submitted by the respondent. That the application was again listed for appraisal before the 20th meeting of Expert Appraisal Committee to be held on 29.03.2019 minutes of meeting of which are awaited.

xxii. That therefore it is clear and quite evident from the facts and submissions made above that the respondent has been rigorously following up with the authorities whether it was the State Expert Appraisal Committee or Ministry of Environment, forest and climate change and have left no stone unturned to get the environment clearance from the authorities. It is pertinent to mention herein that the provision for such an eventuality has been provided for in the buyer's agreement dated 15.12.2012. It is specifically provided in clause 14 of the aforesaid contract that in case the completion of the project was delayed due to

departmental delay or on account of any reason beyond the control of the respondent, the same would entitle the respondent for extension of time for delivery of physical possession. In fact, it was also provided that upon occurrence of such eventuality, the respondent would have the right to alter or vary the terms and conditions of the agreement. Thus, it is comprehensively established that no default of any nature can be attributed to the respondent in the entire sequence of events.

xxiii. That clause 14 of the buyer's agreement provides that possession of the unit shall be offered to the complainants within 3 years from the date of execution of the agreement subject to force majeure conditions and reasons beyond the power and control of the respondent, in which case the date for delivery of possession shall stand extended accordingly. It has been specifically provided in clause 14 of the aforesaid contract that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same would entitle the respondent for extension of time for delivery of physical possession. In fact, it was also provided that upon occurrence of such eventuality, the respondent would have the right to alter or vary the terms and conditions of the agreement. The complainant was a chronic defaulter in payment of instalment. Although, the respondent was under no obligation to keep

sending reminders to the complainant to make payment of outstanding instalments, yet as a gesture of goodwill letter dated 19th of January, 2011, letter dated 8th of March, 2013, letter dated 11th of April, 2013, letter dated 26th of April, 2013, letter dated 9th of July, 2013, letter dated 10th of August, 2013, letter dated 7th of September, 2013, letter dated 12th of October, 2013 and letter dated 4th of February, 2014 were sent by the respondent to the complainant calling upon the complainant to make payment of outstanding amounts. Email dated 15th of November 2017 had been sent by the respondent to the complainant for making payment of outstanding dues towards electrical installation and VAT charges. Occupation certificate for the said project had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh on 28th of January 2020.

xxiv. That letter dated 29th of January 2020 was sent by the respondent to the complainant calling upon the complainant to obtain physical possession of the said unit and to make outstanding payments. Even thereafter letter dated 15th of September 2020 and letter dated 5th of December, 2020 were sent by the respondent to the complainant calling upon the complainant to make payment of outstanding amount. The detailed statement of accounts as on 31st of March, 2021 of the transaction of sale of the said unit in favour of the complainant.

The interest ledger as on 2nd of April 2021 has been appended as annexure R44. The said project has been duly registered with the honourable authority and the registration certificate is annexure R45. Thus, no lapse in the entire sequence of events can be attributed to the respondent. In accordance with contractual covenants incorporated in buyer's agreement dated 15.12.2012 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:

Sr. 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	Approval of Building Plans	09-10-2011	10-05-2012	7 months
2	Clarification regarding applicability of Forest Laws	22.07.2011	07.02.2013	20 months
3	Environment Clearance	10-07-2012	01.01.2020	

xxx. That from the facts and circumstances mentioned above, it is comprehensively established that the time period mentioned hereinabove, was consumed in obtaining of requisite

permission/sanctions from the concerned statutory authorities. It is respectfully submitted that the project in question could not have been constructed, developed and implemented by the respondent without obtaining the approvals referred to above. Thus, the Respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 3 years as has been explicitly provided in buyer's agreement dated 15.12.2012. 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. It has been comprehensively established that the complainant has 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. The complainant consciously and maliciously chose to ignore the payment request letters, notices, emails and reminders issued by respondent and flouted in making timely payments of the instalments which was an essential, crucial and indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per the payment schedule agreed upon, the failure has a cascading effect on the operations and the

cost for proper execution of the project increases exponentially and at the same time inflicts substantial losses to the developer. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments.

xxxi. That without admitting or acknowledging in any manner the truth or legality of the allegations put forth by the complainant and without prejudice to any of the contentions of the respondent, it is submitted that there is no contractual covenant contained in the buyer's agreement based on which the complainant can stake claim to any compensation to be granted to them by the respondent. Furthermore, in case of delay caused due to non-receipt of permission/sanction from the competent authorities, it is only logical that no compensation shall be payable by the respondent as delay having arisen from circumstances beyond the power and control of the developer.

xxxii. That cumulatively considering the facts and circumstances of the present case, no delay whatsoever can be attributed to the Respondent by the Complainant. However, all these crucial and important facts have been deliberately concealed by the Complainant from this Honourable Authority. The complaint has been preferred on absolutely baseless, unfounded and legally and factually unsustainable surmises which can never inspire the confidence of this Honourable Authority. The accusations levelled

by the Complainant are completely devoid of merit. The complaint filed by the Complainant deserves to be dismissed.

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.

E. Jurisdiction of the authority:

13. 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

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.

F. Findings on the objection raised by the respondent:

F.I Objection regarding maintainability of the complaint.

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

15. 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 regarding relief sought by the complainant:

G.1 Labour cess @Rs. 10 sq.ft. amount to Rs. 5,240/-, external electrification charges of Rs. 1,46,134/-, additional firefighting charges of Rs. 32,866/-, wet point charges of Rs. 54,880/-, miscellaneous charges of Rs. 41,300 and interest charges of Rs. 3,20,898/-.

- **Labour cess @10 sq.ft.**

16. The complainant pleaded that the respondent/builder has demanded a charge of Rs. 5,240/- on pretext of labour cess vide notice of possession dated 29.01.2020 which is illegal and unjustifiable and is not tenable in the eyes of law. He further stated that he approached the office of the respondent for rectification of the alleged illegal and unjustifiable demand it outrightly refused to do the same. In reply to this the respondent submitted that all the final demands raised by him are justifiable and complainant 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 @10/sq/ft totalling to the amount of Rs. 5,240/-. On perusal of the BBA signed between both the parties it can be inferred that 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 complainant is 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 titles as ***Mr. Sumit Kumar Gupta and Anr. Vs. Supset Properties Private Limited (962 of 2019)*** wherein 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**

17. While issuing offer of possession of the allotted unit vide letter dated 29.01.2020, besides asking for payment of amount due, the respondent/builder also raised a demand of Rs. 1,46,134/- for external electrification charges (including 33 KVA connection & meter charges) @249/sq.ft. but that amount could not have been collected because it is not a part of BBA. So, the demand raised as external electrification charges from the allottee is not valid demand and the allottee is not liable to pay the external electrification charges.

- **Additional firefighting charges**

18. The complainant pleaded that the respondent/builder has demanded a charge of Rs. 32,866/- on pretext of additional firefighting charges vide notice of offer of possession 29.01.2020, which is illegal and unjustifiable and is not tenable in the eyes of law. In reply to this the respondent submitted that all the final demands raised by him are justifiable and complainant choose to ignore the same. It is pertinent to mention here that the respondent vide offer of possession raised additional firefighting charges @56/sq.ft. Moreover, it is pleaded by the respondent that as per clause 5.4 of the BBA dated 15.12.2012 the allottee is liable to pay the amount.

19. Clause 5.4 of the buyer's agreement is reproduced below:

> *"5.4 That the rate mentioned in* ***Clause (1) supra*** *is inclusive of the cost of providing electrical wiring in each premises and does not include the cost of electric fitting, fixtures, etc, which shall be got*

installed by the ALLOTTEE(S) at his/her own cost. The fire fighting equipments shall be provided in accordance with the ***supra.*** *If however, due to any subsequent legislation/Govt. order or directive or guidelines or change in the National Building Code or if deemed necessary at the sole discretion of the DEVELOPER, additional Fire safety measures are undertaken, then the ALLOTTEE(S) agrees to pay on demand the additional expenditure incurred thereon on a pro-rata basis as determined by the DEVELOPER, which shall be final and binding on the ALLOTTEE(s). The ALLOTTEE(S)'s ownership and right to use and occupy the said premises shall be in accordance with and subject and subordinate in all respects to the provisions of the Byelaws & Maintenance Agreement of SPAZE CORPORATE PARKK and to such other rules and regulations as DEVLOPER may from time to time promulgate. Failure to comply with these provisions shall constitutes a material breach of this Agreement and shall empower the DEVELOPER to terminate the contract. ALLOTTEE(S) undertakes to execute the maintenance agreement in favour of maintenance agency as and when the ALLOTTEE(S) is called upon to do so.*

20. As per clause 5.4 of the buyer agreement the allottee agreed to pay on demand additional firefighting charges. But there is nothing on the record in which justification is mentioned regarding raising of additional firefighting amount and the measure undertaken in this regard So, the complainant is not liable to pay additional firefighting charges of Rs. 32,866/.

- **Wet point charges:**

21. Though wet point charges have been raised from the allottee by the builder of Rs. 54,880/- but that amount could not have been collected as it is not a part of BBA. The clause regarding wet point charges neither in the agreement nor it is evident that the project in which the allotted unit is located adjacent to any water body. So, the respondent is directed not to charge any wet point charges.

- **Miscellaneous charges:**

22. Though miscellaneous charges have been raised from the allottee by the builder of Rs. 41,300/-. The respondent pleaded that as per clause 38 of the buyer agreement of the allottee agreed to pay the

expenses of stamp duty, registration charges and all other incidental and legal expenses for execution and registration of conveyance deed in favour of allottee. But there is nothing on the record in which justification is mentioned regarding raising of miscellaneous charges. So, the complainant is not liable to pay the miscellaneous charges.

- **Interest on delay payments:**

23. The authority is of the view that the interest rate charged by the promoter on the delayed payment is one-sided and arbitrary. The rate of interest chargeable from the allottee by the promoter, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. 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., 22.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e., 9.30% by promoter.

F. II Holding charges

24. The respondent is not entitled to claim 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 the Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020. The authority earlier, in view of the provisions of the Act in a lot of complaints decided in favour of promoters to the effect holding charges are payable by the allottee. However, in the light of the recent judgement of the NCDRC and hon'ble Apex Court, the authority concurs with the view taken therein and holds

that a promoter/ builder cannot levy holding charges on a homebuyer/allottee as it does not suffer any loss on account of the allottee taking possession at a later date.

As far as holding charges are concerned, the developer having received the sale consideration has nothing to loose by holding possession of the allotted unit except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

F.III Cancellation of the allotted unit

25. The respondent sent various reminder on different dates regarding the payment of outstanding payment of the said unit. Thereafter, it offered the possession of the unit vide offer of possession letter dated 29.01.2020. Further, the respondent raised a last & final demand vide letter dated 15.09.2020 calling upon to pay the outstanding payment. Thereafter, the respondent in lieu of the last opportunity sent a pre-termination notice to the complainant on 05.12.2020. It is pertinent to mention here that the complainant has paid more than 85% of the amount of total consideration at that point of time and the respondent has also offered the possession of the unit. Therefore, it would not be justified for the respondent to cancel the unit of the complainant and he is directed to clear the outstanding dues within a month failing which it can proceed against the allottee as per the

provisions of buyer agreement for cancellation and refund. However, the respondent shall be at liberty to exercise his right for delay payment interest under 19(6) & (7) of the Act of 2016.

F.IV Indemnity cum undertaking indemnifying

The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to the rights of the complainant as has been decided by the authority in complaint bearing no. *4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.*

F. V Delay possession charges:

26. 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.*

27. 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.

28. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/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.

29. 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.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee 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.*

31. 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.

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., 22.02.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

32. 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;"*

33. 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.

34. 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 15.12.2012, the developer proposes to hand over the possession of the apartment within a period of three years from the date of execution of this agreement. The date of execution of this agreement is 15.12.2012 so the possession of the booked unit was to be delivered on or before 15.12.2015. The respondent has obtained the occupation certificate on 28.01.2020. 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 15.12.2012 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 15.12.2012 to hand over the possession within the stipulated period.

35. 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, 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. 15.12.2015 till 29.03.2020 i.e. expiry of 2 months from the date of offer of possession (29.01.2020).

36. 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. 15.12.2015 till 29.03.2020 i.e. expiry of 2 months from the

date of offer of possession (29.01.2020) 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.

G. Directions of the authority:

37. 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., 15.12.2015 till 29.03.2020 i.e. expiry of 2months from the date of offer of possession (29.01.2020).

ii. 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.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. 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.

v. 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.

38. Complaint stands disposed of.

39. File be consigned to registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram

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

Dated: 22.02.2022